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# THE UNITED NATIONS SECURITY MECHANISM AND AFRICA: CHALLENGES AND THE WAY FORWARD

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**GOLDEN GATE UNIVERSITY  
SCHOOL OF LAW, SAN FRANCISCO**

**THE UNITED NATIONS SECURITY  
MECHANISM AND AFRICA: CHALLENGES  
AND THE WAY FORWARD**

**BY**

**NEBIYOU DAGNE TESSEMA**

A DISSERTATION SUBMITTED TO THE GOLDEN GATE  
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*SCIENTIAE JURIDICAE DOCTOR (SJD)*

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SAN FRANCISCO, CALIFORNIA, U.S.A.

NOVEMBER 26, 2014

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## **DEDICATION**

**This work is dedicated to my lovely wife and best earthly companion, Haimanot, and our two sons, Noah and Kaleb. Your unconditional love, unflinching support and encouragement made this dissertation possible.**

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## ABBREVIATIONS

AAFC	Allied Armed Forces of the Community
AEC	African Economic Community
AFDL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
APSA	African Peace and Security Architecture
ASF	African Standby Force
AU	African Union
AUBP	African Union Border Program
AUPCRD	African Union Post-conflict Reconstruction and Development
CEWARN	Conflict Early Warning Mechanisms
CEWS	Conflict Early Warning System
CISSA	Committee of Intelligence and Security Services of Africa
DDR	Disarmament, Demobilization, and Reintegration system
DRC	Democratic Republic of Congo
ECOMIL	ECOWAS Mission in Liberia
ECOMOG	ECOWAS Military Observer Group
ECOWAS	Economic Community of West African States
IGAD	Inter-Governmental Authority on Development
IGADD	Inter-Governmental Authority on Drought and Development
IPF	International Partnership Forum
ISDSC	Inter-State Defense and Security Committee
ISPDC	Interstate Politics and Diplomacy Committee
MONUC	UN Observer Mission in Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo



MSC	Mediation and Security Council
OAU	Organization of African Unity
PSC	Peace and Security Council
RECs	Regional Economic Communities
RM	Regional Mechanisms
SADC	Southern Africa Development Community
SADCC	Southern African Development Coordinating Conference
SADC OPDS	SADC Organ of Politics, Defense and Security
SIPO	Strategic Indicative Plan for the Organ
SMC	Standing Mediation Committee
UN	United Nations
UNMEE	United Nations Mission in Eritrea and Ethiopia
UNOAU	United Nations Office to the African Union
UNOMIL	United Nations Observer Mission in Liberia
UNREC	United Nations Regional Center for Peace and Disarmament in Africa

## INTRODUCTION

*“Empty gestures are all too easy to make: an effective, efficient and equitable collective security system demands real commitment.”<sup>1</sup>*

According to UN Secretary General’s High-Level Panel on Threats, Challenges and Change, the biggest security threats the world faces today “go far beyond States waging aggressive war [and] ...extend to poverty, infectious disease and environmental degradation, war and violence within States; the spread and possible use of nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime.”<sup>2</sup>

Africa is no exception in this regard. Regrettably the situation is even more complicated given conditions of grinding poverty, the continued surge of infectious diseases, the alarming environmental degradation, unresolved long-standing disputes, unsettled border disputes, rising ethnic tension, challenges of good governance, the colonial legacy and the regional and international dimensions of intrastate conflicts in the continent. It needs to be underscored here that the international community cannot make itself invulnerable from the impending threats of international peace and security while the security challenges in Africa are still pressing.

The United Nations (UN) has primary responsibility for the maintenance of international peace and security.<sup>3</sup> Though the ideological divide during the

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<sup>1</sup>Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, A more secure world: Our shared responsibility, United Nations, A/59/565 (2 December 2004), p. 13

<sup>2</sup>Id, 11

<sup>3</sup> See Article 1 of the UN Charter

Cold War era largely crippled the UN from acting on important collective security issues, its involvement in global security issues including those in Africa increased exponentially following the end of the Cold War.<sup>4</sup> The number of Security Council Resolutions rose from an average of fifteen per year prior to the end of the Cold War era to twenty-five in 2014. Its involvement in Africa has also substantially increased. In 1988, immediately before the end of the Cold War, the Security Council passed nineteen Resolutions out of which only four were on Africa,<sup>5</sup> while in 2014 the Council passed twenty-five resolutions on Africa out of an overall total of forty.<sup>6</sup> Between 1946 and 1989, the UN had only three peacekeeping operations in Africa.<sup>7</sup> Following the end of the Cold War, the UN conducted twenty-one peacekeeping operations out of which sixteen are still active.<sup>8</sup>

Increasingly, the African Union (AU) is also taking an active role in responding to the crisis in the continent by providing leadership in the promotion and advancement of regional security. The UN has welcomed the AU emerging role with optimism and high expectations.<sup>9</sup> More importantly, there has been a growing trend of cooperation between UN, AU and various sub-regional organizations in Africa since the mid 1990s.

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<sup>4</sup>Oscar Schachter, *THE UN LEGAL ORDER: AN OVERVIEW, THE UNITED NATIONS AND INTERNATIONAL LAW*, (1997), 3 & 13

<sup>5</sup>United Nations, Security Council Resolutions, 1988, available at <http://www.un.org/Docs/scres/1988/scres88.htm> (last visited on May 7, 2009)

<sup>6</sup><http://www.un.org/en/sc/documents/resolutions/2014.shtml> (last visited on November 18, 2014)

<sup>7</sup>UN Peace Keeping, List of Peacekeeping Operations, available at <http://www.un.org/Depts/dpko/list/list.pdf> (last visited on 10 October 2014)

<sup>8</sup> Id.

<sup>9</sup>United Nations Security Council, Resolution on Peace and Security in Africa, S/RES/1809 (2008), 16 April 2008

Although the UN Security Council supports the general idea of stronger cooperation between the UN, and regional organizations such as AU as well as sub-regional organizations,<sup>10</sup> it has not traditionally shown much inclination to consider this issue other than at the abstract level. Rather the Security Council has tended to focus its energy on concrete cases in an ad hoc manner rather than proceeding from the general to the specific.

Obviously the AU has neither the United Nations' level of resources, institutional capacity nor experience in dealing with threats to regional peace and security. Nonetheless, its founding instrument, the Constitutive Act of the African Union, provides the promotion of peace, security and stability on the African Continent as one of the major objectives of the Union. The important centerpiece of the Organization of African Unity's (AU's predecessor) reform was in fact in the area of conflict prevention, management and resolution that culminated in the foundation of a more permanent legal and institutional framework under the African Union.<sup>11</sup> In addition to creating the Peace and Security Council (PSC) as a standing organ of the Union, the AU framework also provides additional mechanisms, including: the Panel of the Wise; the PSC Secretariat; the Continental Early Warning System; the Peace Fund; and, the African Standby Force.<sup>12</sup>

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<sup>10</sup> Id.

<sup>11</sup>The first attempt by the OAU to institutionally address the issue of peace and security in the region was the establishment of the OAU Mechanism for Conflict Prevention, Management and Resolution in 1993.

<sup>12</sup> The Secretary General, Report of the Seminar on Cooperation between the United Nations and the African Regional Organizations in the field of Peace and Security, (Dec. 15, 2005)

The AU Assembly attempted to make this mechanism even stronger through the adoption of a Common Defense and Security Policy and, later on, the AU Non-aggression and Common Defense Pact.<sup>13</sup> Despite the resource and capacity limitations, AU has also gained considerable experience in the area of conflict prevention, management and resolution.<sup>14</sup> This arguably puts AU in a better position to take more responsibility in the maintenance of regional peace and security.

African sub-regional organizations such as Economic Community of West African States (ECOWAS), the Intergovernmental Authority for Development (IGAD), Southern Africa Development Community (SADC), and Economic Communities of Central African States (ECCAS), Community of Sahelo-Saharan States (CEN-SAD) also responded to the conflicts in Africa with the creation of sub-regional security mechanisms.

And yet Africa is still experiencing multiplicity of conflicts.<sup>15</sup> The prevailing intrastate conflicts and internationalized intrastate conflicts is particularly pressing. Reports suggest that Africa suffers more armed conflicts than any other region and even compared to the rest of the developing world. Regrettably conflict appears to be the hallmark of African societies.

The current state of insecurity in Africa is dire and is characterized by:

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<sup>13</sup> Assembly/AU/Dec.71 (IV) (2005)

<sup>14</sup> Margaret Vogt, Analysis of African Mechanisms for Peace and Security, Seminar on Cooperation between the United Nations and the African Regional Organizations in the field of Peace and Security, (December 15, 2005)

<sup>15</sup> Matthew S. Barton, *ECOWAS and West African Security: The New Regionalism*, 4 DEPAUL INT'L L.J. (Winter 2000) 79, 80

- armed conflicts both within and between states, including unresolved longstanding conflicts;
- extremely fragile peace accords;
- uninterrupted flow of arms to the continent, including unchecked proliferation of small arms;
- the deplorable incidents of mass killings and genocide;
- the influx of refugees and internally displaced persons;
- a growing tendency of lawlessness;
- the precarious situation of failed states destabilizing the continent;
- the recent trend in Piracy against international navigation;
- the tension over shared resources; and,
- increased vulnerability of the continent to serve as a safe haven for international terrorism.

The enormity of these challenges is incontrovertible.

The prevailing conflicts in Africa understandably increased the security responsibilities of the UN, which, in turn, has burdened AU and African sub-regional organizations, such as the ECOWAS, IGAD, SADC, ECCAS and CEN-SAD with more responsibilities in the prevention, resolution and management of conflicts. Although one may persuasively argue that the situation could have been worse without the increased involvement of the global, regional and sub-regional security mechanisms, it still triggers an important question about the effectiveness and adequacy of the existing security mechanisms. This will be one of the central questions throughout the research. In the course of the inquiry, a closer

examination will be made on factors that hold back the international security mechanisms from effectively averting the present dire security situation in the continent. This will be done through an in-depth review of major conflicts in Africa.

The dissertation will, therefore, examine the evolving concept of security; the security mechanisms of the UN, AU and the African sub-regional organizations and their respective mandates in the maintenance of peace and security in Africa; assess the state of security in the continent; identify the key factors for the deterioration of the security situation in the continent; evaluate the effectiveness of the existing international security mechanisms in overcoming this dangerous trend; identify the key challenges and drawbacks in the present global security system; and suggest some recommendations on the way forward to meet the security challenges of the African continent in the 21<sup>st</sup> century.

The first chapter explores the evolving concept of security. “Security” is an important notion that divides the international community. However the conception of this important notion is key in addressing the security challenges the world faces today. This chapter will, therefore, discuss the traditional concept of security; the pillars and values of collective security under the UN Charter; the expansion of the concept of traditional security over the past few decades; and factors that led to the expansion of this important concept. This will be followed by an inquiry on the sufficiency of the UN security mechanism to cope with the pressing challenges arising from the expansion of the notion of security.

The second chapter of the dissertation will discuss the UN security mechanism and the place of regional security mechanisms under the UN Charter. After providing some insights into the circumstances that led to the setting up of the UN security mechanism, an attempt will be made to explore the security mandates of the UN, the various mechanisms in place to discharge its security mandates, and the place of regional security mechanisms under the UN Charter that sets the underlying legal framework for the global-regional security cooperation.

The third chapter will discuss the regional and sub-regional security mechanisms in Africa. Following a historical synopsis on the AU security mechanism, the dissertation will discuss the scope of AU's security mandates, the respective responsibilities of those AU organs and bodies with a security mandate, the regional legal frameworks in place to address the security challenges of the continent, and the place of UN as well as African sub-regional security mechanisms under the AU Constitutive Act. The dissertation will then examine three sub-regional security mechanisms in Africa, namely ECOWAS, IGAD, and SADC that have been active on the security domain. On the basis of a critical evaluation of the cooperation agreement as well as the de facto cooperation between AU and the three sub-regional organizations, an attempt will be made to define and analyze the scope as well as challenges of the existing cooperation in the security domain.

The fourth chapter will be devoted to an inquiry and analysis of the existing cooperation among the UN, AU and African sub-regional security

mechanisms. This chapter will review and analyze the cooperation at different levels. First an attempt will be made to review the *de jure* and *de facto* cooperation between the UN and AU in the maintenance of regional peace and security. The examination on the cooperation between the UN and sub-regional security mechanisms in Africa will focus on bilateral cooperation between the UN and each of the sub-regional organizations in Africa. It is hoped that this inquiry will eventually lead to an identification of the missing link required for a more effective cooperation of the UN-AU-African Sub-Regional Security Mechanisms.

The fifth chapter will discuss the contemporary security challenges in Africa with a view to evaluating the sufficiency and effectiveness of the global, regional, and sub-regional security mechanisms. After highlighting the current state of security in Africa, this chapter will analyze selected case studies of conflict situations in Africa in which the UN, AU and sub-regional security mechanisms took part. The case studies will cover the conflict situation in Somalia, the Ethiopia-Eritrea dispute, the conflict in Democratic Republic of Congo, and the case of Liberia. The case studies will identify the root causes of conflict and security challenges in the continent, internal and external factors complicating the situation, and common cluster of security threats that loom large in Africa, and perhaps those specific to Africa. Conceivably these case studies will be important for the lesson they may hold for the much needed and effective security system at the global, regional, sub-regional and national levels. Based on the findings of the case studies, the key challenges and stumbling blocks that adversely impact the effectiveness of the existing international security

framework in the prevention, resolution and management of conflicts in Africa are also identified.

My conclusion will focus on what the United Nations, the African Union, the African sub-regional organizations, and each African state need and ought to do in order to meet the security challenges of the African continent in the 21<sup>st</sup> century.

## CHAPTER 1 THE CONCEPT OF INTERNATIONAL SECURITY

*“No other concept in international relations packs the metaphysical punch, nor commands the disciplinary power of ‘security’”<sup>1</sup>, Ronnie D. Lipshutz*

“Security” literally means to be safe or free from danger.<sup>2</sup> It is ‘the absence of a threat to the stability of the international system, to countries or to individuals.’<sup>3</sup> Security has been the central preoccupation for both the powerful and weaker governments.<sup>4</sup> Weaker governments are concerned of threats that could bring their very existence questionable, while the powerful ones have frequently had to face the threat of wars.<sup>5</sup>

The concept of ‘international security’ implies a common interest in security among nation states going beyond the particular interests of sovereign states.<sup>6</sup> It is virtually understood as ‘the ability of sovereign states to defend themselves against external threats to their existence as states through conquest, military defeat, or political and economic domination.’<sup>7</sup> The state is the primary focus of analysis and action.

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<sup>1</sup> Ronnie D Lipshutz, ed., *ON SECURITY*, New York Columbia University Press, 24-25

<sup>2</sup> Andrew Martin & Petro Patrice, Eds. *RETHINKING GLOBAL SECURITY: MEDIA, POPULAR CULTURE AND THE WAR ON TERROR*, 2006

<sup>3</sup> Sean Kay, *GLOBAL SECURITY IN THE TWENTY FIRST CENTURY: THE QUEST FOR POWER AND THE SEARCH FOR PEACE*, (2012), 1

<sup>4</sup> Patrick M Morgan, *INTERNATIONAL SECURITY: PROBLEMS AND SOLUTIONS*, (2006), 1

<sup>5</sup> Id

<sup>6</sup> Michael Howard, “The Historical Development of the UN’s Role in International Security,” *United Nations Divided World*, 63, (1993), at 63

<sup>7</sup> Anne-Marie Slaughter, *The New Challenges to International, National and Human Security Policy*, A Report to the Trilateral Commission, (2004), 58

The issue of international security has been at the fore-front of the world's political agenda since the last century.<sup>8</sup> However the concept is invitingly broad, and complex. This chapter, therefore, examines the evolving dimensions of international security, surveys the major conceptual frameworks of the notion, and identifies the major international security challenges in the twenty-first century.

The field of security studies has been considered as “a child of Machiavellian and Hobbesian realism.”<sup>9</sup> It is important to understand the main assumptions behind the traditional view of international politics, realism, in order to properly understand the concept of security. This is rooted in the writings of the ancient Greek historian Thucydides and great Renaissance and Enlightenment philosophers such as Nicolo Machiavelli, and Thomas Hobbes, who tried in their writings to capture how states behave.<sup>10</sup>

Thucydides illustrated that the strong states do what they can, and the weak states do what they must when it comes to international security.<sup>11</sup> Machiavelli in his study known as *The Prince* wrote the following:

“A man striving in every way to be good will meet his ruin among the great number who are not good. Hence it is necessary for a prince, if he wishes to remain in power, to learn how not to be good and to use his knowledge or refrain from using it as he may need.”<sup>12</sup> Machiavelli advised the Prince that where he must choose between being loved or being feared, he should choose to be

---

<sup>8</sup>Agostinho Zacharias, *THE UNITED NATIONS AND INTERNATIONAL PEACEKEEPING*, (1996), 1

<sup>9</sup>Neta Crawford, , *Once and Future Security Studies*, *SECURITY STUDIES*, 1, (1991) 283, 292

<sup>10</sup> Morgan, *Supra* note 4, at 3

<sup>11</sup> Kay, *Supra* note 3, at 20

<sup>12</sup> *Id*

feared.<sup>13</sup> In Machiavelli's view, a leader should "care nothing for the accusation of cruelty so long as he keeps his subjects united and loyal; by making a very few examples he can be more truly merciful than those who through too much tender-heartedness allow disorders to arise whence come killings and rapine."<sup>14</sup>

Thomas Hobbes, a renowned philosopher and scientist during the 17<sup>th</sup> century, emphasized on the expectation of the citizenry from the state a protection against both domestic and foreign threats.<sup>15</sup> He also advanced the concept of power and anarchy.<sup>16</sup> In the anarchical world, incentives for war are built into the international system as men seek to become first "masters of other men's persons, wives, children and cattle".<sup>17</sup> Note that Hobbes also recognized the dangers arising from domestic turmoil within a country.

The traditional conception of security only relates to issues of militarized relations between competing states.<sup>18</sup> Until the late twentieth century, security thinking emphasized the nation-state and competition for power in the international system.<sup>19</sup>

Realists conclude that the key objective of states is survival, and power is the means to that end.<sup>20</sup> The Realists' tendency to equate international security

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<sup>13</sup> David P. Fidler, *A Symposium on Reenvisioning the Security Council: Article: Caught between Traditions: The Security Council in Philosophical Conundrum*, 17 MICH. J. INT'L L. 411

<sup>14</sup> Kay, *Supra* note 3, at Sean20

<sup>15</sup> Sheehan, *Supra* note 15, at 16

<sup>16</sup> Kay, *Supra* note 3, at 20

<sup>17</sup> *Id*

<sup>18</sup> Aristotle Constantindes, *SECURITIZING DEVELOPMENT: ADVANTAGES AND PITFALLS OF THE SECURITY COUNCIL'S INVOLVEMENT IN DEVELOPMENT ISSUES*, 2003, at 204

<sup>19</sup> Kay, *Supra* note 3, at 1

<sup>20</sup> *Id*

with the use of force between nations is premised on the view that international security involved territorial integrity of nations and the greatest threat to such territorial integrity was posed by wars between states.<sup>21</sup>

The realist understanding of international security is structured by specific ideas about the nature of politics at the international level.<sup>22</sup> They start with the premise that the system of international relations is anarchic, and ‘dominated by a struggle for power and security against the military capabilities of other states in the system.’<sup>23</sup> For Realists the pursuit of power by states is assumed to be “ubiquitous and inescapable”, generating inevitable conflict of interest between states.<sup>24</sup> For them such conflict of interest can only be mitigated but may not be avoided.

For realists, the core purpose of the state is to protect its citizens from both the external and internal danger.<sup>25</sup> It is out of this necessity that the working definition of security under realism is strictly limited to military power.

For classical realists, the determining factor of the security dilemma is attributed to a flawed human nature, which is power-seeking and prone to violence.<sup>26</sup> It emphasized on the degree to which an effort by one state to increase its security might be perceived as a threat by another state.<sup>27</sup> However, this realist account of the security dilemma would naturally lead to insecurity because it

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<sup>21</sup> See for instance Joseph S. Nye Jr., Sean M. Lynn-Jones, “International Security Studies: A Report of a Conference on the State of the Field,” *International Security*, 12 (Spring 1988): 5-27.

<sup>22</sup> Sheehan, *Supra* note 15, at 7

<sup>23</sup> *Id.*, at 16

<sup>24</sup> Michael Joseph Smith, *REALIST THOUGHT FROM WEBER TO KISSINGER*. BATON ROUGE, Louisiana State University Press, (1986), 220

<sup>25</sup> Sheehan, *Supra* note 15, at 7

<sup>26</sup> *Id.*, at 17

<sup>27</sup> Kay, *Supra* note 3, at 1

assumes that all states or units in the international system behave similarly, and this will further exacerbate the competition for more power making the realization of security unachievable.<sup>28</sup>

Structural realists, also known as Neo-realists, however questioned the human nature explanation of classical realists. They argue that the human nature explanation is flawed. For them, the determining factor of the security dilemma is attributed to the structure of the international system and the patterns of behavior it compelled states to fall into.<sup>29</sup>

The continued centrality of international security consideration since the establishment of the League of Nations indicates the significance of international security in international politics.<sup>30</sup> In all the deliberations of the League of Nations in 1918-19, the central theme of the discussion on international security endorsed the traditional conception of security. The discussion was focused on 'deterring potential aggressors by agreeing in advance to oppose them with a united front of all other states'.<sup>31</sup>

President Woodrow Wilson's Final Addresses in Support of the League of Nations explains the context under which the League of Nations came into existence. President Wilson noted the following:

All the Nations that are going to be members of the League of Nations enter into a solemn promise to one another that they will never use

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<sup>28</sup> Hugh Dyer, *Environmental Security: The New Agenda*, INTERNATIONAL SECURITY IN A GLOBAL AGE: SECURING THE TWENTY-FIRST CENTURY, (2000), 140

<sup>29</sup> Sheehan, *Supra* note 15, at 17

<sup>30</sup> Agostinho, *Supra* note 8 at 1

<sup>31</sup> David Armstrong, *THE RISE OF THE INTERNATIONAL ORGANIZATION: A SHORT HISTORY*, Palgrave Macmillan (1982), 11

their power against one another for aggression; that they never will impair the territorial integrity of a neighbour; that they never will interfere with the political independence of a neighbour; that they will abide by the principle that great populations are entitled to determine their own destiny and that they will not interfere with that destiny; and that no matter what differences arise amongst them they will never resort to war without first having done one or other of two things - either submitted the matter of controversy to arbitration, in which case they agree to abide by the result without question, or submitted it to the consideration of the council of the League of Nations, laying before that council all the documents, all the facts, agreeing that the council can publish the documents and the facts to the whole world, agreeing that there shall be six months allowed for the mature consideration of those facts by the council, and agreeing that at the expiration of the six months, even if they are not then ready to accept the advice of the council with regard to the settlement of the dispute, they will still not go to war for another three months.<sup>32</sup>

The League of Nations was established in 1919 with a view to providing security for its members through collective action.<sup>33</sup> Under Article 10 and 11 of the Covenant of the League of Nations, members of the League ‘undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.’<sup>34</sup> This is perhaps a clear endorsement of the traditional conception of security.

When the United Nations was founded in 1945, the sovereign state was still the building block of the international order.<sup>35</sup> The San Francisco Charter of 1945 was a response to the determination to avoid war, and the structure of the Organization and the integration and competence of its bodies were geared to that end. The forefathers had in mind the tragedies of interstate war when they

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<sup>32</sup> President Woodrow Wilson’s Address in favor of the League of Nations, 25 September 1919, available at [http://www.firstworldwar.com/source/wilsonspeech\\_league.htm](http://www.firstworldwar.com/source/wilsonspeech_league.htm), last accessed on September 30, 2011

<sup>33</sup> Armstrong, Supra note 31, at 11

<sup>34</sup> See Article 10 and 11 of the Covenant of the League of Nations

<sup>35</sup> Armstrong, Supra note 31, at 64

negotiated the UN Charter.<sup>36</sup>The threat of inter-state armed conflict was, therefore, primarily in the minds of the architects of the UN Charter.<sup>37</sup>

The UN Charter also endorsed the traditional conception of security by envisioning the UN collective security system with a view to save the world above all from the “scourge of war”.<sup>38</sup>

Though the underlying consideration in setting up the UN security mechanism was the existing reality at the end of World War II, the UN preparatory documents suggest that any other situation or dispute which may lead to international friction or which is likely to endanger international peace and security falls within the conception of international security. Though the drafters of the UN Charter were preoccupied with state security, “they understood well, long before the idea of human security gained currency, the indivisibility of security, economic development and human freedom.”<sup>39</sup>

For example, the 1944 Dumbarton Oaks Conference suggested that the UN Security Council “should be empowered to investigate any dispute or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security.”<sup>40</sup>

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<sup>36</sup> Thomas G. Weiss and Sam Daws, Eds, *WORLD POLITICS: CONTINUITY AND CHANGE SINCE 1945*, The Oxford Handbook on the United Nations, 13 November 2008, 25

<sup>37</sup> *Id.*, at 5

<sup>38</sup> See the Preamble of the United Nations Charter

<sup>39</sup> *A More Secure World: Our Shared Responsibility*, Report of the High-Level Panel on Threats, Challenges and Change, UN Doc. A/59/565, at 11 (2004), *available at* <http://www.un.org/secureworld/report.pdf>

<sup>40</sup> UN Department of Public Information, *Yearbook of the United Nations*, (1946-47), 7

The Dumbarton Oaks Conference, however, qualified the reference to “any dispute or any situation which may lead to international friction...” by stating that it “should not apply to situation or dispute arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned.”<sup>41</sup> This view was eventually endorsed as one of the key principles in the UN Charter. It provides that “nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state”.

Paradoxically the Charter has not defined the matters that fall under “domestic jurisdiction” of states. At the time, Uruguay, Belgium and Peru expressed their regrets that the UN Charter failed to establish a rule of international law that sets a criterion as to what matters fall within domestic jurisdiction of states.<sup>42</sup>

This attitude reflects the then mentality of the founders to jealously guard the sovereignty of states, even at the expense of international peace and security. One could perhaps conclude that they ignored the critical importance of domestic matters in the maintenance of international peace and security.

In the immediate post-World War II period, the expression “national security” was used to describe the preservation of state independence and autonomy.<sup>43</sup> In 1952, Arnold Wolfers, a realist, introduced debate over the larger

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<sup>41</sup> Id, at 7

<sup>42</sup> Id, at 20

<sup>43</sup> Sheehan, *Supra* note 15, at 5

meaning of national security beyond the defense of territory.<sup>44</sup> He made a crucial distinction between objective and subjective security, the absence of threats to acquired values as against the absence of fear that such values will be attacked.<sup>45</sup> Wolfer also made the point that the realist conception of security was no less idealistic than conceptions proposed by its critics, since “the demand for a policy of national security is primarily normative in character.”<sup>46</sup>

Nation states tend to strengthen their military security, either through unilateral force improvements or through membership of alliances until the Cold War evolved toward the superpower détente of the 1970s, at which period this prevailing Western conception gradually shifted from “national security” to international security.<sup>47</sup> Throughout this period, however, the concept of international security was conceived purely in the military context, i.e. military security against the military power of other states.<sup>48</sup>

In 1977, Lester Brown introduced global assessments of environmental and energy challenges, arguing that national security included these dimensions as well as military issues.<sup>49</sup>

Richard Ullman, in his 1983 article entitled, “Redefining Security”<sup>50</sup>, first challenged the traditional conception of security, which ultimately sparked

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<sup>44</sup> Kay, *Supra* note 3, at 1

<sup>45</sup> *Id*

<sup>46</sup> Arnold Wolfers, *National Security as an Ambiguous Symbol*, *POLITICAL SCIENCE QUARTERLY* 67, (1952) 481, at 483

<sup>47</sup> Sheehan, *Supra* note 15, at 2

<sup>48</sup> *Id*

<sup>49</sup> Lester Brown, *Redefining National Security*, *WORLD WATCH PAPER* 14 (Washington, DC, 1977)

<sup>50</sup> Richard Ullman, , *Redefining Security*, 8 *INTERNATIONAL SECURITY* (1983), 129-153

theoretical debate over the subject. The debate was centered on whether or not certain threats could reasonably fall under the common rubric of security.<sup>51</sup>

Barry Buzan's, in his book *People, State and Fear*,<sup>52</sup> advocated a much broader approach to security. For Buzan what counts as a security issue is a result of political and social discourse.<sup>53</sup> Buzan presented Security as an "essentially contested concept".<sup>54</sup> He further portrayed security as a socially constructed concept conveying specific meaning only within a particular social context and accordingly introduced the concept of securitization.<sup>55</sup> Buzan presented the issue as "urgent and existential threat" and asserted that it should be prioritized with a view to handling it through extraordinary means."<sup>56</sup>

These debates opened up the possibility to broaden the scope of security to include a wider range of areas, including the economic and environmental realms.<sup>57</sup>

There is a marked shift in security discourse in the post-Cold War period.<sup>58</sup> The end of the Cold War not only ended the superpower rivalry and bipolar politics<sup>59</sup>, but also the notion of international security has become a subject of serious rethinking among scholars and perhaps the international

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<sup>51</sup> Sheehan, Supra note 15, at 4

<sup>52</sup> Barry Buzan, *PEOPLE, STATES AND FEAR*, Harvester Wheatsheaf, Brighton, 1983

<sup>53</sup> Sheehan, Supra note 15, at 4

<sup>54</sup> Constantindes, Supra note 18, at 204

<sup>55</sup> Id

<sup>56</sup> Id

<sup>57</sup> Sheehan, Supra note 15, at 4

<sup>58</sup> Alexander C. Lynn, *International Security and War*, 8 WM. & MARY BILL OF RTS. J., 725

<sup>59</sup> Alice Edwards, *Symposium: Territory without boundaries: Immigration Beyond Territory: Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders*, 30 MICH. J. INT'L L. 763, 771

community.<sup>60</sup> The nature of security challenges have changed radically with the end of the Cold War era.<sup>61</sup>

Since the UN Charter was fashioned in response to interstate wars, the central problem since the end of the Cold War has been how to define security in light of this new shift from inter-state conflict to predominantly intrastate conflicts.<sup>62</sup> Given the potential impact of intrastate conflicts on international security, it has become increasingly problematic to simply characterize it as a purely domestic matter.<sup>63</sup> It was equally problematic for the UN since Article 2(7) of its Charter put a restraint on it from intervention in matters within the domestic jurisdiction of a state. Coupled with its traditional reluctance to get involved in ostensibly domestic affairs, the efforts of the UN have been belated and hesitant.<sup>64</sup>

The traditional realist conceptualization of security, whose focus is “limited to issues of militarized relations between competing states”<sup>65</sup>, therefore, came under manifold criticism as narrow and inadequate. According to Sheehan this was primarily because the concept “was increasingly seen as unsatisfactory in its own terms, and because it was ignoring important aspects of an emerging international policy agenda.”<sup>66</sup> The post Cold War period is, therefore, defined by

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<sup>60</sup> Id

<sup>61</sup> Andrew Mumford & Natasha Kuhrt, *Policy Challenges to international law, security and ethics in the post 9/11 world*, INTERNATIONAL LAW, SECURITY AND ETHICS: POLICY CHALLENGES IN THE POST 9/11 WORLD, (2011), 1

<sup>62</sup> Lloyd Axworthy, *Human Security: An Opening for UN Reform*, THE UNITED NATIONS AND GLOBAL SECURITY, 245, (2004), 248

<sup>63</sup> Id

<sup>64</sup> Armstrong, *Supra* note 31, at 91

<sup>65</sup> Sheehan, *Supra* note 15, at 2

<sup>66</sup> Id, at 2-3

changed priorities, and it has become commonplace to reconsider the concept of security in the new context.<sup>67</sup>

Proponents of new conceptions of security maintain that the security definition must be broadened to incorporate new threats, such as environmental degradation.<sup>68</sup> This view is premised on the marked change and transformation in the familiar imperatives of international security.<sup>69</sup>

The UN-sanctioned imposition of no-fly zones in Iraq in 1991 signaled a new willingness on the part of the Security Council to broaden its interpretation of its Chapter VII powers to include intra-state humanitarian crises.<sup>70</sup> In its landmark resolution 688/1991, the UN Security Council 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.’

The ensuing international security debate over the notion of “humanitarian intervention” triggered significant divisions on the legal conception of the scope of international intervention in the internal affairs of sovereign states.<sup>71</sup> When civil wars broke out in Somalia, Yugoslavia and Rwanda at the beginning of the 1990s, the UN was not prepared to employ more effective action such as robust

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<sup>67</sup> Dyer, *Supra* note 28 at 138

<sup>68</sup> *Id*

<sup>69</sup> Janne E. Nolan (Editor), *GLOBAL ENGAGEMENT: COOPERATION AND SECURITY IN THE 21<sup>ST</sup> CENTURY*, The Brookings Institution, Washington, D.C., (1994), vii. Note that the cooperative approach has its own limitations in terms of achieving the security objectives.

<sup>70</sup> Aidan Hehir, *Security, discretion and international law*, *International Law*, SECURITY AND ETHICS: POLICY CHALLENGES IN THE POST 9/11 WORLD, (2011),79, 80

<sup>71</sup> Mumford, *Supra* note 61, at 2

peacekeeping or peace enforcement to protect the population from death and ethnic cleansing.

In the face of this failure, the notion of humanitarian intervention to save the people from war became a highly controversial issue. At first, the legal permissiveness of humanitarian intervention was questioned. After all, the principle of non-interference in domestic affairs is a cornerstone of the UN system. Non-interference is also an expression of sovereign equality between the UN members to shield the weak from the strong. But Article 2 paragraph 7 of the Charter also states that ‘this principle shall not prejudice the application of enforcement measures under Chapter VII.’ Consequently, if the Security Council decides that a civil war constitutes a threat to international peace and security, collective action to maintain or restore peace may also be mandated. One possible approach to build a broader consensus for legalizing and legitimizing humanitarian intervention may have been a focus on averting the international consequences of serious violations of human rights.<sup>72</sup>

Throughout the 1990s the Security Council repeatedly found that the conditions prevailing within a state, from starvation in Somalia to political intimidation and massacre in East Timor, constituted threats to international peace and security sufficient to require collective armed intervention.<sup>73</sup>

In 1991 the UN Security Council recognized the continuation of fighting in Yugoslavia, which was causing a heavy loss of human life and material

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<sup>72</sup>Carsten Giersch, *International Law and Collective Management*, GLOBALISATION – THE STATE AND INTERNATIONAL LAW, 81, (2009), 83

<sup>73</sup> Anne-Marie Slaughter, *Note and Comment: Security, Solidarity, and Sovereignty: The Grand Themes of UN Reform*, 99 A.J.I.L. 619, (2005), 625

damage, and by the consequences for the countries of the region, in particular in the border areas of neighboring countries as a breach to international peace and security.<sup>74</sup>

In 1992, the UN Security Council formally recognized that "non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security."<sup>75</sup> For example, the Security Council considered the continuation of the "rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country" constitutes a threat to international peace and security.<sup>76</sup>

The President of the Security Council in his statement of 31 January 1992 pointed out that "the proliferation of all weapons of mass destruction constitutes a threat to international peace and security."<sup>77</sup> The UN Security Council reiterated this position in its resolution of 6 June 1998.<sup>78</sup>

In 1993, the UN Security Council formally determined that a widespread violation of international humanitarian law occurring within the former Yugoslavia, including mass killings and the continuance of the practice of ethnic cleansing, constitutes a threat to international peace and security.<sup>79</sup>

In 1994, the UN Security Council determined that the magnitude of the humanitarian crisis in Rwanda, which actually resulted in the death of thousands

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<sup>74</sup> See UN Security Council Resolution 713 (1991), 25 September 1991

<sup>75</sup> Edwards, *Supra* note 59, at 771

<sup>76</sup> UN Security Council Resolution, 733 (1992), 23 January 1992

<sup>77</sup> See Statement of the President of the Security Council, S/23500, 31 January 1992

<sup>78</sup> See UN Security Council Resolution, S/RES/1172 (1998), 6 June 1998

<sup>79</sup> See UN Security Council Resolution, S/RES/ 808 (1993), 22 February 1993

of civilians, constitutes a “threat to peace and security of the region”.<sup>80</sup> Though the Security Council decided to remain seized with the matter, it did limit the extent of the threat to the security of the region. It was only in 1996 that the UN Security Council eventually recognized the situation in Rwanda, i.e. the “genocide and other systematic, widespread and flagrant violations of international humanitarian law ... committed in Rwanda” as constituting a threat to international peace and security.<sup>81</sup>

In 1994, the UN Security Council reached “a high point of decisive action” when it approved Resolution 940 authorizing member states of the UN to use all necessary force to remove General Raoul Cedras of Haiti, who in 1991 topples Haiti’s democratically elected President Aristide.<sup>82</sup> This presents a shift in the conception of international security to embrace a matter which is traditionally perceived as a subject of domestic jurisdiction or internal sovereignty. Such quick response of the UN defused a developing threat to international security.<sup>83</sup>

As evidenced by interventions in Somalia and ex post facto acceptance of the NATO intervention in Kosovo, the Security Council itself has adopted a broader understanding of the international peace and security agenda.

In 1996, the UN Security Council identified international terrorism as “an essential element for the maintenance of international peace and security.”<sup>84</sup>

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<sup>80</sup> See UN Security Council Resolution, S/RES/929 (1994), 22 June 1994

<sup>81</sup> See UN Security Council Resolution, S/RES/955 (1994), 8 November 1994

<sup>82</sup> See UN Security Council Resolution, S/RES/940 (1994), 31 July 1994

<sup>83</sup> Michael D. Ramsey, *Reinventing the Security Council: The U.N. as a Lockean System*, 79 NOTRE DAME L. REV. 1529, 1536

<sup>84</sup> See UN Security Council Resolution, S/RES/ 1044 (1996), 31 January 1996

In 1998, the UN Security Council recognized “the close relationship of the problem of illicit arms flows to and in Africa with international peace and security.”<sup>85</sup>

In 2000, the UN Security Council underscored that “the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security.”<sup>86</sup>

The 9/11 terrorist attacks against the United States and the global war on terror provided a new dimension to the debates over the nature and utility of international law in the maintenance of international peace and security.<sup>87</sup> It also reinvigorated the state centric conceptions of security. The debate over this new dimension had also shaken the progressive ‘humanization’ of security.<sup>88</sup>

Following the September 11 terrorist attack in the United States, the UN Security Council adopted a resolution declaring in the strongest terms that “acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century”.<sup>89</sup> UN Security Council Resolution 1368 of 12 September 2001 declared that international terrorism constituted a threat to international peace and security, and in this context recognized the right to self-defense. Moreover, the UN Security Council adopted Resolution 1373 of 28 September 2001, and obliged all UN members to combat terrorism by translating an extensive catalogue of countermeasures into domestic law. Even though Article 25 of the UN Charter implicitly allows the SC to issue binding

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<sup>85</sup> See UN Security Council Resolution, S/RES/1209 (1998), 19 November 1998

<sup>86</sup> See UN Security Council Resolution, S/RES/1308 (2000), 17 July 2000

<sup>87</sup> Mumford, *Supra* note 61, at 2

<sup>88</sup> Constantindes, *Supra* note 18, at 204

<sup>89</sup> See UN Security Council Resolution, S/RES/1377 (2001), 12 November 2001

decisions, the making of international law neither by treaty nor by custom was a rather unusual act.<sup>90</sup>

The concept of human security emerged as an important component of international security in the 1990s. This concept found an early champion in the Canadian government, particularly Foreign Minister Lloyd Axworthy.<sup>91</sup> Kofi Annan then embraced the concept in his millennial "We the Peoples" report, where he spoke of the need for a more human-centered approach to security.<sup>92</sup> Human security, therefore, is not a concern with weapons.<sup>93</sup> It rather marks a process of broadening the scope of security beyond state/military security towards the human being,

A concern for human security is not a new phenomenon.<sup>94</sup> However it entered the mainstream discourse after UNDP's 1994 Human Development Report. The term was coined to shift the focus of security from the state to the individual, to emphasize freedom from fear and want.

This brought the traditional conception of security under stern criticism that it is "narrow and inadequate."<sup>95</sup> The need was also felt to redefine the concept of international security to include both state and human security. This was perhaps considered as a way to forge a consensus among all the world's nations,

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<sup>90</sup> Giersch, *Supra* note 72 at 87

<sup>91</sup> Axworthy, *Supra* note 62, at 183

<sup>92</sup> Kofi Annan, , WE THE PEOPLES THE ROLE OF THE UNITED NATIONS IN THE 21<sup>ST</sup> CENTURY, United Nations Department of Public Information UN Sales No. 00.1.16 (2000), 43

<sup>93</sup> United Nations Development Programme, HUMAN DEVELOPMENT REPORT, 1994, Oxford University Press, (1994), 22

<sup>94</sup> Report of the Secretary General, Human Security, A/64/701, para 13

<sup>95</sup> Constantindes, *Supra* note 18 at 204

<sup>95</sup> *Id*

developed and developing, regarding the nature of the threats the international community face and the best strategies to respond.<sup>96</sup>

This new conceptions of security – human security – has considered the individual to be the unit of analysis. And a new set of global issues were identified as distinctive challenges to national and international security. According to Kazuo Ogura, these include terrorism, environmental destruction, drug trafficking, international crimes, infectious diseases and refugee problems.<sup>97</sup> Crucially, globalization has an important role in heightening new security priorities because it forces a more expansive understanding of the security dilemma.<sup>98</sup>

The UNDP report defined human security as follows:

“Human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life—whether in homes, in jobs or in communities.”<sup>99</sup>

The concept contained seven security elements: economic, food, health, environmental, physical harm, community, and political.

The Commission for Human Security, which was launched following the UN Millennium Summit by the Government of Japan, defined human security as the protection of “the vital core of all human lives in ways that enhance human

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<sup>96</sup> Slaughter, *Supra* note 7, at 12

<sup>97</sup> Kazuo Ogura, *COPING WITH THREATS TO HUMAN SECURITY, THE NEW CHALLENGES TO INTERNATIONAL, NATIONAL AND HUMAN SECURITY POLICY: A REPORT TO THE TRILATERAL COMMISSION*, (2004), 65

<sup>98</sup> Kay, *Supra* note 3, at 3

<sup>99</sup> United Nations Development Programme, *Supra* note 92 at 23

freedoms and human fulfillment.”<sup>100</sup> The Commission observed that “[t]he state remains the fundamental purveyor of security. Yet it often fails to fulfill its security obligations- and at times has even become a source of threat to its own people.”<sup>101</sup> The human security approach represents an important shift in the way security is viewed- from the level of the state to the level of the individual.<sup>102</sup>

According to the United Nations secretary-general's High-Level Panel on Threats, Challenges and Change, “the central challenge for the twenty-first century is to fashion a new and broader understanding...of what collective security means...”<sup>103</sup> This is premised on the marked change in the character of international security that triggers the need to revisit the 1945 consensus underlying the UN Charter, and perhaps build ‘a new security consensus’.<sup>104</sup>

The High-Level Panel underscored the need for ‘a new security consensus’ that view of security that understands state security and human security to be fundamentally intertwined. Note that the collective security system envisaged by the forefathers of the UN Charter is principally designed to save the world from the ‘scourge of war’.<sup>105</sup> Accordingly, the High-Level Panel suggested the need to broaden the traditional definition of the concept of international security to include both state security and human security. The High-Level Panel on Threats, Challenges, and Change boils down its own conclusions to the following proposition: the “dignity, justice, worth and safety” of the citizens of

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<sup>100</sup> Commission on Human Security, HUMAN SECURITY NOW, New York, (2003), 4

<sup>101</sup> Id, at 2

<sup>102</sup> Axworthy, Supra note 62, at 249

<sup>103</sup> Report of the High-Level Panel on Threats, Challenges and Change, Supra note 39 at 8

<sup>104</sup> Id

<sup>105</sup> See Preamble of the UN Charter

every state "should be at the heart of any collective security system for the twenty-first century."<sup>106</sup>

In 2005, the UN General Assembly adopted Resolution 60/1 recognizing that the world is facing a whole range of threats that require the international community's urgent, collective and more determined response.<sup>107</sup> Member states further reaffirmed their "commitment to work towards a security consensus based on the recognition that many threats are interlinked, that development, peace, security and human rights are mutually reinforcing, that no State can best protect itself by acting entirely alone and that all States need an effective and efficient collective security system pursuant to the purposes and principles of the Charter."<sup>108</sup>

The World Summit further offered the basis for defining the notion, i.e. a common understanding that "all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential."<sup>109</sup> While recognizing the importance of ensuring human security, members of the UN committed to discuss and define the notion of human security in the General Assembly.<sup>110</sup>

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<sup>106</sup> Report of the High-Level Panel on Threats, Challenges and Change, *Supra* note 39 at para. 30

<sup>107</sup> See para 72 of UN General Assembly Resolution, A/RES/60/1, 24 October 2005

<sup>108</sup> *Id*

<sup>109</sup> *Id*

<sup>110</sup> *Id* at para. 143

The Security Council reform discussion at the 60<sup>th</sup> anniversary of the UN in 2005 further reinforced ‘the importance of dealing with the threats to international security in a legal manner’.<sup>111</sup>

Following this World Summit, Japan and Mexico organized an open ended, informal forum called Friends of Human Security every six months since October 2006 to explore collaborative efforts and mainstreaming human security in UN activities.<sup>112</sup> The Human Security network, an inter-regional group established in 1998 and composed of thirteen countries, also provided a platform of communication between policy makers, diplomats, civil society and the academia to tackle critical human security threats.<sup>113</sup>

The General Assembly conducted a thematic debate on Human Security in May 2008.<sup>114</sup> The thematic discussion on the “Human Security” was indeed politically loaded. For example, Israel understood human security as a “people-centered and individual focused approach that can be implemented in a variety of areas such as climate change, environment, sustainable development, non proliferation, human rights, armed conflict, culture of hate, crime prevention, terrorism and others.”<sup>115</sup>

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<sup>111</sup>Carsten, Supra note 72 at 81

<sup>112</sup> Statement by Permanent Representative of Japan to the United Nations at the General Assembly Thematic Debate on Human Security, New York, 22 May 2008, available at <http://www.un.org/ga/president/62/ThematicDebates/humansecurity/Japan.pdf>, last accessed on September 30, 2011

<sup>113</sup> Statement of the Chair of the Human Security Network to the United Nations at the General Assembly Thematic Debate on Human Security, new York, 22 May 2008, available at <http://www.un.org/ga/president/62/ThematicDebates/humansecurity/Greece.pdf>, last accessed on September 30, 2011

<sup>114</sup> Background Paper for the General Assembly Thematic Debate on Human Security, 22 May 2008, available at [http://www.un.org/ga/president/62/letters/background\\_hs.pdf](http://www.un.org/ga/president/62/letters/background_hs.pdf), last accessed on September 30, 2011

<sup>115</sup> Statement of the Permanent Representative of Israel in the General Assembly Thematic Debate on “Human Security”, 22 May 2008, available at

Egypt cautioned the August Assembly “not to confuse “Human Security” with the attempts to use the “Responsibility to Protect” to justify intervention in domestic affairs, particularly between governments and their peoples.”<sup>116</sup> Egypt suggested that any such attempt to define and implement human security “has to focus on human development, in order to preserve human dignity and enable all human beings to enjoy freedom from fear of poverty, hunger or disease...freedom from want, freedom from occupation and oppression...freedom from weapons of mass destruction...and finally respect for each other’s cultures, traditions and beliefs.”<sup>117</sup> This view is rooted on the implicit potential of equating human security with international security in triggering the enforcement powers of the UN Security Council under Chapter VII of the UN Charter. This is perhaps a natural reaction under the circumstances that state sovereignty is still the core of international relations.<sup>118</sup>

Friends of Human Security divert the focus from elaborating a legal definition of the notion, and pursued for concrete collaboration on the basis of a common understanding of the broad concept provided by the Commission on Human Security, i.e. “to protect the vital core of all human lives in ways that enhance human freedom and human fulfillment.”<sup>119</sup>

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<http://www.un.org/ga/president/62/ThematicDebates/humansecurity/Israel.pdf>, last accessed on September 30, 2011

<sup>116</sup> Statement of the Permanent Representative of Egypt in the General Assembly Thematic Debate on “Human Security”, 22 May 2008, available at <http://www.un.org/ga/president/62/ThematicDebates/humansecurity/Egypt.pdf>, last accessed on September 30, 2011

<sup>117</sup> Id

<sup>118</sup> Weiss, *Supra* note 36, at 4

<sup>119</sup> Statement by Permanent Representative of Japan to the United Nations, *Supra* note 112

During this thematic debate, human security was characterized as a framework to further the principles of the 1945 UN Charter but the concept still suffers from lack of concise definition. But it is important to note that the new security discourse elevated the human rights goals of the UN Charter to a new level.

In 2010, the Secretary General of the UN submitted a report on Human Security.<sup>120</sup> The report provides an update on developments related to the advancement of human security since the 2005 World Summit. The Secretary General noted the following in the Human Security Report:

Threats such as natural disasters, violent conflicts and their impact on civilians, as well as food, health, financial and economic crises, tend to acquire transnational dimensions that move beyond traditional notions of security. While national security remains pivotal to peace and stability, there is growing recognition of the need for an expanded paradigm of security.<sup>121</sup>

The Secretary General went on and made reference to triangular relationships between security, development and human rights and further asserted that

[G]uarantee of national security no longer lies in military power alone. Essential to addressing security threats are also healthy political, social, environmental, economic, military and cultural systems that together reduce the likelihood of conflicts, help overcome the obstacles to development and promote human freedoms for all.<sup>122</sup>

The Secretary General of the UN identified three common components that encompass the principles of human security. These are:

(1) the recognition that human security is in response to current and emerging threats; (2) the recognition that protection and empowerment of

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<sup>120</sup> Report of the Secretary General, Supra note 94

<sup>121</sup>Id at Para. 9.

<sup>122</sup>Id, at Para. 10

people form the basis and the purpose of security, and (3) the employment of people-centered, comprehensive, context-specific and preventive strategies to ensure human security.<sup>123</sup>

Human security is based on a fundamental understanding that Governments retain the primary role for ensuring the survival, livelihood and dignity of their citizens. Otherwise no agreement existed on the definition and scope of Human Security in the UN or within any regional organization. Some countries expressed their concern not to confuse “Human Security” with the attempts to use the “Responsibility to Protect” to justify intervention in domestic affairs between governments and their peoples.<sup>124</sup>

The African Union defined human security as:

the security of the individual in terms of satisfaction of his/her basic needs. It also includes the creation of social, economic, political, environmental and cultural conditions necessary for the survival and dignity of the individual, the protection of and respect for human rights, good governance and the guarantee for each individual of opportunities and choices for his/her full development.<sup>125</sup>

There is no consensus yet on the definition of the concept of human security. The vague definition is due to the fact that the phrase has brought together activists of varying issues, and a narrowing of the definition would likely make it difficult for such a diverse coalition to function as a whole.<sup>126</sup> Without

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<sup>123</sup> Id, at Paragraph 19

<sup>124</sup> Statement of the Permanent Representative of Egypt in the General Assembly Thematic Debate on “Human Security”, Supra note 116

<sup>125</sup> See Article 1(K) of the African Union Non-Aggression and Common Defense Pact, [http://www.au.int/en/sites/default/files/AFRICAN\\_UNION\\_NON\\_AGGRESSION\\_AND\\_COM\\_MON\\_DEFENCE\\_PACT.pdf](http://www.au.int/en/sites/default/files/AFRICAN_UNION_NON_AGGRESSION_AND_COM_MON_DEFENCE_PACT.pdf), last accessed on September 30, 2011 (The Pact entered into force on December 18, 2009).

<sup>126</sup> Paris, 87

“clear criteria for specifying what is, and what is not, a security problem... an expanded definition of security will lose its intellectual coherence.”<sup>127</sup>

The establishments of the International Criminal Court, International Criminal Tribunal for Yugoslavia, the International Criminal Tribunal for Rwanda, and the conclusion of the Agreement of the antipersonnel land mine ban treaty are notable outcomes principally attributed to the human security agenda.<sup>128</sup>

The human security concept is already one of the important peace and security agendas of the UN and is likely to become of increasing importance. We have seen the ongoing demands of asymmetric conflict and terrorism, the non-military sources of instability in the economic, social, humanitarian and ecological fields, and growing concerns about energy and the environment.<sup>129</sup> The small arms proliferation, poverty and disease have indeed become threats to the international security.<sup>130</sup> Disease and disaster kill many more people every month than armed conflict or terrorists do in a year, a decade, or even a century.<sup>131</sup> As the Worldwatch Institute writes,

All of the wars of the twentieth century are estimated to have resulted in the deaths of an average of 1.1 million combatants and civilians per year. But at present, communicable diseases are killing fourteen times that number of people annually.<sup>132</sup>

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<sup>127</sup> Heinz Gärtner, Adrian Hyde-Price and Erich Reiter, Eds., *EUROPE'S NEW SECURITY CHALLENGES*, Kumarian Press (2001), 5

<sup>128</sup> Edwards, *Supra* note 59 at 773-4

<sup>129</sup> Kay, *Supra* note 3, at 37

<sup>130</sup> Slaughter, *Supra* note 7 at 16

<sup>131</sup> Slaughter, *Supra* note 73 at 624

<sup>132</sup> Worldwatch Institute, *STATE OF THE WORLD 2005: TRENDS AND FACTS -- CONTAINING INFECTIOUS DISEASE* (Jan. 2005)

We have also experienced extraordinary popular movements for democracy in Africa and the Arab world.<sup>133</sup> The recent wave of public uprisings against dictatorial and repressive regimes in North Africa and the Middle East added a new dimension to the debate on the nature and utility of international law and international institutions due to the demands from some quarters for international intervention against authoritarian regimes. It has indeed caused a dilemma on the international community as to how to react to the specific situations in each country. The United Nations Security Council has dealt with each situation on an ad hoc basis. These events, including the recent uprisings in Tunisia, Egypt, Yemen, Syria and Libya, have provided additional impetus that the fundamentals of the human security framework may become more rather than less important. For example, the UN Security Council determined that the situation in Libya, i.e. the widespread and systematic attacks against the civilian population in Libya, constitutes a threat to international peace and security.<sup>134</sup>

These developments provoked a discussion on the scope of the UN responsibility in the maintenance of international peace and security, i.e. whether its function includes dealing with massive episodes of violence and abuse of human rights within the borders of states – in other words a broad commitment to justice, law, and order.

The concept of international security which was for long synonymous with the defense of territory from external attack has now evolved to embrace the notion of human security. The two policy discourses are likely to operate

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<sup>133</sup> Kay, *Supra* note 3, at 37

<sup>134</sup> UN Security Council Resolution, S/RES/1973 (2011), 17 March 2011

alongside one another.<sup>135</sup> What is perhaps more important is the potential added value that this framework can contribute to existing multilateral framework and national actions. Though the notion of rigid state sovereignty enshrined under the UN Charter seems less sacrosanct today than in 1945<sup>136</sup>, it still remains to be a challenge in the security mandates of the UN. However, as articulated by UN former Secretary General Kofi Annan, ‘state frontiers... should no longer be seen as a watertight protection for war criminals or mass murderers’.<sup>137</sup> One should not, however, lose sight of the critical power of the UN Security Council to determine the existence of any threat to international peace and security and to authorize use force to respond broadly to threats against international security.

However, at a practical level, the framework has not displaced traditional notions of security. States continue to be the primary actors in the international system, and they assess their security requirements in terms of power.<sup>138</sup> It is, therefore, imperative that the concept of international security should be framed within an expanded context including human security.

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<sup>135</sup> Edwards, *Supra* note 59, at 773

<sup>136</sup> Weiss, *Supra* note 36, at 9. The UN Security Council, through its decisions and actions has eroded the foundations of absolute conceptions of state sovereignty fundamentally altering the way in which many see the relationship between state and citizen. See David M. Malone, SECURITY COUNCIL, *The Oxford Handbook on the United Nations*, (November 2008) 117, 117

<sup>137</sup> *Id* at 8

<sup>138</sup> *Id*

## CHAPTER 2 AN OVERVIEW OF THE UNITED NATIONS SECURITY MECHANISM

### *2.1 General Background*

The genesis of the UN security mechanism, and perhaps the reframing of the organizational structure of the world community, started when the demise of the League of Nations became evident following the start of the Second World War.<sup>1</sup> United States, United Kingdom, and Soviet Union took the leading initiative for the establishment of the ‘United Nations Organization’.<sup>2</sup> Subsequently China joined them upon the issuance of the Moscow Declaration on General Security on October 30, 1943. This Declaration was perhaps the first formal recognition by the four countries on the necessity of establishing a general international organization for the maintenance of international peace and security.<sup>3</sup>

The US proposals entitled, “Tentative Proposals for a General International Organization” were accepted as the basis for discussion at the Dumbarton Oaks Conference, where the UN project was generally agreed.<sup>4</sup> These proposals contemplated the establishment of a multi-purpose organization whose principal purpose would be the maintenance of international peace and

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<sup>1</sup> Bruno Simma (editor), *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY*, Second Edition, vol. 1(2002), 1. The failure of the League of Nations to take collective measures and the ineffectiveness of its sanctions principally led to the inevitable demise of the League.

<sup>2</sup> Sir Francis Vallat, United Nations General Assembly, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, Volume IV (2002), 1119. It was a major policy shift on the part of the United States that pursued the policy of isolationism during the League of Nations era.

<sup>3</sup> Simma, *Supra* note 1 at 7

<sup>4</sup> Oscar Schachter, United Nations Charter, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, Volume IV, (2000), 1051, 1052. The Dumbarton Conference was held in the late summer of 1944.

security.<sup>5</sup> Similarly, the Soviet Union's Memorandum dispatched at the Conference advanced the idea that the new global organization should be security centered.<sup>6</sup> The primary focus on the issue of security was geared towards remedying the defects of the League of Nations system.<sup>7</sup> That is why White characterized this important initiative as the second attempt at collective security after the failed collective security schemes of the League of Nations.<sup>8</sup>

Forty-seven states that adhered to the 1941 "Declarations by United Nations"<sup>9</sup> and four other states, i.e. Argentina, Denmark, Belarussian Soviet Socialist Republic and the Ukranian Soviet Socialist Republic, were invited to attend the founding Conference of the UN in San Francisco.<sup>10</sup> Except Poland, all the invited countries attended the Conference held from 25 April to 26 June 1945.

The composition of the negotiating countries suggests that the negotiation of the founding instrument started as a continuation of the wartime alliance against the axis powers.<sup>11</sup> It should be added that it was indeed a post-war planning, as a reaction to the devastation of the Second World War,<sup>12</sup> to establish

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<sup>5</sup> Id.

<sup>6</sup> Simma, *Supra* note 1 at 5 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY, Second Edition, vol. 1(2002), 5.

<sup>7</sup> Malcolm N. Shaw, INTERNATIONAL LAW, Cambridge University Press (1991), 748

<sup>8</sup> N.D. White, THE LAW OF INTERNATIONAL ORGANIZATIONS, Manchester University Press, (1996), 171

<sup>9</sup> The "Declarations by United Nations" was a statement signed on January 1, 1942 at the Anglo-American Arcadia conference held in Washington DC. The Declaration subscribed the principles of the 1941 Atlantic Charter. The signatories also committed to employ their full economic and military resources against the Axis Powers. They further pledged not to make separate armistice or peace agreements with the enemy. It is important to note that the United Nations received its designation from this Declaration.

<sup>10</sup> Oscar Schachter, *The UN Legal Order: An Overview*, in THE UNITED NATIONS AND INTERNATIONAL LAW, Cambridge University Press, (1997), 1052

<sup>11</sup> John H. Barton, Disarmament, in ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, Volume I (1992), 1072

<sup>12</sup> Antonio Cassese, INTERNATIONAL LAW IN A DIVIDED WORLD, Oxford University Press (1986), 68

a wider and permanent system of general security that would help overcome the biggest challenges the world had experienced during the Second World War.

The necessity of guaranteeing a more secured world peace and the need for collective action were at the center of the discussion in the entire exercise of designing the new global peace organization.<sup>13</sup> Issues related to the maintenance of international peace and security, especially the central role of the Security Council and the voting formula of the Security Council, were among those issues top on the agenda in the course of the negotiation. Cassese compared the outcome of the negotiation, i.e. the new collective security system, with the 1815 Concert of Europe, where the big powers considered the assumption of control over international security affairs as necessary.<sup>14</sup>

The series of negotiations held in four phases eventually led to the adoption of the UN Charter at the San Francisco Conference on 2 June 1945.<sup>15</sup> The US participation and perhaps its leadership in the entire negotiation process was crucial in the reorganization of the new global framework.

The preamble of the Charter articulated the factors that led to the formation of the UN. The determination of the Peoples of the United Nations “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind” is top among the list of factors.<sup>16</sup> And this

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<sup>13</sup>Simma, Supra note 1 at 2

<sup>14</sup>Cassese, Supra note 12 at 68

<sup>15</sup>Simma, Supra note 1 at 2

<sup>16</sup>See the Preamble of the UN Charter

is perhaps the principal *raison d'être* for its formation. It also fits the historical context under which the Charter was negotiated.<sup>17</sup>

The principal purpose of the UN is the maintenance of international peace and security.<sup>18</sup> According to the International Court of Justice, the primacy is ascribed to its centrality to the fulfillment of the other purposes of the organization, i.e. promoting friendly relations, achievement of economic, social, cultural, and humanitarian goals and respect for human rights, and to serve as a center for harmonizing the actions of nations in the attainment of these common ends.<sup>19</sup> High are the stakes in ensuring the effectiveness of the UN in the maintenance of international peace and security. It is indeed a determining factor for the very existence of a global legal order.<sup>20</sup>

The Charter envisaged two subsidiary purposes for the achievement of the maintenance of international peace and security. These are the use of effective collective measures and “the adjustment or settlement of international disputes or situations, which might lead to a breach of the peace”.<sup>21</sup> The Charter explicitly attaches a caveat that the latter subsidiary purpose should be taken “in conformity with the principle of justice and international law”.

This led some scholars to assert that collective measures could be taken in disregard to the principles of justice and international law so long as it is deemed expedient.<sup>22</sup> On the contrary, Oscar argued that the same limitation does apply to

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<sup>17</sup>Schachter, *Supra* note 4 at 1053

<sup>18</sup> See Article 1 of the UN Charter

<sup>19</sup> E. Lauterpacht, (Editor), *INTERNATIONAL LAW REPORTS*, Volume 34 (1967), 297. ICJ Advisory Opinion on the *Expenses of the Organization*

<sup>20</sup>Schachter, *Supra* 10 at 21

<sup>21</sup> See Article 1(1) of the Charter of the United Nations

<sup>22</sup>Schachter, *Supra* note 4 at 1054

collective measures.<sup>23</sup> His argument is based on the assertion that international law is an implicit normative basis of the Charter.<sup>24</sup>

Other scholars such as Singh looked at the issue from a different angle. While agreeing that collective measures are not unlimited in scope, the proponents of this view attach the limitation to proportionality to the maintenance of international peace and security objectives.<sup>25</sup> A similar but quite a general view is the one articulated by Arechaga. He contends that the collective measures are limited only by the duty to act in accordance with the purpose and principles of the Charter.<sup>26</sup>

The underlying principles of the Charter include sovereign equality of member states; the duty to settle international disputes by peaceful means without endangering international peace and security, and justice;<sup>27</sup> the duty to refrain from the threat or use of force inconsistent with the purposes of the UN;<sup>28</sup> the duty to provide every assistance to the UN for any action it takes in accordance with the Charter, and the duty to refrain from giving any assistance to any states against which the UN is taking preventive or enforcement action,<sup>29</sup> and Non-intervention in domestic affairs.

The incorporation of the principle of prohibition of use or threat of use of force in the UN Charter distinguishes the UN from its predecessor, i.e. the League

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<sup>23</sup> Id

<sup>24</sup> Id.

<sup>25</sup> N.D. White, *THE LAW OF INTERNATIONAL ORGANIZATIONS*, Manchester University Press, (1996), 170; See J. N. Singh, *USE OF FORCE UNDER INTERNATIONAL LAW*, (1984), 82

<sup>26</sup> Eduardo Jimenez De Arechaga, *United Nations Security Council*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, Volume IV (2002), 1168, 1171

<sup>27</sup> See Article 2(3) of the United Nations Charter

<sup>28</sup> See Article 2(4) of the United Nations Charter

<sup>29</sup> See Article 2(6) of the United Nations Charter

of Nations. The Covenant of the League of Nations does not substantively outlaw war. Article 11 of the Covenant only used a vague language declaring that any war or threat of War was a matter of concern to the whole League.<sup>30</sup> It should also be noted that principles such as the principle of non-intervention, which indeed constitute one of the most significant tenets of the 'Westphalian model',<sup>31</sup> do not "prejudice the application of enforcement measures under Chapter VII".<sup>32</sup>

Article 24 of the UN Charter confers on the UN Security Council a primary responsibility for the maintenance of international peace and security.<sup>33</sup> The Security Council is entrusted with both recommendatory and mandatory enforcement powers to discharge its responsibility. Under Chapter VI of the Charter, the Council is given recommendatory power to encourage the pacific settlement of disputes while under Chapter VII the Council is entrusted with both recommendatory and enforcement powers to maintain or restore international peace and security. The rationale behind conferring primary responsibility on this important domain is to 'ensure prompt and effective action'.<sup>34</sup>

The Security Council's voting formula was the result of a compromise mainly between two extreme positions. While the United States and United Kingdom argued that the veto power is incompatible with the fundamental principles of the UN, Soviet Union resisted any procedure that would lead it to submission to majority decisions on questions of essential

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<sup>30</sup> See Article 11 of the Covenant of the League of Nations

<sup>31</sup> Cassese, *Supra* note 12 at 143

<sup>32</sup> See Article 2(7) of the Charter of the United Nations

<sup>33</sup> See Article 24 of the UN Charter

<sup>34</sup> Lauterpacht, *Supra* note 19 at 292

importance.<sup>35</sup> Eventually a compromise formula was adopted. The five leading nations of the military alliance that defeated the Axis powers became permanent members of the Security Council with a veto power.<sup>36</sup> Five years later, the General Assembly of the United Nations adopted the United for Peace Resolution reaffirming the duty of the permanent members of the Security Council “to seek unanimity and to exercise restraint in the use of the veto”.<sup>37</sup>

Actions of the Security Council are activated when the Security Council determines the existence of threats to the peace, breach of the peace, or act of aggression.<sup>38</sup> Such determination is very complex and does not enjoy immunity from politicization. The danger that such determinations may be dominated by overriding political considerations is perhaps a notable factor for the complexity of the decision making process.<sup>39</sup>

The traditional definition of ‘threat to the peace’ refers to a declaration of war, or intervention or of other hostile intent by one state against the other.<sup>40</sup> Over the past decades the concept of threat to the peace further developed through the decisions of the Security Council to include intra-state violence and breaches of fundamental international laws.<sup>41</sup> The recent resolutions of the Security Council on the situation in the Sudan are notable in this regard. In its resolutions, the

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<sup>35</sup> Simma, *Supra* note 1 at 9

<sup>36</sup> Jimenez De Arechaga, *Supra* note 41 at 1168

<sup>37</sup> A/RES/377 (V) A, The Uniting for Peace Resolution, 3 November 1950

<sup>38</sup> J.G. Merrills, *INTERNATIONAL DISPUTE SETTLEMENT*, Second edition, Cambridge: Grotius Publications Limited, (1992)

<sup>39</sup> Schachter, *Supra* note 19 at 12

<sup>40</sup> Quincy Wright, *INTERNATIONAL LAW AND THE UNITED NATIONS*, Greenwood Press, Publishers (1976), 95

<sup>41</sup> White, *Supra* note 25 at 174

Council decided that the situation in the Sudan continues to constitute a threat to international peace and security.<sup>42</sup>

The concept of ‘threat to the peace’ is equally applicable to interstate conflicts. During the 1998-2000 armed conflict between Ethiopia and Eritrea, the Security Council determined that “the situation between Ethiopia and Eritrea constitutes a threat to peace and security”.<sup>43</sup>

The concept of breach of peace is, however, applicable only to inter-state uses of force.<sup>44</sup> The Security Council used the term “breach of the peace” for full-scale attack of one state by another.<sup>45</sup> The practice of the Council suggests that resort to use of force is activated when it is determined that the situation constitutes breach of the peace.<sup>46</sup> In its sixty-four year history, the Security Council made such determination only in very limited occasions. These include the 1950 armed attack upon the Republic of Korea by forces from North Korea, the 1982 Argentina’s invasion of the Falklands/Malvinas Islands, the Iran-Iraq war, and the 1990 Iraq’s invasion of Kuwait.<sup>47</sup> Thus far there is no single occasion where the Council considered a situation in Africa as breach of the peace.

Pursuant to Article 25 of the Charter, decisions of the Security Council are binding on member states.<sup>48</sup> However there have been divergent views regarding the scope of this provision. On the one hand countries such as the United

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<sup>42</sup> S/Res/1627 (2005), 23 September 2005, Security Council Resolution on the Situation in the Sudan

<sup>43</sup> S/Res/1227 (1999), 10 February 1999, Security Council Resolution on the situation between Ethiopia/Eritrea

<sup>44</sup> Wright, *Supra* note 25 at 93

<sup>45</sup> White, *Supra* note 10 at 175

<sup>46</sup> *Id*

<sup>47</sup> S/1511, 83 (1950), Resolution of 27 June 1950.

<sup>48</sup> See Article 25 of the United Nations Charter

Kingdom contended that the scope is limited to Chapter VII enforcement action of the Security Council.<sup>49</sup> Others advocate a broader interpretation of Article 25. According to the proponents of the latter view, the scope of the provision is not confined to the Council's Chapter VII enforcement action.<sup>50</sup> The International Court of Justice supported this view. In its 1971 Namibia Advisory opinion, the court justified this position by arguing that any attempt to narrow the scope of Article 25 "would be to deprive this principal organ of its essential functions and powers under the Charter".<sup>51</sup>

Though the primary responsibility for maintenance of international peace and security rests upon the Security Council, the International Court of Justice in the Expenses of the Organization Advisory opinion pronounced that "the responsibility conferred is 'primary' not exclusive".<sup>52</sup> It is within this context that the Charter also confers upon the UN General Assembly important responsibilities on matters of international peace and security. These include the power, (1) to discuss and make recommendations on the general principles of cooperation in the maintenance of international peace and security, including disarmament;<sup>53</sup> (2) to discuss any question relating to international peace and security and, except where a dispute or situation is currently being discussed by the Security Council, make recommendations on it;<sup>54</sup> (3) to recommend measures for the peaceful settlement of any situation that might impair friendly relations among nations;<sup>55</sup>

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<sup>49</sup> Jimenez De Arechaga, *Supra* note 26 at 1170

<sup>50</sup> *Id.*

<sup>51</sup> ICJ Reports (1971), Namibia Advisory Opinion, 54

<sup>52</sup> Lauterpacht, *Supra* note 19 at 292

<sup>53</sup> See Article 11(1) of the United Nations Charter

<sup>54</sup> See Articles 11(2) and 12 of the United Nations Charter

<sup>55</sup> See Article 14 of the United Nations Charter

(4) to call the attention of the Security Council to situations which are likely to endanger international peace and security,<sup>56</sup> and (5) to elect non-permanent members of the Security Council upon the Council's recommendations.

Nevertheless these recommendatory powers of the General Assembly are not unlimited. First and foremost, the General Assembly is prohibited from making any recommendation on any dispute or situation on which the Security Council is exercising the functions assigned to it in the Charter.<sup>57</sup> The second limitation is perhaps related to any question that calls for action. If the General Assembly is seized with an issue of this nature, it is required to refer it to the Security Council.<sup>58</sup> The International Court of Justice in the *Expenses case* interpreted the term 'action' to mean only enforcement action, which falls under the Chapter VII powers of the Security Council.<sup>59</sup>

Article 18 of the UN Charter qualified Recommendations of the General Assembly with respect to the maintenance of international peace and security as 'important question', subjecting it to a two-third majority vote of the members present and voting.<sup>60</sup>

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<sup>56</sup> See Article 11(3) of the United Nations Charter

<sup>57</sup> See Article 12(1) of the United Nations Charter. Of course the General Assembly would be at liberty to make recommendations on those disputes or situations if requested by the Security Council.

<sup>58</sup> See Article 11 of the United Nations Charter

<sup>59</sup> *Certain Expenses of the United Nations*, I.C.J. Rep. 1962, 151 at 163

<sup>60</sup> See Article 18 of the United Nations Charter. Note that Article 18 of the Charter divides decisions of the General Assembly into two categories, namely, 'important questions' and 'other questions'. Whereas decisions on important questions are subject to Two-third majority of the members present and voting, General Assembly decisions on 'other questions' are subject to simple majority.

## ***2.2 The UN Security Mechanisms***

The UN Charter has put in place various mechanisms for the achievement of the primary purpose of the UN, i.e. maintenance of international peace and security. There have also developed additional mechanisms such as peacekeeping over the course of time. These mechanisms are usually categorized under four general headings; namely, Peacemaking, Peacekeeping, Peace-enforcement, and Peace-building.<sup>61</sup>

### **2.2.1 Peacemaking**

According to the Charter, one of the distinct responsibilities of the UN is to assist parties to international disputes to settle their differences through peaceful means.<sup>62</sup> Peacemaking is an important mechanism that is directly related with this important responsibility of the UN. It is aimed at achieving UN's principal objective of maintaining international peace and security.<sup>63</sup>

As articulated by Charlesworth, the notion of collective security underpins the dispute resolution regime contemplated in the UN Charter.<sup>64</sup> Chapter VI sets out the framework for the pacific settlement of disputes, a principle that emerged after the Second World War.<sup>65</sup> The Security Council, General Assembly and the

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<sup>61</sup> S/25859, 28 May 1993, Report of the Secretary General on Improving the Capacity of the United Nations for Peacekeeping

<sup>62</sup> Merrills, *Supra* note 38 at 179

<sup>63</sup> See Chapter VI of the UN Charter

<sup>64</sup> Hilary Charlesworth and Christine Chinkin, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS*, Manchester University Press (2000), 280

<sup>65</sup> Cassese, *Supra* note 25 at 142

Secretary-General are competent to support states in the peaceful resolution of disputes.<sup>66</sup>

The obligation to resort to pacific settlement of disputes is imposed on parties involved in any dispute, the continuance of which is likely to endanger international peace and security.<sup>67</sup> The reference to “parties” here suggests that the obligation is not limited to states. It could arguably extend to any non-state entity provided that the dispute is likely to endanger international peace and security.

The determination as to whether the continuance of the dispute is likely to endanger the maintenance of international peace and security appears to be left for the decision of the parties. However this does not prevent the Security Council from investigating and making such determination.<sup>68</sup>

The Security Council is entrusted with power to recommend appropriate procedures or methods of adjustment at any stage of the dispute if it determines that it is likely to endanger international peace and security.<sup>69</sup> Its power extends to recommending appropriate terms of settlement if it deems that the continuance of the dispute is in fact likely to endanger international peace and security.<sup>70</sup> In practice, however, the Security Council also makes such recommendation simply out of political considerations without any finding that the dispute is likely to endanger international peace and security.<sup>71</sup> This is just one example of how

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<sup>66</sup> Merrills, *Supra* note 38 at 179

<sup>67</sup> See Article 33 of the UN Charter

<sup>68</sup> See Article 34 of the UN Charter

<sup>69</sup> See Article 36 of the UN Charter

<sup>70</sup> See Article 37 of the UN Charter

<sup>71</sup> White, *Supra* note 25 at 173

much the Council's decision-making process could be politically driven. Because of the competing political interests among members of the Council and the Council's excessive deference to the wishes of the disputant parties, the performance of the Security Council in the peacemaking domain is a dismal one.<sup>72</sup>

The powers of the General Assembly derive from Chapter IV of the Charter. Article 10 entitles the General Assembly to discuss any question within the scope of the Charter and, except where a dispute or situation is currently being discussed by the Security Council, make recommendations to members of the UN or to the Security Council.<sup>73</sup> It is evident here that the primacy of the Security Council is preserved when it comes to the issue of peace and security. Article 14 of the Charter is more specific entrusting the General Assembly with a power to recommend measures for the peaceful settlement of any situation that might impair friendly relations among nations.<sup>74</sup> Unlike the Security Council whose power, at least in theory, is confined to issues of peace and security, the power of the General Assembly in this domain is apparently broader in that it extends to any situation which is likely to impair the general welfare or friendly relations among nations.<sup>75</sup>

Fact-finding is an important component of the peacemaking mechanism. The 1991 General Assembly Declaration on Fact-finding by the United Nations in the field of the Maintenance of International Peace and Security defined fact-

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<sup>72</sup> Jimenez De Arechaga, *Supra* note 26 at 1171

<sup>73</sup> See Articles 10 and 12 of the UN Charter

<sup>74</sup> See Article 14 of the UN Charter

<sup>75</sup> Merrills, *Supra* note 38 at 181

finding as “any activity designed to obtain detailed knowledge of the relevant facts of any dispute or situation which the competent United Nations organs need in order to exercise effectively their functions in relation to the maintenance of international peace and security”.<sup>76</sup>The Declaration recognized the importance of fact-finding in strengthening the role of the UN in the maintenance of international peace and security and promoting the peaceful settlement of disputes.<sup>77</sup>

Both the Security Council and the General Assembly have established subsidiary organs mandated to undertake fact-finding missions on different occasions.<sup>78</sup>In the recent Eritrea-Djibouti border dispute, the Security Council requested the Secretary-General of the UN to send a fact-finding mission at the border between Djibouti and Eritrea.<sup>79</sup>

The UN Secretary-General also has an important role to play in peacemaking. His power derive from Article 99 which empowers him to bring to the attention of the Security Council any matter which he deems may threaten international peace and security.<sup>80</sup>Moreover the Charter under Article 98 requires the Secretary General to perform any functions entrusted to him by the Security Council or General Assembly.<sup>81</sup>Theses include request for the Secretary-General to offer his good offices and to send fact-finding missions. For example, in the Djibouti-Eritrea border dispute, which we noted above, the Security Council

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<sup>76</sup> A/RES/46/59, 9 December 1991, Declaration on Fact-finding by the United Nations in the field of the Maintenance of International Peace and Security

<sup>77</sup> Ibid.

<sup>78</sup> E.A. Plunkett, *UN Fact-finding as a Means of Settling International Disputes*, 9 VA.J.I.L. (1968-69), 154

<sup>79</sup> SC/9376, AFR/1720, Security Council Press Statement on Djibouti, Eritrea, 25 June 2008

<sup>80</sup> See Article 99 of the UN Charter

<sup>81</sup> See Article 98 of the UN Charter

instructed the Secretary-General to send a fact-finding mission to the borders of the two countries.<sup>82</sup>

### **2.2.2 Peace-Enforcement**

Enforcement action is the exclusive jurisdiction of the Security Council. The International Court of Justice in its Advisory Opinion on the *Expenses of the Organization* affirmed that the Security Council is the only organ that can require enforcement by coercive action.<sup>83</sup> The enforcement actions could either be military or non-military.

#### **a. Non-Military Enforcement Actions**

Non-military enforcement actions are those actions the Security Council is mandated to take pursuant to Article 41 of the Charter. These include the imposition of diplomatic, economic and communication embargoes provided that there is a consensus among the permanent members of the Council.<sup>84</sup> These measures are applied only when the Security Council determines that there is a threat to international peace and security, or a breach of the peace or act of aggression.<sup>85</sup>

The Council occasionally resorted to these measures.<sup>86</sup> The typical measures include economic embargoes including trade and financial embargoes.<sup>87</sup> Severing communications and diplomatic embargoes have also been imposed in

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<sup>82</sup> Id, Supra note 79

<sup>83</sup> Lauterpacht, Supra note 19 at 292

<sup>84</sup> See Article 41 of the United Nations Charter

<sup>85</sup> See Article 41 of the UN Charter

<sup>86</sup> Jimenez De Arechaga, Supra note 26 at 1169

<sup>87</sup> Schachter, Supra note 20 at 15

certain occasions.<sup>88</sup> The non-military enforcement measures are not limited to the aforementioned measures. The language of Article 41 suggests that the Security Council could take any type of non-military punitive measures not listed under Article 41.<sup>89</sup> The establishment of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda under Chapter VII of the UN Charter are worth mentioning here.<sup>90</sup>

Non-military enforcement measures have been increasingly resorted to following the end of the Cold War, which reinvigorated the UN Security Mechanism.<sup>91</sup> Yoshiro Matsui articulated the UN activism in the post-Cold War period as follow:

The Gulf War symbolizes the UN activism after the end of the Cold War. The Security Council adopted many resolutions under Chapter VII of the Charter during and after the Gulf War, without being disturbed by the veto of its permanent members and this fact is highly appreciated...as illustrating a 'rebirth' of the United Nation's collective security.<sup>92</sup>

Schachter saw the end of the Cold War as one that 'raised more hopes for a more effective international legal order' and reinvigorated the enforcement powers of the Security Council.<sup>93</sup> The 1993 Security Council financial, diplomatic and air transport embargoes against Libya in relation to the bombing of the PanAm Flight 103 over Lockerbie,<sup>94</sup> the 1992 Security Council authorization of

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<sup>88</sup> See Article 41 of the UN Charter

<sup>89</sup> Schachter, *Supra* note 20 at 15

<sup>90</sup> Note that establishment of ad-hoc criminal tribunal is not among the non-military enforcement measures listed under Article 41

<sup>91</sup> White, *Supra* note 25 at 171. See also Schachter, *Supra* note 22 at 16

<sup>92</sup> Yoshiro Matsui, *THE GULF WAR AND THE UNITED NATIONS SECURITY COUNCIL*, in R. MacDonald (Ed.), *Essays in Honor of Wang Tieya* (1994), 511

<sup>93</sup> Schachter, *Supra* note 20 at 3 & 13

<sup>94</sup> S/RES/883 (1993), 11 November 1993

the deployment of the UN Operation in Somalia,<sup>95</sup> and the establishment of the International Tribunal for former Yugoslavia in 1993<sup>96</sup> and the International Criminal Tribunal for Rwanda<sup>97</sup> are worth noting in this regard.

## **b. Military-Enforcement Action**

This involves the use of armed force authorized under Chapter VII of the UN Charter. The resort to armed force is made when the Security Council considers that the non-military enforcement measures 'would be inadequate or have proved to be inadequate'.<sup>98</sup> Article 42 sets the underlying principle on the use of force. It provides that the Security Council 'may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security'.<sup>99</sup> The Charter further articulated three directives on the use of force: (1) prohibition of use or threat of use of force; (2) right of self-defense upon armed attack; and (3) the UN Security Council's legal monopoly on the use of force.<sup>100</sup>

The general idea of the use of force is not so unique for the UN. Its predecessor, i.e. the League of Nations, for example deployed an international force on the occasion of Saar Territory Plebiscite in 1935.<sup>101</sup> What makes it different at least theoretically is the newly devised framework that would allow

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<sup>95</sup> S/RES/794 (1992), 3 December 1992.

<sup>96</sup> S/RES/827 (1993), 25 May 1993

<sup>97</sup> S/RES/955 (1994), 8 November 1994

<sup>98</sup> See Article 42 of the UN Charter

<sup>99</sup> See Article 42 of the United Nations Charter

<sup>100</sup> William R. Slomanson, *FUNDAMENTAL PERSPECTIVES ON INTERNATIONAL LAW*, Fourth Edition, New York West Publishing Company, 2003

<sup>101</sup> Raymond Sommereyns, *United Nations Forces*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, Volume IV, (2000), 1106

future military action through the employment of standing forces under the auspices of the UN.<sup>102</sup>

Article 51 of the UN Charter preserves the rights of individual or collective self-defense for states until the UN Security Council takes measures necessary to maintain international peace and security.<sup>103</sup> Beside the reporting obligations to the Security Council, the most important caveat is that the self-defense measure shall not in any way prevent the actions of the Security Council to maintain or restore international peace and security.<sup>104</sup>

However, the fact that the armed forces contemplated under Article 43 have not yet been made available to the Security Council constrained the Council from authorizing military action.<sup>105</sup> Nonetheless, on some occasions the Council authorized member states to use their troops to take military measures.<sup>106</sup> For example, in 2008 the Security Council authorized states, regional and international organizations to

take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia...by deploying naval vessels and military aircraft and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy....<sup>107</sup>

The practical implementation of such authorizations pretty much depends on the nature of the problem and more importantly on the political will of those states that could afford to take the contemplated military measures. This situation

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<sup>102</sup> Id at 1107

<sup>103</sup> See Article 51 of the UN Charter

<sup>104</sup> Id

<sup>105</sup> Schachter, *Supra* note 20 at 17

<sup>106</sup> Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 AJIL 452, (1991), 457

<sup>107</sup> S/RES/1851 (2008), 16 December 2008

raised charges of double standard in the practical implementation of the enforcement measure, which is uncertain.<sup>108</sup>

More importantly, the Cold War effectively prevented the UN from assuming an activist role in maintaining international peace and security.<sup>109</sup> The obstructive use of the veto power in the Security Council significantly prevented the implementation of Article 43 and resort to enforcement measures.<sup>110</sup> Consequently, Chapter VII was little used during the Cold War era.<sup>111</sup>

The collective security system embodied under the UN Charter was rather largely taken over by what White designated as “a-balance-of-power system based on collective defensive alliances”.<sup>112</sup> The underlying philosophical differences between the two systems lie on the means pursued to secure the stability of the global security system and the principal motives of states for their action.

Collective security seeks stability through the general observance of law, while the balance of power system seeks it through the curbing of excessive power.<sup>113</sup> In the balance of power system, states act out of their national interests. But state’s action under the collective security scheme is presumptively undertaken for the benefit of all states to restore or maintain international peace and security.<sup>114</sup>

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<sup>108</sup>Schachter, *Supra* note 20 at 16

<sup>109</sup>Slomanson, *Supra* note 100 at 474

<sup>110</sup>Wright, *Supra* note 40 at 113

<sup>111</sup>Charlesworth, *Supra* note 64 at 281

<sup>112</sup>White, *Supra* note 25 at 171

<sup>113</sup>Wright, *Supra* note 40 at 81

<sup>114</sup>*Id.*

Therefore the military sanction contemplated under Chapter VII within the framework of Article 43 has become a dead letter because of the lack of implementation of Article 43 of the Charter.<sup>115</sup> This is mainly attributed to the prevailing international political climate since the earliest day of the UN,<sup>116</sup> especially the political rift among the permanent members of the Security Council, eroding the confidence and reliance of the international community on the UN security system.<sup>117</sup>

The issue was however on the agenda of the UN since the aftermath of its establishment. The US Deputy Permanent Representative to the Military Staff Committee, Herschel V. Johnson, made a forceful statement on June 4, 1947 expressing his concern that the Security Council will be unable to fulfill its responsibilities as the enforcement organ of the UN until the Article 43 special agreements are signed.<sup>118</sup> Few years later the General Assembly of the UN took an optimistic view through the adoption of the United for Peace Resolution in 1950. The Resolution pointed out that the UN still has “at its disposal means for maintaining international peace and security” pending the conclusion of the Article 43 Special Agreements.<sup>119</sup>

In 1992, former UN Secretary General Boutros Ghali tabled an agenda for peace, advocating a more forceful method for applying Charter principles to

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<sup>115</sup> Jimenez De Arechaga, *Supra* note 25 at 1171

<sup>116</sup> Erik Suy, *United Nations Peacekeeping System*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, Volume IV (2002), 1143

<sup>117</sup> Jimenez De Arechaga, *Supra* note 25 at 1169

<sup>118</sup> Herschel V. Johnson, Deputy United States Representative, Speech on the Work of the Military Staff Committee, June 4, 1947 (available at [http://avalon.law.yale.edu/20th\\_century/decad255.asp#b1](http://avalon.law.yale.edu/20th_century/decad255.asp#b1))

<sup>119</sup> Middle East, UNEF I Background (available at A/RES/377 (V) A, The Uniting for Peace Resolution, 3 November 1950}

future hostilities.<sup>120</sup> He suggested the establishment of a permanent body that would be capable of quickly responding to threats to international peace.<sup>121</sup> This is the body that was envisioned under Article 43 of the UN Charter, but never saw the light of the day. Such arrangement is also believed serve as a deterrent to future threats to peace.

### **2.2.3 Peacekeeping**

The peacekeeping system is not contemplated in any specific provision of the Charter.<sup>122</sup> It rather evolved in response to the political environment during the Cold War era.<sup>123</sup> The 1950 landmark resolution of the General Assembly, known as the Uniting for Peace Resolution, asserted that the General Assembly could still take action if the Security Council fails to act, owing to the negative vote of a permanent member, in a case where there appears to be a threat to the peace, breach of the peace or act of aggression.<sup>124</sup> Accordingly, the General Assembly may immediately consider the matter with a view to recommending to Members for collective measures to maintain or restore international peace and security.<sup>125</sup>

Following the adoption of this resolution, the Security Council itself relied upon the resolution to call emergency meeting of the General Assembly when lack of unanimity of its permanent members prevented it from exercising its

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<sup>120</sup>Slomanson, Supra note 100 at 476

<sup>121</sup> Id

<sup>122</sup> Jimenez De Arechaga, Supre note 26 at 1171

<sup>123</sup> A/50/60, S/1995/1, 3 January 1995. Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations

<sup>124</sup> A/RES/377 (V) A, The Uniting for Peace Resolution, 3 November 1950

<sup>125</sup> Id.

primary responsibility for the maintenance of international peace and security.<sup>126</sup>

The 1960 Security Council resolution on the question of Congo is noteworthy here.<sup>127</sup>

The United Nations Emergency Force (UNEF) was the first armed UN peacekeeping force mandated by the General Assembly of the UN to secure and supervise cessation of hostilities, and to serve as a buffer between the Egyptian and Israeli forces.<sup>128</sup> Since 1948, there have been a total of 69 UN peacekeeping operations around the globe.<sup>129</sup>

Even if authorizing peacekeeping operation is not explicitly referred as the power of the General Assembly under the Charter, the International Court of Justice recognized the power of the Assembly to organize peacekeeping operations by means of recommendations to states or to the Security Council, or to both.<sup>130</sup> The court based its argument on Articles 11(2) and 35. While Article 11(2) entrusted the General Assembly with the power to discuss and make recommendations on any questions relating to the maintenance of international peace and security, Article 35 gives the same power to the Assembly on specific cases brought to the attention of the General Assembly.<sup>131</sup> It should be noted here

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<sup>126</sup> See United Nations Security Council Resolution on the question of Congo, S/4526, 157 (1960), 17 September 1960

<sup>127</sup> Id.

<sup>128</sup> See A/RES/1000, 5 November 1956, First Special Session of the General Assembly of the United Nations. Note that UN had two unarmed peacekeeping operation before UNEF. These are UN Truce Supervision Organization (UNTSO) and UN Military Observer Group in India and Pakistan (UNMOGIP).

<sup>129</sup> United Nations Peacekeeping Operations available at <http://www.un.org/en/peacekeeping/documents/operationslist.pdf> (last visited 10/10/2014)

<sup>130</sup> Lauterpacht, *Supra* note 19 at 294

<sup>131</sup> See Articles 11(2) and 35 of the United Nations Charter.

that the General Assembly could not deploy peacekeeping force without the consent of the host country.<sup>132</sup>

Though initially inaugurated by the General Assembly<sup>133</sup>, the Security Council has subsequently endorsed the practice of UN peacekeeping operations and now peacekeeping operations are principally authorized by the Security Council.<sup>134</sup>

The scope of its mandate is determined on account of the nature of the specific conflict and the specific challenges it presents.<sup>135</sup> During the Cold War era, the mandates of the peacekeeping operations were limited to maintaining ceasefires, serving as a buffer and stabilizing situations on the ground, with a view to facilitating the peaceful resolution of the conflict at the political level.<sup>136</sup>

Over the years, this traditional mission expanded to include ‘complex multidimensional’ undertakings necessary for laying out the foundations for sustainable peace and effective implementation of comprehensive peace agreements. The expanded enterprises include building institutions of governance, human rights monitoring, security sector reform, disarmament, demobilization and reintegration of former combatants.<sup>137</sup>

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<sup>132</sup> Lauterpacht, *Supra* note 19 at 294

<sup>133</sup> Jimenez De Arechaga, *Supra* note 26 at 1170

<sup>134</sup> United Nations, *UNITED NATIONS PEACEKEEPING OPERATIONS: PRINCIPLES AND GUIDELINES*, (2008), 16. The Special Committee on Peace Keeping operations established by the General Assembly in 1965 (known as the Committee of 33) came up with a *modus Vivendi*, which suggested that the Security Council should assume primary responsibility in the field of peacekeeping operations.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> United Nations Peacekeeping, available at <http://www.un.org/Depts/dpko/dpko/>

With changes in the nature of conflicts especially after the end of the Cold War,<sup>138</sup> the UN peacekeeping, which was originally employed for dealing with inter-state conflicts, has been increasingly applied to intra-state conflicts. The mandate has also been extended to include protecting humanitarian operations during continuing warfare, protecting civilian populations and pressing the parties to achieve national reconciliation.<sup>139</sup> The 1992 United Nations Operation in Somalia is notable in this regard.<sup>140</sup>

Though peacekeeping had encountered challenges followed by reflection and adaptation to the evolving demands for complex operations, it has become UN's most successful "standard bearers" over the course of time.<sup>141</sup> It is now a key UN security mechanism to manage complex crises that pose a threat to international peace and security.<sup>142</sup> Nevertheless the UN has not yet been successful in setting a generally accepted standard for the setting up of any new peacekeeping forces.<sup>143</sup>

Though the legitimacy of peacekeeping operations is not questioned, there is still substantial disagreement on the specific legal basis of this entrenched activity.<sup>144</sup> It is interesting to note that even the UN resolutions authorizing peacekeeping operations did not make specific reference to any provisions of the

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<sup>138</sup> Paul Taylor, *THE UNITED NATIONS' MECHANISMS FOR MAINTAINING PEACE AND SECURITY: INTRODUCTION, DOCUMENTS OF REFORM OF THE UNITED NATIONS*, (1997), 65

<sup>139</sup> A/50/60, S/1995/1, 3 January 1995. Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations

<sup>140</sup> S/RES/767/1992, (24 July 1992). Security Council Resolution on Somalia

<sup>141</sup> Alain Le Roy, Under-Secretary-General, Department of Peacekeeping Operations, Statement made at the 2009 Substantive Session of the Special Committee on Peace Keeping Operations, 23 February 2009, GA/PK/199

<sup>142</sup> United Nations, *Supra* note 134 at 13

<sup>143</sup> Michael Bothe, *United Nations Forces*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, Volume IV, (2000), 1106, 1108

<sup>144</sup> Suy, *Supra* note 116 at 1144

Charter until recently where reference to Chapter VII were made when the deployments were authorized into volatile post-conflict setting where the state is not in a position to maintain security and public order.<sup>145</sup>

The second Secretary-General of the UN, Dag Hammarskjold, referred it as a “Chapter Six and a Half” operation placing it between the two broad UN security mechanisms, i.e. Pacific Settlement of Disputes and Collective Enforcement Action.<sup>146</sup>

The position of the UN Secretariat on the subject is reflected in the official document of the UN entitled, ‘United Nations Peacekeeping Operations: Principles and Guidelines,’ published in 2008. It makes a general assertion that the legal basis of such measure, i.e. establishing peacekeeping operation, is found in Chapters VI, VII and VIII of the UN Charter.<sup>147</sup> The document further contends that ‘linking United Nations peacekeeping with a particular Chapter of the Charter can be misleading for the purpose of operational planning, training and mandate implementation’.<sup>148</sup> It appears that the Secretariat attempted to avoid the legal issue reducing it into a mere operational one.

At this juncture it is important to point out the role of the Secretary-General in the system of peacekeeping. The Security Council exercised its power under Article 99 on a number of occasions to assign the Secretary-General for the

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<sup>145</sup> United Nations, Supra note 134 at 14

<sup>146</sup> United Nations Peace Keeping, available at <http://www.un.org/Depts/dpko/dpko/>

<sup>147</sup> United Nations, Supra note 142 at 13

<sup>148</sup> Id at 14

organization and administration of UN peacekeeping operations of various kinds.<sup>149</sup>

In conclusion, the system of peacekeeping is not a peace enforcement operation as envisaged under Article 42.<sup>150</sup> Rather it is a peacekeeping operation carried out with the consent and cooperation of the parties to the conflict and later developed as an entrenched UN activity in lieu of the peace enforcement contemplated under Article 42.<sup>151</sup>

#### **2.2.4 Peace building**

Peace building is basically a post-conflict measure aimed at solidifying peace and building trust and interaction among former foes with a view to avoiding a relapse into conflict.<sup>152</sup> To use the language of former UN Secretary-General Boutros Ghali, peace building measures are aimed at establishing structures to ‘strengthen and solidify peace’.<sup>153</sup> Peace building measures include demilitarization, small arms control, institutional reform, improved police and judicial systems, human rights monitoring, electoral reform and social and economic development activities.<sup>154</sup>

In the foregoing discussion, we already highlighted the extension of peacekeeping forces’ mandate to include some of these peace-building activities.

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<sup>149</sup> Merrills, *Supra* note 38 at 187

<sup>150</sup> Suy, *Supra* note 116 at 1143

<sup>151</sup> See [http://www.un.org/Depts/dpko/dpko/co\\_mission/uneflbackgr1.html](http://www.un.org/Depts/dpko/dpko/co_mission/uneflbackgr1.html)

<sup>152</sup> A/48/403, S/26450, UN General Assembly and Security Council Resolutions, New York March 1994

<sup>153</sup> UN Doc.A/47/277, *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peacekeeping*, Report of the Secretary-General Pursuant to the Statement adopted by the Summit Meeting of the Security Council on 31 January 1992

<sup>154</sup> A/50/60, S/1995/1, 3 January 1995. Supplement to *An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*

Under those circumstances, the UN already has an entrée to undertake the peace-building activity. This makes the task of the UN much easier. But this is not always true. If no peacekeeping operation is on the ground, the situation is more difficult as peace-building measures require the consent of the concerned parties.

In 2005, the UN General Assembly and the Security Council concurrently established Peace-building Commission as an intergovernmental advisory body.<sup>155</sup> The main purposes of the Commission include bringing together all actors to marshal resources; suggesting and advising on integrated strategies for post conflict building and recovery; focusing on the required reconstruction and institution-building efforts for recovery from conflict, and improving the coordination of all relevant actors.<sup>156</sup> As articulated in the introductory paragraphs of the founding resolution, ‘achieving sustainable peace’ is at the center of laying out the coordinated and integrated approach towards peace building.<sup>157</sup>

The Commission has a Standing Organizational Committee whose membership is drawn from permanent and non permanent members of the Security Council, the members of Economic and Social Council, top providers of UN assessed and voluntary contributions, top providers of military personnel and civilian police to UN Missions, and Members elected based on considerations of regional representation and experience in post-conflict recovery.<sup>158</sup>

It is interesting to note that the system requires participation of almost all concerned parties in country specific meetings of the Commission. These include

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<sup>155</sup> A/RES/60/180, 30 December 2005, New York. General Assembly Resolution on Peacebuilding Commission

<sup>156</sup> Id

<sup>157</sup> Id

<sup>158</sup> Id

the country under consideration, states engaged in the post-conflict process relief efforts and/or political dialogue, relevant regional and sub-regional organizations, the major financial, troop and civilian police contributors, Senior UN representative in the field and relevant regional and international financial institutions.<sup>159</sup> The resolution further requires invitation of the World Bank, International Monetary Fund and other institutional donors at these meetings.<sup>160</sup>

### ***2.3 The Place of regional security mechanisms under the UN Charter***

The Charter of the United Nations sets the underlying legal framework for the global-regional security cooperation. Of particular significance are Chapter VIII, Article 2(4), Article 24 and Article 103 of the Charter.<sup>161</sup>

The Charter explicitly confers primary responsibility to the UN Security Council for the maintenance of international peace and security,<sup>162</sup> which the Security Council jealously guards. Almost all of the Council's resolutions relating to international peace and security consistently reiterate this principle. Accordingly, the actions of regional organizations are required to remain consistent with this principle in all cases.<sup>163</sup> This is what Berman and Sams characterized as basically a subsidiary role of regional organizations in the maintenance of international peace and security.<sup>164</sup>

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<sup>159</sup> Id

<sup>160</sup> Id

<sup>161</sup> See AbassAdemola, REGIONAL ORGANIZATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY: BEYOND CHAPTER VIII OF THE CHARTER, Hart Publishing, 2004

<sup>162</sup> U.N. Charter art. 24.

<sup>163</sup> Id. Art. 52

<sup>164</sup> Eric G. Berman and Katie E. Sams, PEACE KEEPING IN AFRICA: CAPABILITIES AND CULPABILITIES, 39, United Nations Publication, (2000)

Chapter VIII of the Charter addresses the anomaly under the regime of the League of Nations whereby regional organizations were not accorded any role in the area of peace and security.<sup>165</sup> According to the Secretary General of the UN, the *raison d'être* of Chapter VIII is, indeed, “to ensure that global and regional collective security is mutually complementary” and to optimize the total endeavors of the international community for securing peace.<sup>166</sup>

Chapter VIII of the Charter provides the framework for a decentralized enforcement system, endorsing the legitimacy of regional arrangements provided that the arrangements or their activities are consistent with the UN Charter.<sup>167</sup> Hence, one may contend that the UN recognizes concurrent as well as residual responsibility of the regional organizations in the maintenance of international peace and security provided that their founding treaty permits them.<sup>168</sup> Moore supported this view arguing, “[r]egional organizations may exercise concurrent jurisdiction, at least in the absence of United Nations action terminating regional jurisdiction.”<sup>169</sup>

Chapter VIII also encourages regional organizations to peacefully settle disputes amongst their members.<sup>170</sup> It devolves enforcement powers, allocated to the Security Council under Chapter VII, on regional organizations through delegated authority. As such, the UN Charter explicitly prohibits regional

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<sup>165</sup> Ademola, *Supra* note 161 at 59

<sup>166</sup> U.N. Doc. A/61/150, The Secretary-General, Report of the UN Secretary General on regional-global security partnership: Challenges and Opportunities, Para. 80

<sup>167</sup> U.N. Charter art. 52(1)

<sup>168</sup> For example, the Charter of the UN under Article 52 provides that pacific settlement should be pursued through regional arrangements before disputes are referred to the Security Council.

<sup>169</sup> John Norton Moore, *THE ROLE OF REGIONAL ORGANIZATIONS, DOCUMENTS ON REFORM OF THE UNITED NATIONS*, 355 (1997)

<sup>170</sup> U.N. Charter art. 52(2)

organizations from taking enforcement action without the authorization of the Security Council.<sup>171</sup>

Nevertheless the post-Cold War Era has witnessed a trend where regional organizations claim legal competence for enforcement actions on the basis of their founding treaties, without deference to the Security Council.<sup>172</sup> The African Union (AU) is not an exception in this regard. The Director of the Peace and Security Department of the AU Commission, in response to this issue, argued that the Union is not an arm of the UN and hence the Union will not wait for UN to authorize actions.<sup>173</sup> This argument may be justified taking into account the new grounds for AU intervention, i.e. war crimes, genocide and crime against humanity as well as a serious threat to legitimate order.<sup>174</sup> Accordingly it is contended that whether the AU seeks authorization or not would not make a difference since the grounds for intervention under the AU are beyond the purview of the Security Council.<sup>175</sup>

The legality of AU's enforcement actions should also be considered in light of the UN Charter. With regard to AU, it is contended that practice of the UN Security Council in delegating enforcement functions to regional organizations, including the AU/OAU for addressing regional crises and the fact that the AU/OAU actions in this area enjoyed close support from the UN would

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<sup>171</sup> Id., Art. 52(3)

<sup>172</sup> Alan K. Henrikson, *The United Nations and Regional Organizations: "King-Links" of "Global Chain"*, 35 DUKE J. COMP. & INT'L L. 143 (Fall 1996)

<sup>173</sup> Id. at 166

<sup>174</sup> African Union, Protocol on Amendments to the Constitutive Act of the African Union, Art. 4(h), available at <http://www.africaunion.org/root/au/Documents/Treaties/Text/Protocol%20on%20Amendments%20to%20the%20Constitutive%20Act.pdf> Art.

<sup>175</sup> Evarist Baimu and Kathryn Sturman, *Amendment to the African Union's Right to Intervene, A Shift from human security to regime security?*, AFRICAN SECURITY REVIEW, 283 (2002).

mean that these actions have been deemed consistent with the UN Charter<sup>176</sup> and that AU's right to intervention in cases of international crimes is not conditioned on the determination of threats and breaches of international peace and security. In fact, if the situation presents danger to international peace and security, the issue falls under the domain of the Security Council, in which case any enforcement action by the Security Council will require authorization from the Security Council.

It is important to note that the adoption of this approach by the AU was not aimed at usurping the competence of the Security Council but was a demonstration of their concern that the Council should not abrogate its primary responsibility for maintaining international peace and stability when it comes to Africa.

The UN-regional organizations relations during the Cold War era was characterized as competitive primarily because of the suspicion and fierce competition between the Eastern and Western blocs<sup>177</sup>. The end of Cold War and the ensuing proliferation of regional conflicts created a fertile ground for cooperation between the UN and regional organizations.<sup>178</sup> Moreover, it increased the security responsibilities of the UN,<sup>179</sup> which, in turn, has burdened regional organizations with more responsibilities in the prevention, resolution and management of conflicts. Boutros Ghali, in his Agenda for Peace, argued that

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<sup>176</sup> Abdulqawi A. Yusuf, *The Right of Intervention by the African Union: A New Paradigm in Regional Enforcement Action*, 9 AFYIL, 3-21 (2005)

<sup>177</sup> Henricson, *Supra* note 172 at 47

<sup>178</sup> *Id.* at 52

<sup>179</sup> Matthew S. Barton, *ECOWAS and West African Security: The New Regionalism*, 4 DEPAUL INT'L L.J. (Winter 2000) 79, 80

regional organizations could more easily work together with the United Nations.<sup>180</sup> He further argued that regional action ‘as a matter of decentralization, delegation and cooperation with United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs.’<sup>181</sup>

There is a general view, also endorsed by the Security Council, that “regional organizations are well positioned to understand the root causes of many conflicts closer to home and to influence the prevention or resolution, owing to their knowledge of the region.”<sup>182</sup> This represents a shift from a global security management to regional actors. AU’s decision to send AU force to Somalia illustrates the contours of this emerging regional focus.

Meetings thus far convened at different levels (i.e. Security Council, General Assembly and Secretariats of the UN and regional organizations) over the subject matter resulted in the development of agreed upon guidelines that govern the cooperation between the UN and regional organizations.<sup>183</sup> These include:

the supremacy of the Charter in governing the partnership, the primary responsibility of the Council in international peace and security, the need for consistency and impartiality by both the United Nations and all partner organizations, the need for flexibility and pragmatism, and the need for the partnership to reflect comparative advantage of all, developing an effective division of labor in...operational collaboration.<sup>184</sup>

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<sup>180</sup> A/47/277-S/24111, The Secretary-General, Report of the Secretary-General pursuant to the statement adopted by the Summit meeting of the Security Council on January 31, 1992, (June 17, 1992)

<sup>181</sup> Id.

<sup>182</sup> S/PRST/2007/7, Presidential Statement, Statement by the President of the Security Council, (March 28, 2007)

<sup>183</sup> The Secretary-General, Supra note 168 at Para.100

<sup>184</sup> Id.

UN and regional organizations have shared responsibilities within the framework of Chapter VIII of the UN Charter. However, a *de facto* division of labor emerged over the course of time. Former UN Secretary General Boutros Ghali believed that regional organizations pursue the political aspects of the problem, i.e. peacemaking, while the role of the UN is focused on peacekeeping operations.<sup>185</sup> There is now even a very interesting trend with regard to peacekeeping operations whereby the *de facto* division of labor is such that regional organizations pursue rapid deployment while UN deploys the blue helmet forces.<sup>186</sup>

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<sup>185</sup>Benjamin Rivlin, REGIONAL ARRANGEMENTS AND THE UN SYSTEM FOR COLLECTIVE SECURITY AND CONFLICT RESOLUTION: A NEW ROAD AHEAD, DOCUMENTS ON REFORM OF THE UNITED NATIONS, 390 (1997)

<sup>186</sup>S.C., S/PV.5649, March 28, 2007

### **Chapter 3**

#### **The African Union Regional Security Mechanism**

This Chapter examines norms and institutions developed under the auspices of the African Union (AU), dealing with security challenges on the African continent. It especially focuses on the possibilities these norms and institutions offer to the UN in the discharge of its mandate in the maintenance of international peace and security, in the face of the 21<sup>st</sup> century security challenges facing the African continent.

The concept of collective security was first introduced in Africa in early 60s when the Great African leader, Dr. Kwame Nkrumah, proposed the establishment of an African High Command as part of his initiative to form an African Union government.<sup>1</sup> Drawing lessons from the circumstances that led into the deployment of UN Peacekeeping force in the Democratic Republic of Congo, Dr. Nkrumah advocated for management of African security by Africans themselves.<sup>2</sup>

The African countries apparently moved to a new era taking charge of the regional security issues when they adopted the OAU Mechanism of Conflict Prevention, Management and Resolution in 1993.<sup>3</sup> This may arguably be a result of political maturity on the part of African nations.

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<sup>1</sup> Margaret A. Vogt , Regional arrangements, the United Nations and Security in Africa, in INTERNATIONAL SECURITY MANAGEMENT AND THE UNITED NATIONS, United Nations University Press, 1999, 295, 295

<sup>2</sup> Id at 296

<sup>3</sup>KithureKindiki, , *The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: A critical appraisal*, 3 AFR. HUM.RTS. L.J. 97 (2003), 97, 98

The OAU mechanism was put in place to address the challenges posed by armed conflicts in Africa.<sup>4</sup> Its aim was not limited to developing an institutional mechanism of collective African action for conflict management, but also to effectively coping with the significant increase in internal conflicts as compared to inter State conflicts.<sup>5</sup>

As stressed in the Declaration on the Establishment, within the OAU, of a Mechanism for Conflict Prevention, Management and Resolution, adopted by the 29<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Cairo, from 28 to 30 June 1993, conflicts have brought about death and human suffering, engendered hate and divided nations and families, and forced millions of people into a drifting life as refugees and internally displaced persons.<sup>6</sup>

OAU's approach which it pursued as a principle was to take the first initiative in approaching the UN to deploy a peace operation in response to an emergency in the continent.<sup>7</sup> In case UN is unresponsive, the OAU resorts to preliminary action while continuing its efforts to elicit a positive response from the UN.<sup>8</sup>

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<sup>4</sup> ASS/AU/Decl. 2 (I), The Durban Declaration In Tribute To The Organization Of African Unity On The Occasion Of The Launching Of The African Union, 9-10 July 2002

<sup>5</sup> PSC/PR/2.(CCCVII), Report of the Chairperson of the AU Commission on the Partnership between the African Union and the : United Nations on Peace and Security: Towards Greater Strategic and Political Coherence, , 9 January 2012. 7-8

<sup>6</sup> AHG/Decl.3(XXIX), Declaration on the Establishment, within the Organization of African Unity, of a Mechanism for Conflict Prevention, Management and Resolution, , 28 to 30 June 1993

<sup>7</sup> EXP/ASF-MSC/2, (I) Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee, Third Meeting of African Chiefs of Defense Staff, 15-16 May 2003, 1, See <http://www.africa-union.org/root/au/auc/departments/psc/asf/documents.htm> (Last visited, 02/18/2013)

<sup>8</sup> Id

The adoption of this Mechanism not only uplifted OAU's political significance but also enabled the organization to engage in a number of conflict situations in the Continent.<sup>9</sup> Nevertheless, OAU is criticized for its failure to help with a number of conflict situations, including the genocide in Rwanda, the civil war in Liberia, the crisis in Burundi or the conflict in the Democratic Republic of Congo (DRC).<sup>10</sup> The nature and complexity of the conflicts in Africa, revealed the limitations of the Mechanism, especially its limitation to providing for the deployment of peacekeeping operations. The efforts deployed in this regard also formed part of the plans to transform the OAU into the AU.

In September 1999, the late Libyan leader Muammar Gaddafi requested the 4<sup>th</sup> extraordinary session of the OAU Assembly of Heads of State and Government in Sirte, Libya to discuss the formation of a 'United States of Africa'.<sup>11</sup> The OAU Assembly, which under the theme "strengthening OAU capacity to enable it to meet the challenges of the new millennium,"<sup>12</sup> endorsed the request, and adopted the Sirte Declaration, which inter alia called for the establishment of a new continental organization.<sup>13</sup>

About a year later, the Assembly of the Heads of State and Government adopted the founding instrument of the African Union, i.e. the Constitutive Act of the African Union.<sup>14</sup> The African Union (AU) replaced its predecessor, the

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<sup>9</sup> Supra note 5

<sup>10</sup> A. Abass & M. Baderin, *Towards effective collective security and human right protection in Africa: An assessment of the Constitutive Act of the new African Union* (2002), 49 NETHERLANDS INTERNATIONAL LAW REVIEW, 112

<sup>11</sup> EAHG/Draft/Decl. (IV) Rev.1, Sirte Declaration, See [http://www.iag-agi.org/bdf/docs/sirte\\_declaration.pdf](http://www.iag-agi.org/bdf/docs/sirte_declaration.pdf) (Last visited, 02/27/2013)

<sup>12</sup> Abass, Supra note 10

<sup>13</sup> Sirte Declaration, Supra note 11, See Article 8(i)

<sup>14</sup> See the Constitutive Act of the African Union

Organization of African Unity (OAU) on July 9, 2002, upon its formal launching as an umbrella organization for the African continent.<sup>15</sup> This period perhaps marked the end of the OAU, i.e. the organization that had united African nations on the Pan-Africanist ideals since 1963.<sup>16</sup>

In designing the Constitutive Act, the African nations made efforts to adapt the structures and resources of the continent to the prevailing situation and to the new challenges resulting from the changes that had taken place in the international system.<sup>17</sup> The preparatory documents for the AU Constitutive Act suggest that the AU Constitutive Act was a response to the changes taking place globally.

An important centerpiece of the OAU's reform was in the area of conflict prevention, management and resolution that culminated in the foundation of a more permanent legal and institutional framework.<sup>18</sup> AU now represents "a continental mechanism for conflict prevention, management and resolution."<sup>19</sup> It occupies a central position in the international security architecture; and becomes an indispensable pillar of multilateralism.<sup>20</sup>

The founding instrument of AU, i.e. the Constitutive Act of the African Union, acknowledges the scourge of conflicts in the continent as a major

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<sup>15</sup>Nsongurua J. Udombana, *The Institutional Structure of the African Union: A Legal Analysis*, CAL. W. INT'L L.J., 72 (2002)

<sup>16</sup> Corinne A. A. Packer and Donald Rukare, *Current Development: The New African Union and Its Constitutive Act*, 96 A.J.I.L. 365, 366

<sup>17</sup> Supra note 5 at 6

<sup>18</sup> The first attempt by the OAU to institutionally address the issue of peace and security in the region was the establishment of the OAU Mechanism for Conflict Prevention, Management and Resolution in 1993.

<sup>19</sup> Ad Hoc Working Group of the Security Council on Conflict Prevention and Resolution in Africa, Concept for a Seminar on the Cooperation between United Nations and African Regional Organizations in the fields of Peace and Security

<sup>20</sup> Supra note 5, 21

impediment to the socio-economic development of Africa.<sup>21</sup> As such, the Act provides the promotion of peace, security and stability on the African Continent as one of the major objectives of the Union.<sup>22</sup> This demonstrates that peace and security is a central concern for African leaders, for this is a prerequisite for the development of the continent and the well-being of its peoples.

The AU Constitutive Act recognized the primary jurisdiction of the UN in the maintenance of international peace and security.<sup>23</sup> Concerning local disputes, prior to referral to the Security Council, members of regional organizations, such as the AU, need to exhaust the available remedies in the regional system.<sup>24</sup> Article 52(2) of the UN Charter supports this view.<sup>25</sup>

Despite AU's positive move in designing Africa's security architecture, the AU Assembly surprisingly failed to incorporate within the founding instrument of the AU an organ responsible for the maintenance of regional peace and security.<sup>26</sup> It was in July 2001 that the AU Assembly adopted a declaration incorporating the 1993 OAU Mechanism on Conflict Prevention, Management and Resolution as an organ of AU. The Assembly particularly noted that the Mechanism was an organ within the OAU that constituted an integral part of the

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<sup>21</sup> Constitutive Act of the African Union

<sup>22</sup> Id. Art. 3(f)

<sup>23</sup> See Article 3(e) of the Constitutive Act of the African Union. The provision provides that one of the objectives of the African Union is to encourage international cooperation taking due account of the Charter of the United Nations.

<sup>24</sup> John Norton Moore, *THE ROLE OF REGIONAL ORGANIZATIONS, DOCUMENTS ON REFORM OF THE UNITED NATIONS*, (1997), 351-2

<sup>25</sup> Article 52(2) of the UN Charter provides, "The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements before referring them to the Security Council."

<sup>26</sup> Udombana, *Supra* note 15 at 122

declared objectives and principles of the AU, thus reaching a decision to incorporate it as one of the organs of the AU.

The OAU Heads of State and Government in its 2000 Solemn Declaration on the Conference on Security, Stability, Development and Cooperation, agreed on fundamental principles to govern cooperation in security among member states.<sup>27</sup>

This was followed by the adoption of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (hereinafter referred to as PSC protocol) that formally established Peace and Security Council (PSC) as an organ primarily responsible for the maintenance of regional peace and security.<sup>28</sup> The PSC Protocol entered into force on 26 December 2003.<sup>29</sup>

In the words of Jegede, the adoption of the PSC Protocol in 2002 “marked the peace and security architecture of the African Union (AU).”<sup>30</sup> Africa perhaps reinvigorated the regional security mechanism with the adoption of the PSC Protocol.

The PSC Protocol, while acknowledging the positive contributions by the OAU conflict prevention mechanism, reflected upon many sources of potential instability and uncertainty that remain, and committed to address those through the PSC mechanism.

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<sup>27</sup> Supra note 4

<sup>28</sup> Doc. A/234 (xxxviii), AU Assembly Decision On The Establishment Of The Peace And Security Council Of The African Union, 10 July 2002

<sup>29</sup> See list of OAU Treaties, Conventions, Protocols & Charters, <http://www.au.int/en/treaties> (Last visited on 01/21/2013)

<sup>30</sup> AdernolaJegede, *African Union Peace and Security Architecture: Can the Panel of the Wise Make a Difference*, 9 AFR. HUM. RTS. L.J. (2009) 409,409

About a year later, the Protocol on Amendments to the Constitutive Act of the African Union was adopted.<sup>31</sup> The Protocol formally listed the PSC as a standing organ of the AU, replacing the OAU Central Organ.<sup>32</sup> The Protocol also broaden the scope of intervention power by the Union by adopting an amendment to Article 4(h) of the AU Constitutive Act to extend the grounds of intervention to include ‘a serious threat to legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council.’<sup>33</sup> However, the Protocol on the Amendment of the Constitutive Act of the African Union has not yet entered into force.<sup>34</sup> Only 28 member states had deposited instruments of ratification as of August 27, 2014, and the Protocol has not yet entered into force.<sup>35</sup>

The vital tasks of the peace and security architecture of the AU include: anticipation and prevention of conflicts; promotion and implementation of peace-building; post-conflict reconstruction; coordination and harmonization of continental efforts in the fight against terrorism; and the promotion and encouragement of democratic practices, good governance, the rule of law, human rights and fundamental freedoms.<sup>36</sup>

Different organs of the AU, including the Assembly of Heads of State and Government and the Executive Council, have important roles in the peace and

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<sup>31</sup> See The Protocol on Amendments to the Constitutive Act of the African Union, July 11, 2003

<sup>32</sup> Id, Article 5

<sup>33</sup> Id at Article 4(h)

<sup>34</sup> List of Countries which have signed, ratified/acceded to the Protocol on the Amendments to the Constitutive Act of the African Union, See [http://www.au.int/en/sites/default/files/amendments%20to%20the%20Constitutive%20Act\\_0.pdf](http://www.au.int/en/sites/default/files/amendments%20to%20the%20Constitutive%20Act_0.pdf) (Last visited on 02/19/2013)

<sup>35</sup> Amendments to the Constitutive Act of the African Union, Supra note at Article 5

<sup>36</sup> The Secretary-General, Supra note 9, at Para. 8

security structure of the AU. The Assembly, which is the supreme organ of the AU, is entrusted with the powers of 'managing conflicts' and 'restoring peace' under the Constitutive Act of the African Union.<sup>37</sup> The Assembly delegated its power to the AU Executive Council, which is composed of the Foreign Ministers of member states of the African Union.<sup>38</sup>

The Chairperson of the AU Commission is entrusted with important responsibilities in the area of peace and security. The AU Constitutive Act and the PSC Protocol specifically define the role of the Chairperson with regard to conflict prevention and resolution including the maintenance of peace, security and stability on the continent. These include taking his/her own initiative to use regional mechanisms to prevent potential conflicts, resolve actual conflicts, promote peace building, and post conflict reconstruction.<sup>39</sup>

The Chairperson of the AU Commission is also mandated to bring any matter that is relevant for the promotion of peace, security and stability in Africa to the attention of the AU Peace and Security Council or the Panel of the Wise.<sup>40</sup> The PSC Protocol requires the Chairperson to use the information gathered under the Protocol's 'early warning system' to advise the AU Peace and Security Council on potential conflicts and threats to peace and security in Africa and recommend

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<sup>37</sup> See Article 9(g) of the Constitutive Act of the African Union

<sup>38</sup> Id.

<sup>39</sup> See Article 10(2)(c) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 9 July 2002 available at [http://www.au.int/en/sites/default/files/Protocol\\_peace\\_and\\_security.pdf](http://www.au.int/en/sites/default/files/Protocol_peace_and_security.pdf), (Last visited on 02/23/2013)

<sup>40</sup> Id at Article 10(2)

the best course of action.<sup>41</sup> Moreover, the Chairperson is responsible for ensuring the implementation and the follow up of decisions of the PSC.<sup>42</sup>

The Chairperson indeed has a role in the selection of members of the Panel of the Wise. The PSC Protocol entrusted the Chairperson with the power to select members of the Panel of the Wise.<sup>43</sup>

Another important aspect of the Chairperson's role in the area of peace and security is the use of his/her good offices to prevent potential conflicts, resolve actual conflicts and promote peace-building and post-conflict reconstruction.<sup>44</sup>

The Chairperson of the AU Commission is further entrusted with additional responsibilities by the various organs of the AU from time to time. Noteworthy is the 2004 Decision of the Assembly of the Heads of State and Government of the AU, which instructed the Chairperson to take the necessary measures to operationalize all aspects of the PSC Protocol including in particular the Panel of the Wise, the Continental Early Warning System, the African Standby Force and the Military Staff Committee, the Memorandum of Understanding (MoU) with Regional Economic Communities (RECs) in the areas of peace and security, and to report to the Executive Council and the Assembly on the progress made in this direction.<sup>45</sup>

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<sup>41</sup> Id at Article 12(5)

<sup>42</sup> Id at Article 10(3)

<sup>43</sup> Id at Article 11(2)

<sup>44</sup> Id.

<sup>45</sup> Assembly/AU/2 (III), AU Assembly Decision On The Operationalization Of The Protocol Relating To The Establishment Of The Peace And Security Council Of The African Union, 6-8 July 2004

However, the primary responsibility for the maintenance of regional peace and security rests on the PSC.

### ***3.1 The Five Pillars of the African Peace and Security Architecture***

The AU Constitutive Act and Protocol on the Establishment of the Peace and Security Council provide the basis for the African Peace and Security Architecture.<sup>46</sup> The five main pillars comprise the Peace and Security Council, the Panel of the Wise, the African Standby Force (ASF), the Continental Early Warning System (CEWS), and the African Peace Facility.<sup>47</sup> The African Union actively pursued the development, operationalization and institutionalization of these pillar structures.<sup>48</sup>

#### **3.1.1 Peace and Security Council**

The adoption of the PSC Protocol marked a turning point, strengthening the powers of the AU in matters of conflict prevention and resolution.<sup>49</sup> Subsequent to the election of the PSC members in March 2004, the PSC was officially launched on 25 May 2004, ending the legacy of the OAU Conflict Prevention, Management and Resolution Mechanism that had been in place since 1993.<sup>50</sup>

The Peace and Security Council (PSC), which is the key pillar of the African peace and security architecture, is a standing decision-making organ for

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<sup>46</sup> The Secretary General, Report of the Seminar on Cooperation between the United Nations and the African Regional Organizations in the field of Peace and Security, (Dec. 15, 2005)

<sup>47</sup> Id

<sup>48</sup> PSD/EW/CEWS Handbook, The CEWS Handbook, African Union Continental Early Warning System, February 2008

<sup>49</sup> Supra note 5 at 7-8

<sup>50</sup> See Article 22(1) of the PSC Protocol

the prevention, management and resolution of conflicts in the continent.<sup>51</sup> It is a legitimate mandating authority under Chapter VIII of the UN Charter.<sup>52</sup> It is also responsible for facilitating timely and efficient response to conflict and crisis situations in Africa.<sup>53</sup> Its powers and responsibilities are defined by the PSC Protocol.<sup>54</sup>

Under Article 2 (1) of the PSC Protocol, PSC is defined as “a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa”. The objectives of the Peace and Security Council include the anticipating and pre-empting of armed conflicts, preventing massive violations of fundamental human rights, promotion and encouragement of democratic practices, good governance, the rule of law, human rights, the respect for the sanctity of human life and international humanitarian law.<sup>55</sup> The PSC protocol establishes an organic link between conflict prevention, on the one hand, and good governance, rule of law, protection of human rights and freedoms, and respect for the sanctity of human life, on the other.<sup>56</sup>

In order to achieve these objectives, the PSC is entrusted with broad mandates that include early warning, preventive diplomacy, peacemaking, peace

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<sup>51</sup> Supra note 5 at 7-8

<sup>52</sup> EXP/ASF-MS/2 (I), Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee, Third Meeting of African Chiefs of Defense Staff, 15-16 May 2003, 4, See <http://www.africa-union.org/root/au/au/department/psc/asf/documents.htm> (Last visited, 02/18/2013)

<sup>53</sup> Id at 8

<sup>54</sup> Supra note 5 at 8-9

<sup>55</sup> See Article 3 of the PSC Protocol

<sup>56</sup> Art. 7(1)(1) of the PSC Protocol

building, and post-conflict reconstruction functions.<sup>57</sup> In January 2007, the AU Assembly adopted a decision calling upon the PSC “to pursue its efforts, with special emphasis on conflict prevention, by examining potential conflict situations before they degenerate into conflicts.”<sup>58</sup> There is a growing tendency of placing particular emphasis on conflict prevention and post-conflict reconstruction activities.<sup>59</sup>

The PSC is an inevitable product of a political compromise among member states.<sup>60</sup> This organ, which is analogous to the UN Security Council, is composed of fifteen member states elected by the Assembly of the Heads of State and Government of AU on the basis of criteria enumerated under Article 5(2) of the PSC Protocol.<sup>61</sup> These include; the commitment of member states to uphold the principles of the African Union; contribution to the maintenance of peace and security; capacity and commitment to shoulder the responsibility; and, respect for constitutional governance, rule of law and human rights. Additionally, the Protocol puts in place a periodic review mechanism whereby the AU Assembly will evaluate fulfillment of the criteria and take appropriate action accordingly.<sup>62</sup> Though the Protocol has not specified possible actions by the Assembly, one may

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<sup>57</sup> Id

<sup>58</sup> Assembly/AU/3(VIII), AU Assembly Decision On The Activities Of The Peace And Security Council Of The African Union And The State Of Peace And Security In Africa, 29-30 January 2007

<sup>59</sup> Assembly/AU/Dec. 3 (VI), African Union, Declaration on the Activities of the Peace and Security Council of the AU and the State of Peace and Security in Africa, 24 January 2006, available at [http://www.africa-union.org/root/au/Documents/Decisions/hog/AU6th\\_ord\\_KHARTOUM\\_Jan2006.pdf](http://www.africa-union.org/root/au/Documents/Decisions/hog/AU6th_ord_KHARTOUM_Jan2006.pdf) (Last visited, 12/02/2008)

<sup>60</sup> The writer of this paper had the chance to participate in the negotiation of the Protocol.

<sup>61</sup> Art. 5(1) of the PSC Protocol. The principles of equitable representation and rotation are also applied in electing the Council members.

<sup>62</sup> Id.

plausibly argue that it could extend up to removal from the Council membership. This provision is yet to be tested.

Though all members have equal rights, there are two classes of membership in the PSC. Ten members are elected for a term of two years while five are elected for three years. This modality is triggered by the need to ensure continuity in the Council.<sup>63</sup>

AU departed significantly from the OAU practice both in terms of organization and mandate. One of its major departures is the recognition of the AU's right of intervention in a member state.<sup>64</sup> The ambiguity surrounding humanitarian intervention appears to have prompted AU to include provisions in the Constitutive Act that provide for the possibility of AU intervention in certain grave circumstances. These circumstances include war crimes, genocide and crime against humanity as well as a serious threat to legitimate order.<sup>65</sup>

In the words of Dejo, this shift apparently 'redresses the statutory inhibitions of its predecessor during threatening conflicts or incidents.'<sup>66</sup> The 1994 genocide that resulted in the death of over half a million Tutsis and moderate Hutu Rwandese in just 100 days and the massive human rights violations in Darfur, Sudan, are but only two recent events in Africa that signify the relevance of AU's right of intervention against genocide, crimes against humanity, and war crimes inside states.

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<sup>63</sup> Id

<sup>64</sup> Article 4(h) of the AU Constitutive Act

<sup>65</sup> Id.

<sup>66</sup> DejoOlowu, *Regional Integration, Development, and the African Union Agenda: Challenges, Gaps, and Opportunities*, 13 *TRANSNAT'L L. & CONTEMP. PROBS*, (Spring 2003), 211, 222

Neither the Constitutive Act nor the PSC Protocol defines the listed grounds for intervention. The decision, rather, is left to the Assembly of Heads of State and Government of the AU.<sup>67</sup> The Assembly is expected to resort to relevant international conventions and instruments in defining these crimes, although the Protocol doesn't specifically identify the relevant conventions.<sup>68</sup>

Interventions by the PSC in the maintenance of regional peace and security take different forms. For instance, in 2005 the PSC suspended Togo from participating in the activities of all the organs of the AU 'until such a time when constitutional legality is restored'.<sup>69</sup>

The PSC is guided by principles enshrined in the Constitutive Act, the UN Charter and the Universal Declaration of Human Rights.<sup>70</sup> Shared principles with the UN include peaceful settlement of disputes and conflicts, respect for the sovereignty and territorial integrity of member states, and non-interference in the internal affairs of member states. The AU Constitutive Act also provides for humanitarian intervention, consisting of, the use of force by states or states to preempt or halt gross human rights violations leading to massive loss of lives, without the consent of the target state.

As of October 27, 2014, PSC has already met 463 times, to address the security challenges facing the continent.<sup>71</sup> Since its launch in 2004, PSC has been

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<sup>67</sup> Art. 4(h) of the Constitutive Act of the African Union

<sup>68</sup> Id at Art. 7(1)(e)

<sup>69</sup> AU Doc PSC/PR/Comm(XXV), 25 February 2005, para 3. Communique of the 25th meeting of the PSC

<sup>70</sup> See Art. 4 of the PSC Protocol

<sup>71</sup> PSC/PR.COMM.(CDLXIII), Communiqué of AU Peace and Security Council, 463<sup>rd</sup> Meeting, 27 October 2014

called upon to undertake peacekeeping missions to the Darfur region of western Sudan and Somalia.<sup>72</sup>

### 3.1.2 Panel of the Wise

The Panel of the Wise is another pillar for continental architecture of peace and security in Africa. The Panel was inaugurated on 18 December 2007.<sup>73</sup> It is established to assist the PSC and the Chairperson of the AU Commission particularly in the areas of conflict prevention.<sup>74</sup>

The setting up of the Panel of the Wise ‘reflects the long-held notion of an African solution to African problems.’<sup>75</sup> Proponents of this notion have premised their arguments on the values and practices from different settings of Africa on conflict prevention and resolution.<sup>76</sup>

Gounden, Pillay and Mbugua defined this notion as follows:

African solutions to African conflicts’ means that Africans should not only design their agendas for peace and security; they should also own the processes for creating such agendas and their implementation. Further, only through analysis and evaluation, understanding and development of an ‘African identity’ can African solutions to African conflicts emerge.<sup>77</sup>

The establishment of the Panel is, therefore, a renaissance of African values in addressing its contemporary challenges.

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<sup>72</sup> Benjamin Carvalho, Thomas Jaye, Kasumba Yvonne & Wafula Okumu, *Peacekeeping in Africa: The Evolving Roles of the African Union and Regional Mechanisms*, NORWEGIAN INSTITUTE OF INTERNATIONAL AFFAIRS (2010), 13

<sup>73</sup> A Mazrui, *Towards containing conflict in Africa: Methods, mechanisms and values*, EAST AFRICAN JOURNAL OF PEACE AND HUMAN RIGHTS, (1995), 81-90

<sup>74</sup> See Article 11(1) of the PSC Protocol

<sup>75</sup> Jegede, *Supra* note 30 at 412

<sup>76</sup> *Supra* note 73

<sup>77</sup> Carvalho, *Supra* note 72 at 21

The Panel is mandated to advise the PSC and the Chairperson of the Commission on all issues pertaining to the promotion, and maintenance of peace, security and stability in Africa.<sup>78</sup> It is indeed entrusted a broader power to undertake appropriate action, either at the request of the PSC/the Chairperson of the AU Commission or on its own initiative, to “support the efforts of the Peace and Security Council and those of the Chairperson of the Commission for the prevention of conflicts, and to pronounce itself on issues relating to the promotion and maintenance of peace, security and stability in Africa.”<sup>79</sup>

The Panel may also conduct shuttle diplomacy between parties unwilling to engage in formal talks; assist and advice mediation teams engaged in formal negotiations; and develop and recommend ideas and proposals that can contribute to promoting peace, security and stability on the continent.<sup>80</sup> As the advisory body of the PSC, the Panel’s work is presumptively guided by the principles enumerated under Article 4 of the PSC protocol as the guiding principles of the PSC.

The Panel is composed of five highly respected personalities from various segments of society who have made outstanding contributions to peace, security and development on the African continent.<sup>81</sup> The Chairperson of the AU Commission is entrusted with the power to select the members on the basis of regional representation.<sup>82</sup> However, the Chairperson is required to make

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<sup>78</sup> See Article 11(3) of the PSC Protocol

<sup>79</sup> See Article 11(4) of the PSC Protocol

<sup>80</sup> Modalities of the Panel of the Wise, adopted by the Peace and Security Council at its 100th meeting held on 12 November 2007, available at <http://www.peaceau.org/uploads/modalitieseng.pdf>

<sup>81</sup> See Article 11(2) of the PSC Protocol

<sup>82</sup> Id

consultations with the member states concerned prior to the selection of the members.<sup>83</sup> The reference to consultation with concerned member states, though not defined in the instrument, should be interpreted in light of the regional representation requirement for the selection of the Panel members. The Chairperson should, therefore, consult with the countries of each region regarding the selection of the member from the respective region.

Each term of the members is limited to three years.<sup>84</sup> The political clout of the members of the Panel and the respect they command might provide the panel more leverage in discharging its security mandate.

Some scholars argue that there is a potential overlap in the interaction of the Panel and Special envoys/representatives with the PSC and the Chairperson of the Commission.<sup>85</sup> Despite the potential overlap, one should not, however, lose sight of the ad-hoc nature of special envoys while the Panel is a permanent institution with a broader mandate.

The Panel meets as often as the circumstances may require.<sup>86</sup> The Panel may also meet at any time upon the request of the PSC or the Chairperson of the AU Commission.<sup>87</sup>

The effectiveness of the panel is criticized on account of its limited number of membership considering the level and spontaneity of conflicts and crises in Africa. For example, Jegede suggested broadening the Panel's

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<sup>83</sup> Id

<sup>84</sup> Id

<sup>85</sup> Jegede, Supra note 30 at 422

<sup>86</sup> Modalities of the Panel of the Wise, Supra note 30 at Paragraph IV(3)

<sup>87</sup> Id

membership arguing that doing so “will offer an opportunity for more influence over conflict and crisis situations in Africa.”<sup>88</sup>

### 3.1.3 African Standby Force

In 2002, the late Libyan leader, Colonel Muammar Gaddafi, tabled an initiative on the establishment of a single African army.<sup>89</sup> The framework document for the establishment of the African Standby Force (ASF) was adopted by the Third Session of African Chiefs of Defense Staff held in Addis Ababa, Ethiopia, on 15 –16 May 2003.<sup>90</sup> A year later, the AU Assembly of Heads of State and Government approved the Policy Framework Document, on the establishment of the African Standby Force (ASF).<sup>91</sup>

ASF is envisioned as a tool to support the PSC in discharging “its responsibilities with respect to the deployment of peace support missions and intervention pursuant to article 4 (h) and (j) of the Constitutive Act.”<sup>92</sup> As Majinge noted, ASF would “give teeth to the Council’s peacekeeping efforts.”<sup>93</sup>

The PSC Protocol provides for its composition, mandate, chain of command, training, and role of AU member states in providing troops and all forms of assistance and support.<sup>94</sup> In addition to its functions in the context of preventive deployment and peace-building, including post-conflict disarmament

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<sup>88</sup> Jegede, *Supra* note 30 at 417

<sup>89</sup> Assembly/AU/Dec.16 (II), Decision On The Operationalization Of The Protocol Relating To The Establishment Of The Peace And Security Council, July 2003

<sup>90</sup> *Id*

<sup>91</sup> Doc. EX.CL/110 (V), AU Assembly Decision On The African Standby Force (ASF) And The Military Staff Committee (MSC), 8-10 July 2004

<sup>92</sup> See Article 13(c) of the PSC Protocol

<sup>93</sup> Charles Riziki Majinge, *The Future of Peacekeeping in Africa and the Normative Role of the African Union*, GOETTINGEN JOURNAL OF INTERNATIONAL LAW, 2 (2010) 2, 463, 485

<sup>94</sup> See Article 13 of the PSC Protocol

and demobilization, the ASF is also designed to provide humanitarian assistance to address the challenges of the civilian population in conflict areas.<sup>95</sup>

The ASF is designed with a view to operate in six possible mission scenarios:

(1) providing military advice to a political mission, (2) AU observer mission co-deployment with a UN peacekeeping mission, (3) a stand-alone AU observer mission, (4) a traditional peacekeeping or preventative deployment mission, (5) complex multidimensional peace operations, and (6) peace enforcement or what the ASF Framework document refers to as intervention missions.<sup>96</sup>

The detailed tasks of ASF and its modus operandi are, however, determined by the PSC on a case by case basis for each authorized mission.<sup>97</sup>

ASF is composed of ‘standbymultidisciplinary contingents, with civilian and military components intheir countries of origin and ready for rapid deployment at appropriatenotice.’<sup>98</sup> It is, therefore, conceived along the lines of the UN “standby arrangement” where a state assumes the responsibility to train and equip contingents for peacekeeping operations for eventual deployment.<sup>99</sup> AU has set up a Peace Fund to provide the necessary financial resources for the peace support mission including that of the ASF.<sup>100</sup>

The June 2008 Memorandum of Understanding between the AUand the African Regional Economic Communities was entered to make the ASF

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<sup>95</sup> AU Assembly of Heads of State and Government Solemn Declaration on a Common Defence and Security Policy, 28 February 2004, See [http://www.africa-union.org/News\\_Events/2ND%20EX%20ASSEMBLY/Declaration%20on%20a%20Comm.AF%20Def%20Sec.pdf](http://www.africa-union.org/News_Events/2ND%20EX%20ASSEMBLY/Declaration%20on%20a%20Comm.AF%20Def%20Sec.pdf) (Last visited on 02/25/2013)

<sup>96</sup> Supra note 52

<sup>97</sup> See Article 13 of the PSC Protocol

<sup>98</sup> See Article 13 of the PSC Protocol,

<sup>99</sup> Majinge, Supra note 93 at 463

<sup>100</sup> See Article 21 of the PSC Protocol

operational on the basis of the Policy Framework on the Establishment of the African Standby Force.<sup>101</sup> The Memorandum reflects the common understanding of the AU and the RECs that the latter serve as a crucial building block for the operationalization of the Africa Peace and Security Architecture.<sup>102</sup>

The Policy Framework on the Establishment of the African Standby Force and Military Staff Committee provides for the establishment of five regional brigades to constitute the African Standby Force. ASF comprise five regional brigades; namely, Economic Community of Central African States Standby Brigade, Eastern African Standby Brigade, Northern African Regional Capability, Southern African Development Community Brigade and ECOWAS Standby Force.<sup>103</sup>

A brigade is “the first level of military command where multiple arms and services are grouped under one HQ [Headquarter].”<sup>104</sup> Although some of these regional brigades are established under the auspices of regional economic communities like ECOWAS, SADC and the Economic Community of Central African States (ECCAS), ASF peace operations are under the political control of the AU.<sup>105</sup>

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<sup>101</sup> See Memorandum of Understanding between the AU and the African Regional Economic Communities, June 2008, <http://www.paxafrica.org/areas-of-work/peace-and-security-architecture/peace-and-security-architecture-documents/mou-in-the-area-of-peace-and-security-between-the-au-and-the-recs> (Last visited 02/20/2013)

<sup>102</sup> Carvalho, Supra note 72 at 58

<sup>103</sup> Id at 57

<sup>104</sup> Supra note 52 at 5

<sup>105</sup> Carvalho, Supra note 72 at 57

### 3.1.4 The Continental Early Warning System (CEWS)

CEWS is an important pillar of the African Peace and Security Architecture. It is envisaged under Article 12(1) of the PSC Protocol, which provides the following:

In order to facilitate the anticipation and prevention of conflicts, a Continental Early Warning System to be known as the Early Warning System shall be established.<sup>106</sup>

A fundamental responsibility is, therefore, bestowed upon the CEWS through the collection and analysis of data and information. Based on a closer reading of the PSC Protocol, CEWS functions could be summarized as information collection, information sharing, information analysis, coordination and harmonization.

This early warning system helps the key institutions of the Union and other pillars of the peace and security architecture to properly discharge their responsibilities in the areas of maintenance of peace and security.<sup>107</sup>

The PSC Protocol further provides the following regarding the framework of the Continental Early Warning System:

The Early Warning System shall consist of:

- a. an observation and monitoring centre, to be known as "The Situation Room", located at the Conflict Management Directorate of the Union and responsible for data collection and analysis on the basis of an appropriate early warning indicators module; and
- b. observation and monitoring units of the Regional Mechanisms to be linked directly through appropriate means of communications to the Situation Room, and which shall collect and process data at their level and transmit the same to the Situation Room.<sup>108</sup>

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<sup>106</sup> See Article 12(1) of the PSC Protocol

<sup>107</sup> The CEWS Handbook, Supra note 48 at 7-8

<sup>108</sup> See Article 12(2) of the PSC Protocol

In July 2003, the AU Assembly invited the AU Commission to prepare a Memorandum of Understanding on the establishment of the Early Warning System provided for under the PSC.<sup>109</sup> After series of consultations, the Commission developed a draft Road-map for the operationalization of the Continental Early Warning System in July 2005. In its 8<sup>th</sup> Ordinary Session of 29-30 January 2007, the Assembly of Heads of State and Government of the AU finally endorsed the “Framework for the Operationalisation of the Continental Early Warning System” that was initially approved by the Executive Council of the African Union.

As summarized under the CEWS Handbook, the purpose of the CEWS is “the provision of timely advice on potential conflicts and threats to peace and security to enable the development of appropriate response strategies to a number of principle users at the AU: the Chairperson of the Commission, the PSC and other Departments within the Commission. Others include various organs and structures of the AU, namely the Pan-African Parliament, the Panel of the Wise and the African Commission on Human and People’s Rights.”<sup>110</sup>

### **3.1.5 The Peace Fund**

Article 21 of the PSC Protocol established the Peace Fund to provide “financial resources for peace support missions and other operational activities related to peace and security”.<sup>111</sup> The Peace Fund is one of the important pillars that make up the African Peace and Security Architecture(APSA).

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<sup>109</sup> AU Assembly, Supra 89

<sup>110</sup> The CEWS Handbook, Supra note 48 at 16

<sup>111</sup> See Article 21 of the PSC Protocol

The Peace Fund is made up of financial appropriations from the regular AU budget; voluntary contributions from Member States, international partners and other sources such as the private sector, civil society and individuals; as well as through fund-raising activities.<sup>112</sup> Article 21.3 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union requires the Chairperson of the AU Commission to raise and accept voluntary contributions from sources outside Africa, in conformity with the AU's objectives and principles. The Peace Fund has become operational and receives funds for all Peace and Security Department activities.<sup>113</sup>

The Trust Fund, which is envisaged to be established within the broader Peace Fund, has not yet become operational.<sup>114</sup> This Trust Fund was anticipated to serve as a standing reserve for special projects in case of emergencies and unforeseen priorities.<sup>115</sup>

The contribution of African states to the Peace Fund between 2008-2011 was only 2%.<sup>116</sup> The remaining 98% of the funding came from international donors.<sup>117</sup> This means that international donors provided 98 percent of the funding, making it difficult to institute African solutions to African problems.

Given the challenges of sustainable funding for the AU, the Chairperson of the AU Commission brought to the attention of the Assembly of the Heads of

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<sup>112</sup> See Article 21.2 of the PSC Protocol

<sup>113</sup> African Union Handbook, 2014, p.43

<sup>114</sup> Id.

<sup>115</sup> Id at 44

<sup>116</sup> Raymond Gilpin & Michelle Swearingen, Financing and Refocusing of African Union's Peace Fund, United States Institute of Peace, 24 June 2013, available at <http://inec.usip.org/blog/2013/jun/24/financing-and-refocusing-african-unions-peace-fund> (Last visited 02/10/2014)

<sup>117</sup> Id.

State and Government of the African Union about the urgent need to explore alternative means of financing in order to address the various socio-economic challenges facing the African Continent.<sup>118</sup>

In July 2011, the Assembly of Heads of State and Government of the African Union requested the AU Commission to expeditiously set up a High Level Panel on Alternative Sources of Financing the Union.

At the May 2013 summit of the African Union the High–Level Panel on Alternative Sources of Funding the African Union, chaired by Former Nigerian President OlusegunObasanjo submitted their report, which included two innovative fundraising measures: a \$10 levy on air travel and a \$2 levy on hotel accommodations.<sup>119</sup> Although the proposals have received criticism from several African leaders for the potential negative impact on the tourism industry, the report was approved by the heads of state and was sent to finance ministers for feedback at the January 2014 meetings. Even if these proposals are eventually adopted, they are unlikely to resolve larger fund-raising challenges.

### ***3.2 Other important pillars of the AU Security Mechanism***

The African Union endeavored to further strengthen the continental security mechanism by taking further measures,<sup>120</sup> such as the adoption of a Common Defense and Security Policy, and, later on, the AU Non-aggression and

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<sup>118</sup> Assembly/AU/18(XIX), Progress Report of the High Level Panel on Alternative Sources of Financing the African Union chaired by H.E. OlusegunObasanjo, Former President of Nigeria consultations with Member States, July 2012, 1

<sup>119</sup> Id.

<sup>120</sup> Assembly/AU/Dec.71 (IV) (2005), Assembly of the African Union Decision on the Draft African Union Non-Aggression and Common Defence Pact, 30-31 January 2005, available at [http://www.au.int/en/sites/default/files/ASSEMBLY\\_EN\\_30%20%2031\\_JANUARY\\_%202005\\_AUC\\_FOURTH\\_ORDINARY\\_SESSION.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY_EN_30%20%2031_JANUARY_%202005_AUC_FOURTH_ORDINARY_SESSION.pdf), (Last visited 12/02/2008)

Common Defense Pact, which seeks to define a framework under which the Union intervenes or authorizes intervention in preventing or addressing situations of aggression in conformity with the AU Constitutive Act, the PSC Protocol and the Common Africa Defense and Security policy.<sup>121</sup> AU also designed various mechanisms to address the many security challenges of the continent, including for terrorism, border problems, nuclear weapons proliferation, and coup d'état. The following part provides an overview of these security mechanisms pursued by the AU.

### **3.2.1 Common African Defense and Security Policy**

The AU Constitutive Act provides that the union shall function in accordance with the principles of the 'establishment of a common defense policy for the African Continent'.<sup>122</sup> In July 2002, the AU Assembly of Heads of State and Government requested the AU Chairman to establish a group of experts to examine and to make recommendation on all aspects related to the establishment of a common African defense and security policy.<sup>123</sup>

A year later, i.e. in July 2003, the Draft Framework for a Common African Defense and Security Policy was submitted for consideration by the Assembly.<sup>124</sup> After a preliminary debate over the draft, the Assembly requested the AU

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<sup>121</sup>African Union, African Union non-Aggression and Common Defense Pact, Art. 2(b), available at, <http://www.africaunion.org/root/au/Documents/Treaties/text/Non%20Aggression%20Common%20Defence%20Pact.pdf> (Last visited, 12/02/2008)

<sup>122</sup> See Article 4(j) of the Constitutive Act of the African Union

<sup>123</sup> Doc. Ass/AU/3 (I) Add.4, Decision On A Common African Defence And Security, 9-10 July 2002, available at <http://www.peaceau.org/uploads/assembly-au-dec-5-i-e.pdf>, (Last visited 12/30/2008)

<sup>124</sup>DOC.Assembly/AU/6(II), Decision On The African Defence And Security Policy, July 2003, available at <http://www.peaceau.org/uploads/assembly-au-dec-13-ii-e.pdf> (Last visited 10/31/2014)

Commission to conduct further consultations with all stakeholders and finalize the Common African Defense and Security Policy for its consideration.<sup>125</sup>

On February 28, 2004, the AU Assembly adopted a Common Defense and Security Policy.<sup>126</sup> The Assembly further endorsed the proposal by the African States Ministers of Defense and Security to establish, within the framework of Article 14.2 of the Constitutive Act of the AU, a specialized Technical Committee comprising Ministers responsible for Defense and Security of the AU, to work with the Peace and Security Council, in the implementation of the Common African Defense and Security Policy and in addressing the complex issues of peace and security on the continent.<sup>127</sup>

The Declaration on a Common African Defense and Security Policy is a proactive Declaration “based on the notion of human security rather than the narrow approach which perceives security solely as state security.”<sup>128</sup> The Declaration provides for an interventionist policy to the security challenges of Africa. It also encourages “the conclusion and ratification of non-aggression pacts between and among African States and the harmonization of such agreements.”<sup>129</sup>

### **3.2.2 African Union Non-Aggression and Common Defence Pact**

On January 31, 2005, the AU Assembly adopted the AU Non-aggression and Common Defense Pact.<sup>130</sup> The Pact gives due recognition to the gravity of the

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<sup>125</sup> Id.

<sup>126</sup> AU Assembly, Supra note 95

<sup>127</sup> AU Assembly Decision, Supra note 91

<sup>128</sup> Jegede, Supra note 30 at 409

<sup>129</sup> See Chapter III paragraph (t) of African Union Non-Aggression and Common Defense Pact

<sup>130</sup> AU Assembly, Supra note 120

impact of interstate and intra-state conflicts on peace, security, stability, and socio-economic development in the African continent.<sup>131</sup>

The AU Non-aggression and Common Defense Pact defines aggression and seeks to define a framework under which AU intervenes or authorizes intervention in preventing or addressing situations of aggression in conformity with the AU Constitutive Act, the PSC Protocol and the Common Africa Defense and Security policy.<sup>132</sup>

### **3.2.3 Prevention and Combating of Terrorism**

AU recognized terrorism as a security challenge both to the African continent, and the international community at large.<sup>133</sup> Accordingly, AU has placed emphasis on the importance of a global approach in pursuance of the fight against international terrorism.<sup>134</sup>

Nevertheless, given the increasing threat posed by international terrorism on the security situation and the socio-economic development of the African continent, AU adopted various measures towards the prevention and combating of terrorism.<sup>135</sup>

These include the OAU Convention on the Prevention and Combating of Terrorism adopted in July 1999 in Algiers, Algeria, and the Protocol thereto, as well as the AU Plan of Action on the Prevention and Combating of Terrorism in Africa (2002).

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<sup>131</sup> African Union, Supra note 121

<sup>132</sup> Id at Article 2(b)

<sup>133</sup> Assembly/AU/Dec.15 (II), Decision On Terrorism In Africa, 10-12 July 2003, available at [http://www.au.int/en/sites/default/files/ASSEMBLY\\_EN\\_10\\_12\\_July\\_2003\\_AUC\\_%20THE\\_SECOND\\_ORDINARY\\_SESSION\\_0.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY_EN_10_12_July_2003_AUC_%20THE_SECOND_ORDINARY_SESSION_0.pdf), (Last visited 02/25/2013)

<sup>134</sup> Assembly/AU/8(II) Add. 11, AU Assembly Decision On The Elaboration Of A Code Of Conduct On Terrorism, , July 2003

<sup>135</sup> AU Assembly, Supra note 133

The AU Commission also elaborated a Model Law, following the Member States experts meeting held in Algiers, in December 2010.<sup>136</sup> The Model law is designed to guide member states to streamline and strengthen their national legislations to overcome this security challenge in the African continent.<sup>137</sup> The AU Commission is further entrusted with the responsibility to provide technical assistance to member states by availing the expertise required, including through the establishment of standby team of experts.<sup>138</sup>

Another innovative approach AU pursued to facilitate an enhanced and coordinated response to the terrorism threat was the establishment of the African Centre on the Research and Study on Terrorism (ACRST).

AU also adopted various decisions condemning the acts of terrorism committed in the African soil. For example, in July 2010, the AU Assembly adopted a decision condemning the terrorist attack perpetrated by Al Shabab terrorists on July 11, 2010 killing and injuring innocent civilians in Kampala, Uganda.<sup>139</sup> The Assembly further expressed serious concern over the worsening of the scourge of terrorism and the threat posed by this situation to peace, security and stability in Africa.<sup>140</sup>

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<sup>136</sup> Assembly/AU/Dec.369(XVII) AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, Doc. Assembly/AU/4(XVII)30 June- 1 July 2011, available at [http://www.au.int/en/sites/default/files/Assembly\\_AU\\_Dec\\_363-390\\_\(XVII\)\\_E.pdf](http://www.au.int/en/sites/default/files/Assembly_AU_Dec_363-390_(XVII)_E.pdf) , (Last visited 10/11/2013)

<sup>137</sup> Id.

<sup>138</sup> Id.

<sup>139</sup> Assembly/AU/Dec.311(XV), AU Assembly Decision On The Prevention And Combating Of Terrorism, 25-27 July 2010 available at <http://www.dfa.gov.za/diaspora/docs/audecision/summitJul2010Decisions.pdf> (Last visited 10/11/2013)

<sup>140</sup> Id.

In January 2012, the AU Assembly expressed deep concern at the spate of terrorist attacks in different parts of Africa, in particular, in Nigeria.<sup>141</sup> The AU Assembly also anticipates the emerging linkages among terrorist groups, as well as between terrorist groups and criminal networks.<sup>142</sup> One typical example is the growing maritime piracy in the Mediterranean Sea, a major corridor for international sea trade, the follow-up on the decisions of the AU regarding the prohibition of the payment of ransom to terrorist groups, and the convening, in Algiers, Algeria, on 15 and 16 December 2010, of a meeting of experts from Member States to consider and adopt the draft African Model Law on the Prevention and Combating of Terrorism, prepared by the Commission.<sup>143</sup>

#### **3.2.4 African Solidarity Initiative**

AU launched the African Solidarity Initiative, on July 13, 2012.<sup>144</sup> It is an effort towards post-conflict reconstruction and development in order to consolidate peace where it has been achieved.<sup>145</sup> The African Solidarity Initiative is premised with the notion that African countries should complement the support of international development partners by directly taking part in offering assistance

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<sup>141</sup> Assembly/AU/6(XVIII), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa , 29-30 January 2012, available at

[http://www.au.int/en/sites/default/files/ASSEMBLY%20AU%20DEC%20391%20-%20415%20\(XVIII\)%20\\_E.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY%20AU%20DEC%20391%20-%20415%20(XVIII)%20_E.pdf)

(Last visited 10/15/2013)

<sup>142</sup> Id

<sup>143</sup> AU Assembly Decision, Supra note 136

<sup>144</sup> AU Assembly Decision, Supra note 142

<sup>145</sup> Assembly/AU/6(XIX ), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, , 15-16 July 2012, available at [http://www.au.int/en/sites/default/files/Assembly%20AU%20Dec%20416-449%20\(XIX\)%20\\_E\\_Final.pdf](http://www.au.int/en/sites/default/files/Assembly%20AU%20Dec%20416-449%20(XIX)%20_E_Final.pdf) (Last visited 08/20/2013)

in post-conflict reconstruction and development of AU member states emerging from conflicts.<sup>146</sup>

The African Solidarity Initiative is a culmination of the AU Policy on Post-conflict Reconstruction and Development (AU PCRDR) that was adopted by the Executive Council of the AU during its 9<sup>th</sup> Ordinary Session held in Banjul, The Gambia, from 25 June to 2 July 2006.<sup>147</sup> The AU PCRDR Policy was intended to serve as a guide for the development of comprehensive policies and strategies that seek to consolidate peace, promote sustainable development and pave the way for growth and regeneration in countries and regions emerging from conflict.<sup>148</sup> Subsequent to the adoption of the policy, AU sent out missions to a number of African countries that emerged out of conflict with a view to evaluating their needs and facilitating the launching of the African Solidarity Initiative.<sup>149</sup>

### **3.2.5 AU Border Program (AUBP)**

AU has recognized the border problem in Africa as a security challenge for the continent. The border problem in Africa is the legacy of colonialism in the past two centuries. In June 2007, the AU Executive Council adopted the Declaration on the AU Border Programme (AUBP) with the overall objective of preventing conflicts and deepening integration on the continent.<sup>150</sup> The border

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<sup>146</sup> Supra note 5 at 9

<sup>147</sup> Decision EX.CL/Dec. 302 (IX), Decision on the AU Policy Framework on Post-Conflict reconstruction and Development, 29 June 2006, available at <http://www.peaceau.org/uploads/ex-cl-dec-302-ix-e.pdf>, (Last visited 10/20/2014)

<sup>148</sup> Supra note 5 at 9

<sup>149</sup> Supra note 5 at 9

<sup>150</sup> EX.CL/Dec.370(XI), AU Executive Council adopted the Declaration on the AU Border Programme, 25-29 June 2007, available at

program (a.k.a. AU Border Programme) was eventually launched in 2010.<sup>151</sup> The AUBP revolves around three main axes, namely: delimitation and demarcation of African borders where such an exercise has not yet taken place, development of cross border cooperation, and capacity building.<sup>152</sup> With regard to cross-border cooperation, the AU is working on a Draft Convention on Cross-border Cooperation.<sup>153</sup>

In view of the many challenges the African continent encounter, the AU Assembly set a new deadline for the completion of the demarcation of all African borders by 2017.<sup>154</sup> Note that the initial deadline set by the Memorandum of Understanding on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) of July 2002, was 2012.<sup>155</sup>

This program is perhaps designed to address one of the root causes of interstate conflicts in Africa, i.e. border disputes. However this new deadline does not appear to be realistic taking into account the magnitude of the border problems in the continent. And yet, AU should be commended for designing this innovative approach to address the problem in a special and targeted manner.

### **3.2.6 Committee of Intelligence and Security Services of Africa (CISSA)**

In January 2005, AU Assembly endorsed the establishment of the Committee of Intelligence and Security Services of Africa (CISSA).<sup>156</sup> CISSA is

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[http://www.au.int/en/sites/default/files/EX%20CL%20DEC%20348%20-%20377%20%28XI%29%20\\_E.pdf](http://www.au.int/en/sites/default/files/EX%20CL%20DEC%20348%20-%20377%20%28XI%29%20_E.pdf), (Last visited 10/25/2011)

<sup>151</sup> Id.

<sup>152</sup> Supra note 5 at 10

<sup>153</sup> AU Assembly Decision, Supra note 141

<sup>154</sup> AU Assembly Decision, Supra note 136

<sup>155</sup> Id

<sup>156</sup> Assembly/AU/Dec.62 (IV), AU Assembly Decision On The Committee Of Intelligence And Security Services Of Africa And The Establishment Of The Security And Intelligence Committee

designed to address Africa's myriad security, stability and developmental problems.<sup>157</sup> The Committee is structured under the Office of the Chairperson of the African Union Commission who shall be the recipient of reports from the CISSA Secretariat or other CISSA structures.<sup>158</sup>

### **3.2.7 AU Plan of Action on Drug Control and Crime Prevention**

In January 2008, the Assembly of the Union adopted an AU Plan of Action on Drug Control and Crime Prevention. A year later, the Heads of State and Government adopted a decision on the threat of drug trafficking in Africa, which recognizes that this phenomenon was becoming a major challenge to security and governance in Africa.<sup>159</sup>

### **3.2.8 The African Nuclear Weapon Free Zone**

The African Nuclear Weapon-Free Zone Treaty (Pelindaba Treaty) of 1996 is another essential tool for the continent's collective security. The Treaty bans the testing, manufacturing, stockpiling, acquisition or possession of nuclear explosives in Africa.<sup>160</sup> Following the entry into force of the Treaty on 15 July 2009, the AU Commission convened the first meeting of the State Parties on 4 November 2010.<sup>161</sup> This was followed by the establishment of the African

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In The Office Of The African Union Commission Chairperson, 30-31 January 2005, available at <http://www.peaceau.org/uploads/assembly-au-dec-62-iv-e.pdf> (Last visited 10/10/2009)

<sup>157</sup> Id.

<sup>158</sup> Id.

<sup>159</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 10

<sup>160</sup> See Articles 3, 4 & 5 of the African Nuclear Weapon-Free Zone Treaty (Pelindaba Treaty), 11 April 1996 (available at [http://www.au.int/en/sites/default/files/Treaty\\_En\\_African\\_Nuclear\\_Weapon\\_Free\\_Zone\\_AddisAbaba\\_July1995.pdf](http://www.au.int/en/sites/default/files/Treaty_En_African_Nuclear_Weapon_Free_Zone_AddisAbaba_July1995.pdf), last visited on 10/08/2014)

<sup>161</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 10

Commission on Nuclear Energy (AFCONE), which is primarily established to ensure States Parties' compliance with their undertakings.<sup>162</sup>

The Treaty of Pelindaba that established AFCONE mandates AFCONE, to collate States Parties annual reports, review the application of peaceful nuclear activities and safeguards by the International Atomic Energy Agency, bring into effect the complaints procedure, encourage regional and sub-regional cooperation, as well as promote international cooperation with extra-zonal States for the peaceful applications of nuclear science and technology.<sup>163</sup> AFCONE has a Secretariat based in Pretoria, South Africa.<sup>164</sup>

Equally important are the various decisions and instruments pertaining to landmines, in particular the May 1997 Kempton Park Plan of Action on a Landmine Free Africa, as well as to small arms and light weapons. In this respect, it is important to point out the ongoing process towards the adoption of an African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.<sup>165</sup>

### ***3.3 African Sub-regional Organizations***

A proliferation of internal conflicts in the wake of the Cold War era coupled with the relative disengagement of the developed world from Africa led African sub-regional organizations to assume unprecedented role in conflict

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<sup>162</sup> Id

<sup>163</sup> See Article 12 of the African Nuclear Weapon-Free Zone Treaty

<sup>164</sup> African Commission on Nuclear Energy, <http://www.peaceau.org/en/page/78-african-commission-on-nuclear-energyafcone#sthash.KSHsZQWU.dpuf>, (last visited on 10/08/2014)

<sup>165</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 10

management.<sup>166</sup> AU formally recognizes eight regional economic communities within the African Continent. These are the Intergovernmental Authority on Development (IGAD); the Economic Community of West African States (ECOWAS); the Southern Africa Development Community (SADC); the Economic Community of Central African States (ECCAS); the Common Market for Eastern and Southern Africa (COMESA); the Arab Maghreb Union (UMA); the Eastern Africa Community (EAC); and the Community of Sahel-Saharan States (CEN-SAD).<sup>167</sup>

Though most of these Regional Economic communities were originally established for economic purposes, a number of them have progressively included peace and security mandates in their objectives. Given the regional dimension of conflicts in Africa and their impacts on the neighboring states, they have a legitimate and compelling interest to broaden their mandates to include peace and security initiatives.<sup>168</sup>

### **3.3.1 ECOWAS Security Mechanism**

#### **A. Background**

The Economic Community of West African States (ECOWAS) was founded on May 28, 1975 with the principal objective of achieving an "accelerated and sustained economic development of Member States" in West

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<sup>166</sup>HilaireMcCoubrey & Justin Morris, *Regional Peacekeeping in the Post-Cold War Era*, KLUWER LAW INTERNATIONAL (2000), 144

<sup>167</sup> African Union, <http://www.au.int/en/>

<sup>168</sup> Fredrik Soderbaum & Rodrigo Tavares, *REGIONAL ORGANIZATIONS IN AFRICAN SECURITY*, (2001) Routledge, 7

Africa.<sup>169</sup> It was originally premised with the belief that regional cooperation and an inward looking approach could accelerate the economic viability of West African nations.<sup>170</sup> Out of the 55 African nations, 15 West African States are currently members of ECOWAS.<sup>171</sup>

Though security was an important issue, the ECOWAS treaty did not originally contain an explicit provision that provides for a structured intervention in conflicts.<sup>172</sup> Despite what its forefathers anticipated, ECOWAS spent a considerable part of its existence on resolving crises in Sierra Leone, Liberia and Guinea Bissau and other troubled spots.<sup>173</sup> It has now become the most prominent sub-regional organizations engaged in peace enforcement operations in its member states.<sup>174</sup>

## **B. The 1978 ECOWAS Protocol on Non-Aggression**

Given the distressing events in the sub-region, ECOWAS soon realized that peace and stability are critical factors to achieve the anticipated economic

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<sup>169</sup> 1010 U.N.T.S. 17, Treaty of the Economic Community of West African States, May 28, 1975, See Preamble

<sup>170</sup> Daniel Daktori, *Minding the Gap: International Law and Regional Enforcement in Sierra Leone*, 20 FLA. J. INT'L L. 329 (2008), 331

<sup>171</sup> Katharina P. Coleman, *INTERNATIONAL ORGANIZATIONS AND PEACE ENFORCEMENT: THE POLITICS OF INTERNATIONAL LEGITIMACY*, Cambridge University Press, (2007), 74

<sup>172</sup> Jeremy Levitt, *Conflict Prevention, Management, and Resolution: Africa – Regional Strategies for the Prevention of Displacement and Protection of Displaced Persons: The Cases of the OAU, ECOWAS, SADC, and IGAD*, 11 DUKE J. COMP. & INT'L L., 39 (2001), 45

<sup>173</sup> Francois Van As, *African Peacekeeping Past Practices, Future Prospects and its Contribution to International Law*, 45 MIL. L & L WAR REV, 329(2006), 336

<sup>174</sup> Coleman, *Supra* note 171 at 73

development and progress in Western Africa.<sup>175</sup> More so, ECOWAS member states came to realize that internal conflicts are indeed security threats to the sub-region.<sup>176</sup>

Accordingly, the ECOWAS member states adopted the Protocol on Non-Aggression to the ECOWAS Treaty on April 22, 1978. The Protocol constitutes an integral part of the ECOWAS Treaty.

Under this Protocol, ECOWAS member states pledged allegiance to the U.N. Charter's prohibitions on cross-border attacks. The Protocol further confirmed the signatories' adherence to Art 2(4) of the UN Charter of refraining from the threat or use of force and Art 3 (3) of the OAU Charter, respect of the sovereignty and territorial integrity of States.<sup>177</sup>

### **C. The 1981 Protocol on Mutual Assistance of Defense**

On May 29, 1981 ECOWAS member states adopted the Protocol on Mutual Assistance in Defense. The Protocol explicitly recognized the interdependence of economic progress and security. In this regard, it specifically noted that “economic progress cannot be achieved unless the conditions for the necessary security are ensured in all Member States of the Community.”<sup>178</sup> This Protocol offered a framework for a collective response to external aggression, and in cases of inter-state and intra-state conflicts.

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<sup>175</sup>Profile: Economic Community of Western African States, See <http://www.africa-union.org/root/au/recs/ECOWASProfile.pdf> (Last visited on 10 December 2013)

<sup>176</sup> Van As, Supra note 173 at 336

<sup>177</sup>Id.

<sup>178</sup> See Paragraph 5 of the Preamble of ECOWAS Protocol Relating to Mutual Assistance of Defense, <http://biblioteca.clacso.edu.ar/ar/libros/iss/pdfs/ecowas/13ProtMutualDefAss.pdf> (Last visited on 10 December 2013)

Articles 13 of the 1981 Protocol anticipates the establishment of a standby armed force which is referred to as the Allied Armed Forces of the Community. It provides that any ECOWAS military intervention would be undertaken by the Allied Armed Forces of the Community (AAFC).<sup>179</sup> Article 18.2 explicitly provides that no intervention by the AAFC will be authorized if the conflict is and remains purely internal.<sup>180</sup> Though this force has never been created, the principle of collective action embodied in the Treaty remains intact.<sup>181</sup>

Under Article 2 of the Protocol on Mutual Assistance of Defense, ECOWAS member states recognized armed threat or aggression directed against any Member State as a threat or aggression against the entire Community.<sup>182</sup> ECOWAS member States expressed their resolve to provide mutual aid and assistance for defense against any such armed threat or aggression.<sup>183</sup>

The Protocol further authorized member states to take appropriate measures under two circumstances. One is in case of armed conflict between two or several Member States if the peaceful settlement procedure under the 1978 Non Aggression Protocol proves ineffective.<sup>184</sup> The second circumstance that warrants appropriate measure is internal armed conflict fueled by external support and likely to endanger the community's security and peace.<sup>185</sup>

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<sup>179</sup> See Article 13 of the ECOWAS Protocol on Mutual Assistance on Defence

<sup>180</sup> Van As, *Supra* note 173 at 337

<sup>181</sup> Coleman, *Supra* note 171 at 80

<sup>182</sup> See Article 2 of the ECOWAS Protocol Relating to Mutual Assistance of Defense

<sup>183</sup> *Id.*, Article 33

<sup>184</sup> *Id.*, Article 4(a)

<sup>185</sup> *Id.*, Article 4(b)

#### D. ECOWAS Peace and Security Architecture

ECOWAS peace and security architecture was initially launched as an ad hoc security mechanism in an effort to respond to the December 1989 crisis in Liberia.<sup>186</sup> The Liberian crisis, which started in 1989, was, therefore, a turning point for ECOWAS to take a lead in the maintenance of regional peace and security.<sup>187</sup> Following the eruption of the crisis, ECOWAS devised ad hoc security mechanism to address the crisis.<sup>188</sup> In May 1990, ECOWAS established a Standing Mediation Committee (SMC) entrusted with the responsibility of bringing a peaceful resolution to the crisis.<sup>189</sup>

Thereafter, ECOWAS developed a significant military security dimension with the establishment of ECOMOG as a response to the Liberian crisis. ECOMOG was specifically mandated to conduct a military operation for the purpose of monitoring the ceasefire between the rebels and the government, clear the Liberian capital of all threats of attack and establish and maintain law and order.<sup>190</sup> This decision of creating a military force was justified by the prevailing human rights abuses, the threat of large scale refugees and general regional destabilization.<sup>191</sup> ECOWAS did so without first consulting the U.N. Security Council.<sup>192</sup> This perhaps constitutes a departure from the typical trajectory.

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<sup>186</sup> Jane Boulden, (ed.), *RESPONDING TO CONFLICT IN AFRICA: THE UNITED NATIONS AND REGIONAL ORGANIZATIONS*, (May 2013), 54

<sup>187</sup> *Id.* at 61

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Majinge, *Supra* note 93 at 463, 477

<sup>191</sup> Daniel Daktori, *Minding the Gap: International Law and Regional Enforcement in Sierra Leone*, 20 *FLA. J. INT'L L.* 329 (2008), 334

<sup>192</sup> *Id.* at 333-4

ECOWAS also took other measures that provided robust legal foundation to the regional peacekeeping.<sup>193</sup> These include the adoption of the 1991 Declaration of Political Principles sought to protect human rights. The Declaration bestowed each ECOWAS citizen with the "inalienable right to participate by means of free and democratic processes in the framing of the society in which he lives."<sup>194</sup>

Given the lessons learned from its peacekeeping operations, ECOWAS revised its founding Treaty in 1993.<sup>195</sup> Under this treaty member states undertook "to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region."<sup>196</sup> ECOWAS, through the revision, codified ECOMOG as a regional peacekeeping force.

The revised ECOWAS Treaty conferred the Community with the responsibility of preventing and settling regional conflicts. It recognized the following as its fundamental principles in relation to the maintenance of regional security: non-aggression between Member States<sup>197</sup>; maintenance of regional peace, stability and security through the promotion and strengthening of good neighborliness<sup>198</sup>; peaceful settlement of disputes among Member States, active Co-operation between neighboring countries and promotion of a peaceful

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<sup>193</sup> Id at 339

<sup>194</sup> Declaration A/DCL.1/7/91, Declaration of Political Principles of the ECOWAS, 4-6 July 1991, Paragraph 6, available at [http://www.eods.eu/library/ECOWAS\\_Declaration%20of%20Political%20Principles%20of%20the%20Economic%20Community%20of%20West%20African%20States\\_1991\\_EN.pdf](http://www.eods.eu/library/ECOWAS_Declaration%20of%20Political%20Principles%20of%20the%20Economic%20Community%20of%20West%20African%20States_1991_EN.pdf) , (Last visited 10/09/10)

<sup>195</sup> Boulden, Supra note 186 at 61

<sup>196</sup> See Article 58(1) of the Revised Treaty of the Economic Community of West African States (ECOWAS), 24 July 1993, [http://www4.worldbank.org/afr/ssatp/Resources/HTML/legal\\_review/Annexes/Annexes%20VII/Annexe%20VII-02.pdf](http://www4.worldbank.org/afr/ssatp/Resources/HTML/legal_review/Annexes/Annexes%20VII/Annexe%20VII-02.pdf) (Last visited on December 15, 2013)

<sup>197</sup> Id, Article 4(d)

<sup>198</sup> Id, Article 4(e)

environment as a prerequisite for economic development<sup>199</sup>. The promotion and consolidation of a democratic system of governance is also recognized as one of the fundamental principles under Article 4 of the revised treaty.

Under Article 58 of the ECOWAS revised Treaty, member states undertake “to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region.”<sup>200</sup> In this regard, the revised treaty envisaged the establishment and strengthening of “appropriate mechanisms for the timely prevention and resolution of intra-State and inter-State conflicts.”<sup>201</sup> These include the maintenance of periodic and regular consultations between national border administration authorities; establishment of Joint Commissions; resort to methods of peaceful settlement of disputes including reconciliation, mediation and good offices; the establishment of regional peace and security observation system and peacekeeping; and provision of assistance to Member States for the observation of democratic elections.<sup>202</sup>

On October 31, 1998 ECOWAS member states authorized the establishment of a Framework that would regulate ECOWAS/ECOMOG enforcement operations.<sup>203</sup> The Framework envisaged the creation of an ECOWAS Mediation and Security Council that would have the necessary standing to authorize intervention actions, including military intervention.<sup>204</sup> Paragraph 46 of the Framework provides for military intervention by ECOWAS

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<sup>199</sup> Id, Article 4(f)

<sup>200</sup> Id, Article 58(1)

<sup>201</sup> Id, Article 58(2)

<sup>202</sup> Id, Article 58

<sup>203</sup> Van As, Supra note 173 at 337

<sup>204</sup> Id.

in situations of internal conflicts that are maintained and sustained from within a Member Country.

This was followed by the adoption of the Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security in 1999. This is perhaps the most important legal instrument in the domain of security within ECOWAS.<sup>205</sup> This Protocol established a “mechanism for collective security and peace to be known as "Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security" for ECOWAS.”<sup>206</sup> And it provides the legal framework for regulating collective security in the West Africa sub-region.<sup>207</sup>

While negotiating this Protocol, ECOWAS defense ministers who convened in Banjul, Gambia in 1998 considered the reluctance of the Security Council to sanction UN peacekeeping in Liberia, Sierra Leone, and Guinea Bissau and decided to retain autonomy on the decision to intervene.<sup>208</sup>

Article I of the Protocol provides for the establishment of a mechanism for collective security and peace to be known as the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.<sup>209</sup> The objectives of the Mechanism are to prevent, manage and resolve internal and inter-state conflicts under the conditions provided in Art 46 of the Framework.

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<sup>205</sup>Boulden, *Supra* note 195 at 61

<sup>206</sup> See Article 1 of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, <http://www.comm.ecowas.int/sec/?id=ap101299&lang=en>, (Last visited on 11/29/2013)

<sup>207</sup> Emanuel Kwesi Anning, Emma Birikorang & Thomas Jaye, *COMPENDIUM OF ECOWAS PEACE AND SECURITY DECISIONS*, (September 2010), 69-94

<sup>208</sup> Adekeye Adebajo, *Pax West Africana?*, in *WEST AFRICA'S SECURITY CHALLENGES: BUILDING PEACE IN A TROUBLED REGION*, Lynne Rienner Publishers, 291 (2004), 302

<sup>209</sup> Anning, *Supra* note 207 at 72

As articulated in the preamble of the Protocol, the underlying reasons for the adoption of the Protocol was the concern of ECOWAS member states “about the proliferation of conflicts which constitute a threat to the peace and security in the African continent” and their spillover effects undermining efforts of ECOWAS member states “to improve the living standards” of the peoples of the sub-region.<sup>210</sup>

Article 3 sets out the objectives of the Mechanism. These include the prevention, management and resolution of internal and inter-State conflicts; strengthening cooperation in the areas of conflict prevention, early-warning, peace-keeping operations, the control of cross-border crime, international terrorism and proliferation of small arms and anti-personnel mines; maintenance and consolidation of peace, security and stability within the Community; promoting close cooperation between Member States in the areas of preventive diplomacy and peace-keeping; constituting and deploying a civilian and military force to maintain or restore peace within the sub-region, whenever the need arises; and setting up an appropriate framework for the rational and equitable management of natural resources shared by neighboring Member States which may be causes of frequent inter-State conflicts.<sup>211</sup>

#### **E. ECOWAS organs with the regional peace and security mandate**

The Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security identified the Authority, the Mediation

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<sup>210</sup> See Paragraph 12 of the Preamble of Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security

<sup>211</sup> Id., Article 3

and Security Council (MSC) and the ECOWAS Executive Secretariat as institutions of the ECOWAS security mechanism.<sup>212</sup> It further provides that the Authority could establish other institution as required. The Protocol under Article 17 also established the Defense and Security Commission, the Council of Elders, and the ECOWAS Cease-fire Monitoring Group (ECOMOG) as organs of ECOWAS in charge of assisting the Mediation and Security Council.<sup>213</sup>

*i. The Authority*

ECOWAS Authority is “the Mechanism’s highest decision making body”<sup>214</sup>, and it is composed of heads of state and government of all ECOWAS member states.<sup>215</sup> ECOWAS Authority has been entrusted with the “powers to act on all matters concerning conflict prevention, management and resolution, peace-keeping, security, humanitarian support, peace-building, control of cross-border crime, proliferation of small arms, as well as all other matters covered by the provisions of this Mechanism.”<sup>216</sup> It has an exclusive mandate to decide ‘on the expediency of military force’.<sup>217</sup> ECOWAS Authority operates under the consensus rule envisaged in the ECOWAS Treaty.

*ii. Mediation and Security Council*

The ECOWAS Mediation and Security Council is composed of nine ECOWAS member states, out of which seven are elected by the Authority and the

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<sup>212</sup> Id, Article 4

<sup>213</sup> Id, Article 17

<sup>214</sup> Id, Article 6

<sup>215</sup> See Article 5.1 of the ECOWAS Treaty

<sup>216</sup> See Article 6 of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security

<sup>217</sup> See Article 6 of the 1981 ECOWAS Protocol on Mutual Assistance on Defence

remaining two are the current chairman and the immediate past chairman of the authority.<sup>218</sup>

The Council is a key organ that is entrusted with the power to take decisions on issues of peace and security in the sub-region on behalf of the Authority.”<sup>219</sup> In fact, the Authority under Article 7 of the Protocol has provided the Council a broader mandate to take, on its behalf, “appropriate decisions for the implementation of the provisions of” the ECOWAS security Mechanism.<sup>220</sup> The Council is further entrusted with a broader power of implementing all the provisions of this Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.<sup>221</sup>

Article 7 of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security enumerates specific functions of the Council in the implementation of the Protocol. These include the power to decide on all matters relating to peace and security; decide and implement all policies for conflict prevention, management and resolution, peace-keeping and security; authorize all forms of intervention and decide particularly on the deployment of political and military missions; approve mandates and terms of reference for such missions; review the mandates and terms of reference periodically, on the basis of evolving situations; on the

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<sup>218</sup> See Article 8 of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security

<sup>219</sup> Id, Article 10

<sup>220</sup> Id, Article 7

<sup>221</sup> Id, Article 10

recommendation of the Executive Secretary, appoint the Special Representative of the Executive Secretary and the Force Commander.<sup>222</sup>

**iii. *Executive Secretariat***

The ECOWAS Executive Secretary is mandated to “initiate actions for conflict prevention, management, resolution, peace-keeping and security in the sub-region.”<sup>223</sup> These actions include “fact-finding, mediation, facilitation, negotiation and reconciliation of parties in conflict.”<sup>224</sup>

**iv. *Defense and Security Commission***

The ECOWAS Defense and Security Commission has important advisory function to the Council. It assists the Council in ‘formulating the mandate of the Peace-keeping Force; defining the terms of reference for the Force; appointing the Force Commander; determining the composition of the Contingents.’<sup>225</sup>

**v. *Council of Elders***

The Council of Elders is composed of eminent personalities from various segments of society. The list of the eminent personalities is approved by the Mediation and Security Council at the level of the Heads of State and Government.<sup>226</sup> The members of the Council of Elders could, on behalf of ECOWAS, “use their good offices and experience to play the role of mediators,

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<sup>222</sup> Id

<sup>223</sup> Id, Article 15

<sup>224</sup> Id

<sup>225</sup> Id, Article 19

<sup>226</sup> Id, Article 20

conciliators and facilitators” when the need arises.<sup>227</sup> The Council plays important role offering advisory function to the Council regarding military support missions authorized by the Council.<sup>228</sup>

*vi. ECOMOG*

ECOWAS Monitoring Group (ECOMOG) was originally created as an ad hoc force with the task of arranging and supervising a cease-fire to be followed by the establishment of a sustainable interim government leading to democratic elections within a period of 12 months.<sup>229</sup> It eventually evolved as one of the ECOWAS organs in charge of assisting the Peace and Security Council.<sup>230</sup> It is composed of “several Stand-by multi-purpose modules (civilian and military) in their countries of origin and ready for immediate deployment.”<sup>231</sup> It is now one of the key bodies for the enforcement of military support missions of ECOWAS.

ECOMOG is comparable to the UN Standby force anticipated under Article 43 of the UN Charter. The ECOWAS Standby Force is composed of contingents earmarked from national armed forces of ECOWAS member states for deployment in ECOWAS peace support operations as the need arises.<sup>232</sup>

Article 22 of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security provides the following as missions of ECOMOG: Observation and Monitoring; peace-keeping

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<sup>227</sup> Id

<sup>228</sup> McCoubrey, Supra note 166 at 144

<sup>229</sup> Id at 142

<sup>230</sup> Id at 144

<sup>231</sup> See Article 20 of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security

<sup>232</sup> McCoubrey, Supra note 166 at 144

and restoration of peace; Humanitarian intervention in support of humanitarian disaster; Enforcement of sanctions, including embargo ;Preventive deployment; Peace-building, disarmament and demobilization; Policing activities, including the control of fraud and organized crime; Any other operations as may be mandated by the Mediation and Security Council.<sup>233</sup>

Like the other African regional and sub-regional organizations, ECOWAS has had to overcome a number of challenges to strengthen the sub-regional security arrangement. In its initial years, ECOWAS had encountered challenges in its aspirations to evolve into a sub-regional security community. This was perhaps one manifestation of the colonial legacy, primarily driven by France through coordinating the Francophone West African nations.<sup>234</sup> The Francophone states, which constitute the majority in West Africa, were concerned about the Anglophone Nigeria's economic and military dominance in the sub-region and its leverage within ECOWAS.<sup>235</sup> That was perhaps the driving force behind the conclusion of the 1977 Exclusive Mutual Non-aggression and Defense Pact (ANAD) among the Francophone West African nations.<sup>236</sup> More so, they were initially reluctant to move along with the ECOWAS more inclusive regional security mechanism.<sup>237</sup> The West African Anglophone states perceived the foregoing exclusive arrangement among the Francophone states as a threat to regional unity. Coupled with the initial reluctance of the Francophone nations to

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<sup>233</sup> See Article 22 of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security

<sup>234</sup> Coleman, *Supra* note 171 at 74

<sup>235</sup> *Id* at 75

<sup>236</sup> *Id*

<sup>237</sup> *Id*

move along with the ECOWAS more inclusive regional security arrangement, the sub-regional security arrangement was not an easy venture for ECOWAS in the early 1980s.<sup>238</sup>

### **3.3.2 SADC Security Mechanism**

#### **A. Background**

The Southern Africa Development Community (SADC) was founded by the Treaty of Southern Africa Development Community signed on August 17, 1992.<sup>239</sup> Currently SADC has fifteen Southern African States as its members. These are: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.<sup>240</sup>

SADC's predecessor, i.e. Southern African Development Coordinating Conference (SADCC), which came into existence in April 1980 by the nine Southern African countries,<sup>241</sup> had the underlying objective of coordinating and harmonizing economic cooperation within its member states with a view to improving the quality of life of the peoples of the region.<sup>242</sup> SADCC adopted the slogan "Southern Africa – towards economic liberation" and pursued the goal of reducing economic dependence from Apartheid South Africa and dismantling the

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<sup>238</sup> Id

<sup>239</sup> See SADC's official website, <http://www.sadc.int/documents-publications/show/865>, (Last visited on 12/26/2013)

<sup>240</sup> See SADC's official website, <http://www.sadc.int/member-states/> (Last visited on 12/29/2013)

<sup>241</sup> The original members of the SADCC were Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe. Namibia joined the organisation after securing its independence in 1990.

<sup>242</sup> Majinge, Supra note 93 at 481

Apartheid regime in South Africa.<sup>243</sup> SADCC activities were based on a Memorandum of Agreement between Member States until the Declaration and Treaty of the SADC was signed on August 17, 1992.<sup>244</sup>

According to the SADC Treaty, one of the key objectives of SADC is to 'promote and defend peace and security' in the region.<sup>245</sup> Solidarity, Peace, Security and Peaceful settlement of disputes are indeed adopted as principles governing the acts of SADC and its member states.<sup>246</sup> As Coleman put it, SADC is "the most appropriate regional framework for conducting peace enforcement operations in Southern Africa."<sup>247</sup>

However, the Treaty did not provide specific mechanisms to achieve this important objective of the organization, except generally providing that SADC shall "create appropriate institutions and mechanisms for the mobilization of requisite resources for the implementation of programmes and operations of SADC and its institutions".<sup>248</sup>

The abolition of apartheid in South Africa in 1994 shifted the focus of the Southern African states demanding reorientation in the existing sub-regional security architecture in the Southern Africa.<sup>249</sup> Note that SADC and its predecessor, the Southern African Development Coordination Council (SADCC), viewed the apartheid in South Africa as the principal security threat for the sub-

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<sup>243</sup> C.Ng'long'ola, , *The Legal Framework for Regional Integration in the Southern African Development Community*, UNIVERSITY OF BOTSWANA LA JOURNAL, vol. 8 (December 2008),4

<sup>244</sup> Van As, Supra note 173 at 331

<sup>245</sup> See Article 5(1)(c) of the Treaty of the Southern Africa Development Community

<sup>246</sup> See Article 4 of the Treaty of the Southern Africa Development Community

<sup>247</sup> Coleman, Supra note 234 at 167

<sup>248</sup> See Article 5(2)(c) of the Treaty of the Southern Africa Development Community

<sup>249</sup> McCoubrey, Supra note 166 at 146

region.<sup>250</sup> With the abolition of apartheid, it, therefore, became evident that a new mechanism for the maintenance and strengthening of regional peace and security was needed.<sup>251</sup>

The SADC Foreign and Defense Ministers Summit, which convened in January 1996, defined the sub-regional defense and security architecture through proposing a SADC Organ of Politics, Defense and Security (OPDS) as a principal security mechanism.<sup>252</sup> On June 28, 1996, SADC member states adopted a Communiqué to create the SADC Organ on Politics, Defence and Security Cooperation (OPDS).<sup>253</sup>

Five years later, i.e. on August 14, 2001, the Protocol on Politics, Defence and Security Cooperation was adopted by SADC Summit, and the Protocol recognized OPDS as the principal security mechanism for the Southern Africa sub-region.<sup>254</sup> The Protocol provides explicit recognition to the critical importance of peace and security in creating conducive atmosphere for regional co-operation and integration.<sup>255</sup>

This Protocol was designed in the aftermath of the intervention by Angola, Namibia and Zimbabwe in the war and political crises in the Democratic Republic

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<sup>250</sup> Id

<sup>251</sup> Kaire M. Mnuende, *Conflict Prevention and Resolution in the Southern African Development Community (SADC)*, INTERNATIONAL JOURNAL ON MINORITY AND GROUP RIGHTS, vol. 8. Issue 1 (2001)

<sup>252</sup> McCoubrey, *Supra* note 166 at 147

<sup>253</sup> See Preamble of the SADC Protocol on Politics, Defence and Security Cooperation, 14<sup>th</sup> August 2001

<sup>254</sup> McCoubrey, *Supra* note 166 at 147

<sup>255</sup> See Paragraph 7 of the preamble of the SADC Protocol on Politics, Defence and Security Cooperation, 14<sup>th</sup> August 2001

of Congo (DRC).<sup>256</sup> The Protocol entered into force on 2 March 2004.<sup>257</sup> This new security mechanism has an extended mandate to deal not only with regional collective security but also to help SADC Member States establish and safeguard the democratic order in the Southern Africa region.<sup>258</sup>

In 2008, SADC articulated its vision that it is one of “a common future, a future within a regional community that will ensure economic wellbeing, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples of Southern Africa.”<sup>259</sup>

While recognizing that security matters transcend national and regional boundaries, SADC sets out a procedure whereby co-operation agreement on defense, security and political matters between SADC member states and non-State Parties, and between SADC member states and organizations take effect in the SADC member states. Any such cooperative agreements are subject to approval by SADC Summit.<sup>260</sup>

The SADC security regime gives due recognition to the primary responsibility of the United Nations Security Council in the maintenance of international peace and security.<sup>261</sup> Likewise, the SADC Protocol on Politics, Defence and Security Cooperation provide primacy to the security regime of the African Union.<sup>262</sup>

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<sup>256</sup>Ng'ong'ola, *Supra* note 243 at 39

<sup>257</sup> *Id*

<sup>258</sup>Mnuende, *Supra* note 251

<sup>259</sup> Southern African Development Community, SADC Vision 2008

<sup>260</sup> Article 10 of the SADC Protocol on Politics, Defence and Security Cooperation

<sup>261</sup> *Id*, Article 15(1)

<sup>262</sup> *Id*, Article 15(1)(2)

Under Article 11, sub paragraph 4 (c) of the Protocol, it is explicitly required that “[t]he exercise of the right to individual or collective self-defence shall be immediately reported to the UNSC...”<sup>263</sup> This is in tandem with Article 54 of the UN Charter. But the Protocol makes no explicit reference about the requisite prior authorization for enforcement actions stipulated under Article 53(1) of the Charter of the United Nations.<sup>264</sup>

The UN has not defined the geographical scope of regional arrangements. SADC could, therefore, be considered as a regional arrangement envisaged under Chapter VIII of the UN Charter. This view is supported by McCoubrey and Morris, who argued in favor of a broader interpretation of the concept under Chapter VIII.<sup>265</sup>

## **B. Key components of SADC Security Regime**

### ***i. Summit of the Heads of State or Government***

The SADC Summit, which is composed of the Heads of State or Government of all SADC member states, is the supreme policy making institution of SADC responsible for "overall policy direction and control of the functions of SADC."<sup>266</sup> The Summit is led by a Troika, which consists of the Chairperson, the incoming chairperson, and the Outgoing Chairperson.<sup>267</sup> The Summit is entrusted with the power to select the Troika members of OPDS.

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<sup>263</sup> Id, Article 11(4)(e)

<sup>264</sup> Van As, Supra note 173 at 332

<sup>265</sup> McCoubrey, Supra note 166 at 148

<sup>266</sup> See Article 10(1) of the Treaty of the Southern Africa Development Community

<sup>267</sup> Boulden, Supra note 186 at 64

*ii. Organ on Politics, Defence and Security Cooperation (OPDS)*

OPDS is ceded powers and responsibilities of the Summit for the political and security dimensions of SADC integration.<sup>268</sup> It operates at the summit level, and function independently of other SADC structures.<sup>269</sup> This organ may be ranked slightly below the Summit, but above SADC Council of Ministers, in the revised hierarchy of SADC institutions.<sup>270</sup> Like the Summit, OPDS also operates on a Troika basis. The only caveat is that the Troika members of the Summit could not be selected to simultaneously be members of the OPDS.<sup>271</sup>

OPDS is entrusted with a responsibility to develop a common sub-regional foreign policy, sub-regional defense and security cooperation, protection against instability arising from the breakdown of law and order, intrastate conflict, interstate conflict and aggression, conflict mediation and resolution, and the development of peace support capacity.<sup>272</sup>

The Protocol sets out the conditions where OPDS will have jurisdiction to intervene. The first condition is the existence of significant interstate conflict between State Parties or between State Parties and Non-State Parties. The second condition is the existence of significant intra-state conflict in a State Party.<sup>273</sup> OPDS is required to obtain the consent of the disputant parties to pursue its peacemaking efforts for both interstate and intrastate conflicts.<sup>274</sup> The Protocol

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<sup>268</sup>Ng'ong'ola, *Supra* note 243 at 23

<sup>269</sup>Mnuende, *Supra* note 251

<sup>270</sup>Ng'ong'ola, *Supra* note 243 at 22

<sup>271</sup>Boulden, *Supra* note 186 at 64

<sup>272</sup> See Article 2(2) of the SADC Protocol on Politics, Defence and Security Cooperation

<sup>273</sup> *Id.*, Article 11(2)

<sup>274</sup> *Id.*, Article 11(4)

also anticipates the possibility of SADC's involvement in mediating a significant interstate or intrastate conflict that occurs outside the region in consultation with the United Nations Security Council and the African Continental organization.<sup>275</sup>

The activities of OPDS are guided by a business plan, called a Strategic Indicative Plan for the Organ (SIPO).<sup>276</sup> SIPO II was launched on November 20, 2012.<sup>277</sup> It covers five key sectors of Politics, Defence, State Security, Public Security and Police.<sup>278</sup>

The Protocol provides for an elaborate structure of the OPDS. These are the Chairperson, the Troika, a Ministerial Committee, an Inter-State Defense and Security Committee, and other substructures that may be established by either of the Ministerial Committees.<sup>279</sup> The Organ is supported by the Directorate for Politics, Defense and Security Affairs based at the SADC Secretariat in Gaborone.

### *iii. Interstate Politics and Diplomacy Committee (ISPDC)*

The Interstate Politics and Diplomacy Committee (ISPDC) is established with the mandate to enhance peace and security among SADC member states.<sup>280</sup> ISPDC is tasked with functions necessary to achieve the objectives of OPDS relating to defense and security.<sup>281</sup> ISPDC comprises ministers responsible for

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<sup>275</sup> Id, Article 11(2) (c)

<sup>276</sup> Boulden, Supra note 186 at 64

<sup>277</sup> Media Statement on the Launch of SIPO, November 23, 2012 See [http://www.sadc.int/files/3313/5402/0177/Media\\_statement\\_for\\_SIPO\\_Launch\\_final\\_2.pdf](http://www.sadc.int/files/3313/5402/0177/Media_statement_for_SIPO_Launch_final_2.pdf)

<sup>278</sup> Id.

<sup>279</sup> See Article 3(2) of the SADC Protocol on Politics, Defence and Security Cooperation

<sup>280</sup> Majinge, Supra note 93 at 481

<sup>281</sup> See Article 7(2) of the SADC Protocol on Politics, Defence and Security Cooperation

defense, public security and state security from each of SADC member states.<sup>282</sup>

It has a fairly elaborate substructure, especially the Defense Subcommittee and a range of sub-subcommittees on functional areas of cooperation.<sup>283</sup>

*iv. SADC Brigade*

The SADC Brigade is another key component of SADC's security regime. It was launched in August 2008, and is composed of the military, police and civilian members from SADC member states.<sup>284</sup> The Brigade supports regional peace operations under the African Standby Force Policy Framework of the African Union.<sup>285</sup> The SADC Brigade is constituted under the Protocol Relating to the Establishment of the Peace and Security Council of the African Union which require all regional economic communities, including SADC, to have standby peace keeping forces.

The primary function of the SADC Brigade is to participate in missions as envisaged in Article 13 of the "mandate" of the Peace and Security Protocol relating to the Establishment of the Peace and Security Council of the African Union<sup>286</sup>, which includes:

observation and monitoring missions; other types of peace support missions; intervention in a Member State in respect of grave circumstances or at the request of a Member State in order to restore peace and security, in accordance with Article 4(h) and (j) of the Constitutive Act; preventive deployment in order to prevent (i) a dispute or a conflict from escalating, (ii) an ongoing violent conflict from spreading to

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<sup>282</sup> Id, Article 7(1)

<sup>283</sup> See SADC Official website, <http://www.sadc.int/english/key-documents/strategic-indicative-plan-for-the-organ/>, (Last visited October 13, 2013)

<sup>284</sup> SADC, Standby Force and Brigade, See <http://www.sadc.int/themes/politics-defence-security/regional-peacekeeping/standby-force/> (Last visited on 12/29/2013)

<sup>285</sup> Id.

<sup>286</sup> Id

neighboring areas or States, and (iii) the resurgence of violence after parties to a conflict have reached an agreement; peace-building, including post-conflict disarmament and demobilization; humanitarian assistance to alleviate the suffering of civilian population in conflict areas and support efforts to address major natural disasters; and any other functions as may be mandated by the Peace and Security Council or the Assembly.<sup>287</sup>

As part of its peace support capacity building, SADC has set up a regional peacekeeping training center in Zimbabwe to train the SADC Brigade.

The first test of peacekeeping for SADC came in 1997 during the DRC conflict when the Kabila government was challenged by rebels advancing from the eastern part of the country.<sup>288</sup> SADC also encountered challenges emanating from the military unrest in Lesotho following the election disputes which culminated with unrest within the country and the renewed fighting in Angola after the breakdown of the Lusaka Peace Accord between National Union for the Total Independence of Angola (UNITA) and the government of Dos Santos.<sup>289</sup> Unfortunately SADC member states were not able to agree on a united position to respond to these crises.

Since its establishment, the SADC Brigade has not been deployed to undertake peacemaking, peacekeeping, or recovery mission.<sup>290</sup> SADC's February 2013 decision to deploy peacekeeping force in the Democratic republic of Congo could be considered as a paradigm shift in the peacekeeping history of SADC. The Extraordinary SADC Summit meeting that was held in Maputo decided to put together and deploy a force of 4000 SADC troops to address the ongoing conflict

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<sup>287</sup> See Article 9(3) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union

<sup>288</sup> Majinge, *Supra* note 93 at 481

<sup>289</sup> *Id*

<sup>290</sup> Boulden, *Supra* note 186 at 65

in the eastern parts of the DRC. Such mandate to “enforce the peace” rather than just try and keep peace in DRC is a radical deviation and fundamental change from the established international norm. SADC Secretary General elaborated the scope of the mandate saying that SADC troops could “engage with whoever is trying to destabilize the situation in the eastern part of Congo.”<sup>291</sup>

SADC has the material resources available to it to play a major security and peace support role in the Southern Africa sub-region.<sup>292</sup> In the words of McCoubrey, what really has adversely impacted on the works of SADC include the fierce competition among member states, issues relating to leadership and ultimate authority.<sup>293</sup>

### **3.3.3. IGAD Security Mechanism**

Inter-Governmental Authority on Development (IGAD) was established in 1996 to serve as a forum for expanded cooperation among the East African sub-region nations.<sup>294</sup> It is one of Africa’s youngest sub-regional organizations, founded in 1996 to supersede the Inter-Governmental Authority on Drought and Development (IGADD), which was founded in 1986 by the then drought afflicted eastern African countries of Djibouti, Ethiopia, Kenya, Somalia, Sudan and

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<sup>291</sup>Garth Brave Cilliers, Move by SADC for DRC peace keeping makes history: DRC peace mission challenges existing peace-keeping procedure, 26 February 2013, See <http://www.leadershiponline.co.za/articles/brave-move-by-sadc-for-drc-peace-keeping-makes-history-4835.html> (Last visited 12/29/2013)

<sup>292</sup>McCoubrey, Supra note 166 at 150

<sup>293</sup> Id

<sup>294</sup>K Isaac Weldesellassie, *IGAD as an International Organization, Its Institutional Development and Shortcomings*, JOURNAL OF AFRICAN LAW, 55.1 (Apr 2011): 1-29, 1

Uganda.<sup>295</sup> IGAD has been designated as one of the pillars of the African Economic Community (AEC) in terms of the AEC Treaty.<sup>296</sup>

Given the recurring and severe droughts and other natural disasters between 1974 and 1984 in Eastern Africa Sub-region, the above six countries of the Sub-region took the initiative to establish IGADD, of course with the assistance and support of the United Nations.<sup>297</sup> This important development was a kind of a paradigm shift for a sub-region which had known more conflict than cooperation.<sup>298</sup> IGAD itself acknowledged in its presentation that “politics in the Horn of Africa has been shaped by seeds of violence due to the historical and political factors that goes back to the Colonial boundary arrangements and the new dynamics during post Cold war era.”<sup>299</sup>

One could, therefore, plausibly argue that the pressure from donors and international organizations such as the United Nations played a paramount role in this attempt for a sub-regional cooperative framework.

IGADD was primarily established to provide coordinated efforts to manage drought and development across the Eastern Africa sub-region with a focus on food security.<sup>300</sup> Around the beginning of 1995, IGADD member states realized that addressing the basic economic, social, environmental and

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<sup>295</sup> Id.

<sup>296</sup> African Union, Profile: Intergovernmental Authority on Development (IGAD), See [http://www.africa union.org/Recs/IGAD\\_Profile.pdf](http://www.africa union.org/Recs/IGAD_Profile.pdf) (Last visited 01/1/2014)

<sup>297</sup> Id

<sup>298</sup> Abdelwahab El-Affendi, *The Impasse in the IGAD Peace Process for Sudan: The Limits of Regional Peacemaking?*, AFRICAN AFFAIRS, Vol. 100, No. 401 (Oct., 2001), Oxford University Press, 581, 582

<sup>299</sup> IGAD, Peace and Security Situation in the IGAD Region, p.1 See [http://www.un.org/africa/osaa/speeches/IGAD\\_Presentation\\_18Oct2010.pdf](http://www.un.org/africa/osaa/speeches/IGAD_Presentation_18Oct2010.pdf) (Last visited 12/22/2013)

<sup>300</sup> See the Preamble and Article 7 of the Agreement Establishing Inter-Governmental Authority on Drought and Development in Eastern Africa

humanitarian problems was not possible in the region if peace and security could not be ensured.<sup>301</sup> Note that the Eastern Africa Sub-region, which is commonly referred to as the Horn of Africa, is known for its being a conflict-ridden sub region in Africa.<sup>302</sup>

Lionel Cliffe accurately observed that the Horn of Africa encountered with the same arbitrariness of borders inherited from colonial rule and with the inevitably resulting problems of state making and nation building among disparate peoples and in contested territory where there were cultural links where there were cultural links with people across those borders. These features, found throughout Africa and other ex-colonial territories were intensified by factors specific to the Horn, each of which further enhanced the likelihood of internal and inter-state conflict: an ethnically homogenous state Somalia, whose nationalism embraced Somali neighboring minorities; Ethiopia with a territory that resulted from resistance to European colonialism but also from becoming an empire; Sudan straddling the cultural divide between Africa South of the Sahara and the North.”<sup>303</sup>

This reality remains true even today.

Though the Horn of Africa is not the best area for testing sub-regional security cooperation, the Horn states came a long way to collectively address the security challenges of the sub-region.<sup>304</sup> Accordingly IGADD member states, which by then had reached seven with Eritrea as a new member of

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<sup>301</sup> CiruMwaura & Susanne Schmeidl, eds., *EARLY WARNING AND CONFLICT MANAGEMENT IN AFRICA*, 2001, 9

<sup>302</sup> Marie Gibert, *The European Union in the IGAD-Subregion: Insights from Sudan & Somalia*, *REVIEW OF AFRICAN POLITICAL ECONOMY*, Vol. 33, No. 107, (Mar. 2006), 143

<sup>303</sup> Lionel Cliffe, *Regional Dimensions of Conflict in the Horn of Africa*, *THIRD WORLD QUARTERLY*, 20, 1 (1999)

<sup>304</sup> El-Affendi, *Supra* note 298 at 581

IGADD,<sup>305</sup> convened an Extraordinary Summit on April 18, 1995 in Addis Ababa, Ethiopia and signed a Declaration to revitalize and expand IGADD's mandate.<sup>306</sup>

After series of negotiations and consultations among member states, the Assembly of Heads of State and Government adopted the Agreement Establishing the Inter-governmental Authority on Development (IGAD) on March 21, 1996, amending the IGADD Charter.<sup>307</sup> It was, therefore, in 1996 that IGADD evolved into IGAD, with a much broader mandate and ambitious objectives to cooperate in socio-economic, political and environmental fields.<sup>308</sup>

In adopting the IGAD Establishing Agreement, the member states were “[i]nspired by the noble purpose of promoting peace, security and stability, and eliminating the sources of conflict as well as preventing and resolving conflicts in the sub-region”.<sup>309</sup> IGAD member states also gave due recognition that the preservation of peace security and stability are “essential prerequisites for economic development and social progress.”<sup>310</sup>

Under the establishment agreement, the member states expressed their commitment to the following principles:

“sovereign equality of all Member States; Non-interference in the internal affairs of Member States; The peaceful settlement of inter- and intra-State conflicts through dialogue; Maintenance of regional peace, stability and security; Mutual and equitable sharing of benefits accruing from cooperation under this Agreement; Recognition, promotion and protection

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<sup>305</sup> Eritrea was admitted as the seventh member of IGAD at the Fourth Summit of Heads of State and Government of IGADD in Addis Ababa in September 1993.

<sup>306</sup> IGAD Publication Unit, IGAD general information, 1997, p. 1

<sup>307</sup> IGAD/SUM-96/AGRE-Doc, Agreement Establishing the Inter-governmental Authority on Development, available at <http://www.ifrc.org/Docs/idr1/N527EN.pdf>, (Last visited 10/10/2011)

<sup>308</sup> Id, See the Preamble, Articles 7 and 13

<sup>309</sup> Id, See paragraph 9 and 18(a)

<sup>310</sup> Id

of human and people's rights in accordance with the provisions of the African Charter on Human and People's Rights."<sup>311</sup>

According to Article 7(g) of the IGAD Agreement, IGAD's objective is to '[p]romote peace and stability in the sub-region and create mechanisms within the sub-region for the prevention, management and resolution of inter- and intra-State conflicts through dialogue'.<sup>312</sup> In furtherance of this objective, IGAD member states are required to act collectively for the preservation of peace, security and stability.<sup>313</sup>

The IGAD Agreement requires IGAD member states to take the following measures for the preservation of peace, security and stability in the sub-region:

- a) take effective collective measures to eliminate threats to regional co-operation peace and stability;
- b) establish an effective mechanism of consultation and cooperation for the pacific settlement of differences and disputes;
- c) accept to deal with disputes between Member States within this sub-regional mechanism before they are referred to other regional or international organizations.<sup>314</sup>

It is important to note here that the foregoing measures are anticipated in the context of the individual member states but not IGAD as an institution.

IGAD launched a project to build a Peace and Security Strategy for the Horn of Africa in 2003.<sup>315</sup> In October 2003, the Assembly of Heads of State and Government of IGAD endorsed a comprehensive regional Peace and Security strategy and a 5-year implementation plan drawn by IGAD's Secretariat.<sup>316</sup> Both

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<sup>311</sup> Id, See Article 6

<sup>312</sup> Id, See Article 7

<sup>313</sup> Id, See Article 18(a)

<sup>314</sup> Id

<sup>315</sup> Alemayehu Fentaw, THE EMERGING PEACE AND SECURITY ARCHITECTURE IN THE HORN OF AFRICA: PROSPECTS AND CHALLENGES, (17 January 2011)

<sup>316</sup> Khartoum IGAD meeting consensus way ahead final 031005, Consensus Document and Way ahead, Conference to Launch an IGAD Strategy on Peace Security, 3 available at

the strategy and the implementation plan consider the conflict prevention, management and resolution programs as IGAD's priority area.<sup>317</sup> Accordingly it envisaged the development of a Conflict Management, Resolution, and Prevention strategy. The strategy also places emphasis on the primary responsibility of member states to provide peace and security for their citizens.<sup>318</sup>

The IGAD strategy has the objectives of developing, implementing and sustaining a mechanism to prevent, manage and resolve violent conflicts in the IGAD region.<sup>319</sup> These include facilitation of the development of appropriate national-level mechanisms to promote national peace and security within the context of common core values; appraisal of structures and mechanisms for conflict early warning, management and resolution within the region and across its boundaries; achievement of consensus on aims, principles and benchmarks for the promotion of regional peace and security, and monitoring and supporting post-conflict transitions.<sup>320</sup>

Over the course of the development of IGAD's Peace and Security Strategy (IPSS), the preparatory meetings deliberated on what Healy characterized as "the most contentious conflict themes" in the region, i.e. border demarcation, access to the sea for landlocked countries, transboundary water resource management, cross-border cooperation and counter-terrorism.<sup>321</sup>

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[http://www.operationspaix.net/DATA/DOCUMENT/3415--v~Document\\_final\\_suivant\\_la\\_conference\\_pour\\_l\\_adoption\\_d\\_une\\_strategie\\_en\\_matiere\\_de\\_paix\\_et\\_de\\_securite.pdf](http://www.operationspaix.net/DATA/DOCUMENT/3415--v~Document_final_suivant_la_conference_pour_l_adoption_d_une_strategie_en_matiere_de_paix_et_de_securite.pdf), (Last visited 01/12/2014)

<sup>317</sup> Id

<sup>318</sup> Id

<sup>319</sup> Id

<sup>320</sup> Id

<sup>321</sup> Sally Healy, *IGAD and Regional Security in the Horn*, ROUTLEDGE HANDBOOK OF AFRICAN SECURITY, (22 August 2013), 221

The IGAD Peace and Security Strategy (IPSS) aims at achieving “sustainable peace and security for the attainment of economic integration and development in the IGAD Region.” The Strategy has identified four strategic priorities: (1) Strengthening and streamlining conflict prevention, management and resolution in the IGAD Region; (2) Strengthening preventive (track 2) diplomacy in the IGAD Region; (3) Promoting cooperation to address emerging common peace and security threats relating to terrorism, maritime security, organized crime and security sector reform within the IGAD Region; and (4) Enhancing cooperation in other areas incidental to peace and security including management of trans-boundary water resources, and prevention management and resolution of challenges relating to refugees and internally displaced persons.<sup>322</sup>

IPSA is premised on the principles of respect for international law, mutual respect and non-interference in the internal affairs of member states, rejection of the use of force to resolve problems, equitable utilization of trans-boundary resources, respect for territorial integrity and sovereign equality of states, and respect for colonial borders.<sup>323</sup>

The organs of IGAD, namely the Assembly of Heads of State and Government, the Council of Ministers and the Committee of Ambassadors have been charged with the responsibility for implementing the Peace and Security mandates of IGAD.

The Assembly of Heads of State and Government, which is the supreme organ of IGAD, is entrusted with the responsibility to make policy, direct and

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<sup>322</sup> Id

<sup>323</sup>Fentaw, *Supra* note 315

control the functioning of IGAD.<sup>324</sup> The Assembly is specifically mandated to provide guidelines and to monitor “political issues especially on conflict prevention, management and resolution.”<sup>325</sup> The Assembly operated under a consensus rule.<sup>326</sup>

IGAD Council of Ministers is composed of Ministers of Foreign Affairs and one other focal Minister designated from each Member State.<sup>327</sup> The Council is mandated to promote peace and security in the sub-region and to make recommendations to the Assembly of Heads of State and Government.<sup>328</sup> The Council is further tasked with the responsibility to follow up political and security affairs, including conflict prevention, management and resolution as well as post conflict peace building.<sup>329</sup> The Council generally operates under a consensus rule. However, decisions are made by a qualified majority in case the Council fails to reach an agreement by consensus.<sup>330</sup> What makes the Council’s voting procedure unique is the requisite secret ballot voting by the Council.<sup>331</sup>

IGAD’s Executive Secretary, who is the Chief Executive Officer of IGAD’s Secretariat, has a broad mandate to initiate measures aimed at promoting the objectives of IGAD. The Executive Secretary is authorized to promote cooperation with other organizations, such as the United Nations and African Union, with a view to furthering IGAD’s objectives.<sup>332</sup>

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<sup>324</sup> See Article 9 of the Agreement Establishing Inter-Governmental Authority on Development

<sup>325</sup> Id, Article 9(2)(c)

<sup>326</sup> Id, Article 9(4)

<sup>327</sup> Id, Article 10(1)

<sup>328</sup> Id, Article 10(2)(h)

<sup>329</sup> Id, Article 10(2)(h)

<sup>330</sup> Id, Article 10(5)

<sup>331</sup> Id

<sup>332</sup> Id, Article 13(a) & (b)

The IPSS architecture comprises of the following components to achieve its goals:

- IGAD Program of Conflict Prevention, Management and Resolution (CPMR);
- Protocol on the Conflict Early Warning and Response Mechanism (CEWARN);
- Conflict Early Warning and Early Response Units (CEWERUs);
- IGAD Civil Society Forum(IGAD-CSO Forum);
- IGAD Inter-Parliamentary Union (IGAD-IPU);
- IGAD Women’s Desk;
- IGAD Capacity Building Against Terrorism (ICPAT);
- Policy Framework for the Eastern Africa Standby Brigade (EASBRIG);
- Panel of the Wise; and
- Mediation Support Unit (MSU).<sup>333</sup>

The IPSA architecture fits within the broader frameworks of the United Nations Charter and the Constitutive Act of the African Union, which imposed on member states the obligation to participate in advancing international collective security, as well as the IGAD Agreement.

The Conflict Early Warning and Response Mechanism (commonly referred to as “CEWARN”) is worth noting among the IPSA components. CEWARN was established as an integral part of IGAD with the adoption of the Protocol on the Establishment of a Conflict Early Warning and Response

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<sup>333</sup>Fentaw, Supra note 315

Mechanism for IGAD Member States on January 9, 2002. CEWARN has both early warning and response functions.<sup>334</sup>

The early warning functions of CEWARN include receiving, processing and analyzing information and reports from the national conflict early warning and response mechanism (which are known as CEWERUs); bringing the information to the attention of the IGAD secretariat; monitoring and coordinating information collection and reporting; and promoting dialogue on information and analysis.<sup>335</sup> The development of this early warning mechanism is perhaps one of the most significant achievements of IGAD.<sup>336</sup>

With the launching of the revitalized IGAD, a consortium of donor governments and international organizations initiated a development partnership forum with a view to supporting IGAD's revitalization. This relationship is based on partnership and transcends beyond the traditional donor-recipient relationship.<sup>337</sup> This partnership, known as the International Partnership Forum (IPF) is currently comprised of Austria, Belgium, Canada, Denmark, France, Greece, Germany, Ireland, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, United Kingdom, United States of America, European Commission, International Organization for Migration, United Nations Development Program, and World Bank.<sup>338</sup>

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<sup>334</sup> See Article 5 of the IGAD Protocol on the Establishment of a Conflict Early Warning and Response Mechanism, (9 January 2002), available at <http://cewarn.org/attachments/article/58/The%20CEWARN%20Protocol.pdf>, (Last visited 09/12/2013)

<sup>335</sup> Id

<sup>336</sup> Healy, *Supra* note 321 at 220

<sup>337</sup> Weldesellassie, *Supra* note 294 at 1, 3-4

<sup>338</sup> See

Among the permanent UN Security Council members, China and Russia are not part of the IPF. Though UNDP formally collaborates with IGAD through the IPF, the United Nations Security Council is no part of the IPF.

Factors that adversely impact on the effectiveness of IGAD include the intransigence of the parties involved in conflict/dispute; lack of leverage on the disputant parties; competing interests among the members of the IGAD driven by their respective national interests; the absence of a stable and consensual regional power order; the disputed legitimacy of states and governments and the inability of democratic processes to provide that legitimacy; limitations in terms of motivating the disputant parties; financial constraints and resources. Unlike SADC and ECOWAS, which have found their regional hegemons in South Africa and Nigeria respectively, IGAD is characterized by the absence of a sub-regional hegemon.<sup>339</sup> And this is perhaps another obstacle for IGAD in the discharge of its security mandates.

There are instances where the disputing parties use IGAD to block effective form of intervention to address the conflicts. Sudan's reluctance to withdraw from the IGAD process is perhaps a typical example in this regard.<sup>340</sup> The eruption of the Ethiopia-Eritrea conflict in May 1998 subsequently removed IGAD from its engagement in the Sudan peace process.<sup>341</sup>

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[http://igad.int/index.php?option=com\\_content&view=article&id=93&Itemid=124&limitstart=5](http://igad.int/index.php?option=com_content&view=article&id=93&Itemid=124&limitstart=5),  
(Last visited 10/04/ 2013)

<sup>339</sup>Fentaw, Supra note 315

<sup>340</sup>El-Affendi, Supra note 298 at 596

<sup>341</sup>Id at 591

Disagreement among member states over IGAD's policy towards Somalia, which the Eritrean government characterized as "irresponsible", also led Eritrea to suspend its IGAD membership.<sup>342</sup> Given Eritrea's consistent opposition to the deployment of international peacekeepers in Somalia, Eritrea opposed IGAD's involvement in the establishment and deployment of AMISOM force in Somalia.<sup>343</sup>

IGAD also suffers from serious financial constraints to discharge its security mandate. While commenting on IGAD's involvement in Somalia, a Somali political analyst once told the Voice of America that IGAD "cannot pay even its own budget, let alone resolve the conflicts that are taking place in the region."<sup>344</sup>

IGAD member states now "face security threats due to their geopolitical positions, which now include the threats of piracy/maritime security, and Terrorism due to religious extremism."<sup>345</sup> Therefore, the joint peace and conflict prevention efforts of IGAD member states are crucial for the sub-regional security and sustainable development of the countries in the sub-region.

### ***3.4 Concluding Remarks***

Article 52(1) of the UN Charter provides for the "existence of regional arrangements or agencies for dealing with such matters relating to the

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<sup>342</sup>EIU ViewsWire, Somalia politics: Eritrea suspends its membership of IGAD, May 29, 2007

<sup>343</sup>Id

<sup>344</sup>Voice of America News / FIND, IGAD Incapable of Resolving Somali Crisis, Says Analyst: [1](Jul 4, 2010)

<sup>345</sup>IGAD, Peace and Security Situation in the IGAD Region, 1  
See [http://www.un.org/africa/osaa/speeches/IGAD\\_Presentation\\_18Oct2010.pdf](http://www.un.org/africa/osaa/speeches/IGAD_Presentation_18Oct2010.pdf) (Last visited on 22 December 2013)

maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations.” The Charter encourages regional institutions to give priority to finding peaceful solutions to conflicts. However, the Charter reserves the right to authorize enforcement action for the Security Council.

Article 53(1) state that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council...” Thus, all enforcement actions by regional organizations require the authorization of the UN Security Council, but even after such authorization, these organizations are obliged to keep the Council informed of their actions. This principle was largely adhered to for the first four decades of the UN but was tested in the early 1990s when several regional and even sub-regional organizations undertook military action without an explicit UNSC authorization.<sup>346</sup>

The transformation of the OAU into the AU was the most notable development in Africa because of its wider global implications. Having adopted a comprehensive security regime, the AU, in collaboration with the RECs/RMs, is now playing a more pivotal role in managing security in the continent.<sup>347</sup> There is, therefore, optimism that the norms and institutions developed under the AU are

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<sup>346</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 21

<sup>347</sup> Id

progressive than those obtained under its predecessor, the Organization of African Unity.<sup>348</sup>

Understandably, AU doesn't have the United Nations' level of resources, institutional capacity, and experience in dealing with threats to international peace and security.<sup>349</sup> It also faces the additional challenges of endemic poverty and civil conflict among many of its member states. Estimates have pointed to a combined economic loss of an estimated \$300bn since 1990 by a number of African countries affected by conflict.<sup>350</sup>

Despite this reality, its proactive engagement in managing peace and security on the continent has given it a high visibility leading to expectations that are often not matched by its capacity. It has also gained experience in the area of conflict prevention, management and resolution.

Since its transformation, AU has initiated four missions—the AU Mission in Sudan (AMIS), the AU Observer Mission in Somalia (AMISOM), the AU Task Force in Burundi and UN/AU Hybrid Force to Darfur.<sup>351</sup> The Security Council itself recognized the useful role AU has been playing in brokering peace agreements, conflict prevention, crisis management and post-conflict stabilization.<sup>352</sup> This puts AU in a better position to take more responsibility in the maintenance of regional peace and security.

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<sup>348</sup> KithureKindiki, *The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: A critical appraisal*, 3 AFR. HUM. RTS. L.J. 97 (2003), 97, 98

<sup>349</sup> AUPSC is the principal regional security mechanism in Africa

<sup>350</sup> Supra note 5 at 6

<sup>351</sup> U.N. Doc. SC/898428, Press Release, UN Department of Public Information News and Media Division, (Mar. 28, 2007)

<sup>352</sup> U.N. Doc. S/PRST/2006/39, Presidential Statement, Statement by the President of the Security Council, (20 September 2006)

Over the past years, AU has also adopted several instruments designed to facilitate the structural prevention of conflicts. These instruments relate to human rights; elections, governance and the fight against corruption; ongoing democratization processes on the continent; arms control and disarmament; counter terrorism; border management; and the prevention and reduction of interstate conflicts. These further represent a consolidated framework of commonly accepted norms and principles, whose observance would considerably reduce the risk of conflict and violence on the continent and consolidate peace where it has been achieved.<sup>353</sup>

Following a process of normative and institutional development, the African sub-regional organizations are also now seen as critical providers of security as a public good in their respective regions. Nowhere is this more notable than in Africa where institutions that were established for economic integration purposes are now deeply involved in managing security challenges in the continent. However, these regional economic communities on which the African Union relies upon also encounter tremendous challenges to effectively discharge their security mandates. These include resource constraints, competing interests among member states, and issues related to legitimacy.

The success of AU's and the African sub-regional security mechanisms, in addition to other factors, also depends on their role within the new global security regime and their relationship and coordination with the United Nations. AU itself

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<sup>353</sup> Report of the Chairperson of the AU Commission, *Supra* note 5 at 9

generally considers the UN as its international partner.<sup>354</sup> AU as well as the RECs also formally recognize the role of the UN Security Council as a primarily responsible organ for the maintenance of international peace and security. Given this reality, a proper coordination with the UN security mechanism in the implementation of their security mandate could significantly contribute in complementing the UN efforts in the maintenance of international peace and security. Hence, the need for renewed efforts to endow the AU and the African sub-regional organizations with the requisite resources and enhance their decision-making process to enable them fully discharge their mandate in the area of peace and security, and be effective partners of the UN and other international stakeholders.<sup>355</sup>

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<sup>354</sup> EX.CL/110 (V), See AU Assembly Decision On The African Standby Force (ASF) And The Military Staff Committee (MSC),

<sup>355</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 35

**CHAPTER 4**  
**SECURITY COOPERATION BETWEEN THE UNITED NATIONS,**  
**AFRICAN UNION AND AFRICAN SUB-REGIONAL**  
**ORGANIZATIONS**

The forefathers of the UN Charter anticipated the importance of the relationship with regional organizations in the maintenance of international peace and security.<sup>1</sup> Chapter VIII of the UN Charter provides the framework for cooperation between the UN and regional organizations in the maintenance of international peace and security. At the heart of Chapter VIII is the need to complement the international legitimacy and legality of the UN with the advantages embedded in regionalism.

Given the primary responsibility entrusted to the UN Security Council in the maintenance of international peace and security, the UN, in principle, is expected to assume a leadership role in ensuring regional peace and security in Africa. Such a hierarchal division is formally endorsed by the regional and sub-regional organizations in Africa. The Director of the Political Department of AU's predecessor, OAU, for example, noted:

We see a pyramidal relationship between the OAU, the UN, and sub-regional organizations – the UN is at the top, the OAU in the middle and the sub-regional organizations at the bottom ... The first to engage [a crisis] is the sub-region, but the sub-region needs the OAU's continental endorsement, and the OAU then takes it to the UN ... The OAU is a continental organization, and therefore has more responsibilities of getting

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<sup>1</sup> See Chapter VIII of the United Nations Charter

the international community's attention. Our role is to mobilize the international community.<sup>2</sup>

Should regional organizations decide to apply coercive measures, they must obtain the prior authorization of the UN Security Council.<sup>3</sup> However, during the Cold War years, regional organizations occasionally sought UN Security Council endorsement for their initiatives, but overall they had little meaningful engagement with the Security Council and vice versa.<sup>4</sup>

Strategic partnership with regional organizations was considered as a crucial first step in designing a global security architecture that reflected the changing dynamics of the international system, especially in the post-Cold War period. Given these changing dynamics of the international system, the former two UN Secretary-Generals, i.e. Boutros Ghali and Kofi Annan, set the stage for the evolving partnership between the UN and regional organizations.<sup>5</sup> They put forward proposals for a greater contribution by regional organizations with regard to issues of the maintenance of international peace and security.<sup>6</sup> Moreover, both recognized the need to develop a complementary relationship between the UN

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<sup>2</sup>Katharina P Coleman, INTERNATIONAL ORGANIZATIONS AND PEACE ENFORCEMENT: THE POLITICS OF INTERNATIONAL LEGITIMACY, Cambridge University Press, 2007, 100-101

<sup>3</sup> See Article 53 of the UN Charter

<sup>4</sup> David M Malone, *Security Council*, in THE OXFORD HANDBOOK ON THE UNITED NATIONS, 120

<sup>5</sup> PSC/PR/2.(CCCVII), Report of the Chairperson of the AU Commission on the Partnership between the African Union and the United Nations on Peace and Security: Towards Greater Strategic and Political Coherence, (9 January 2012), 23

<sup>6</sup> A/47/277, An agenda for peace, 17 June 1992

and regional organization with a view to addressing the gap in the post-Cold War era international system.<sup>7</sup>

Following the submission of UN Secretary General Boutros Ghali's report entitled "An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping" on June 23, 1992, there began a redefinition of the role of regional organizations in the maintenance of peace and security.<sup>8</sup> In March 1994, the Special Committee on the Charter of the UN and the Strengthening of the role of the organization approved a Declaration on the Enhancement of Cooperation between the UN and Regional Arrangements or Agencies in the Maintenance of international peace and security.<sup>9</sup>

Equally important is the recognition the UN Security Council has given to the well suited position of regional organizations "to understand the root causes of armed conflicts owing to their knowledge of the region which can be a benefit for their efforts to influence the prevention or resolution of these conflicts."<sup>10</sup> The Declaration reaffirms that:

The Members of the United Nations entering into such [regional] arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council; ... Regional arrangements or agencies can, in their

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<sup>7</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 23

<sup>8</sup> Margarita Diéguez, MECHANISMS FOR THE MAINTENANCE OF PEACE AND SECURITY IN THE WESTERN HEMISPHERE, REGIONAL MECHANISMS AND INTERNATIONAL SECURITY IN LATIN AMERICA, 1998, 93

<sup>9</sup> A/AC.182/1994/CRP.3/add.3, Declaration on the Enhancement of Cooperation Between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security

<sup>10</sup> S/Res/1809 (2008), United Nations Security Council, Resolution on Peace and Security in Africa, 16 April 2008

fields of competence and in accordance with the Charter, make important contributions to the maintenance of international peace and security, including, where appropriate, through the peaceful settlement of disputes, preventive diplomacy, peacemaking, peacekeeping and post-conflict peace building.<sup>11</sup>

The current Secretary-General, Ban Ki-moon, has furthered this approach to work with regional organizations in the area of peace and security. In his first report on the relationship between the UN and regional organizations in 2008, Secretary General Ban Ki-moon called upon the United Nations Security Council to properly define the role of regional organizations and streamline the strategic partnership between the UN and AU.<sup>12</sup> The Secretary General kept on pressing this call in his subsequent reports.<sup>13</sup> The October 14, 2010 report especially emphasized on the importance of “a revitalized and evolving interpretation of Chapter VIII of the Charter of the United Nations”.<sup>14</sup>

#### ***4.1 UN-AU Cooperation***

The security situation in Africa has been one of the agenda items of the UN since October 31, 1956 when the UN Security Council considered the grave

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<sup>11</sup>Supra note 9

<sup>12</sup> S/2008/186, Report of the Secretary-General on the relationship between the United Nations and regional organizations, in particular the African Union, in the maintenance of international peace and security, 7 April 2008

<sup>13</sup> See S/2009/470, UN Secretary General Report on Support to African Union Peacekeeping Operations authorized by the United Nations, 18 September 2009, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/RO%20S2009%20470.pdf>; See also A/65/510-S/2010/514, Report of the Secretary-General on Support to African Union peacekeeping operations authorized by the United Nations, 14 October 2010, available at

<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/RO%20S%202010%20514.pdf>, (Last visited 10/05/2013)

<sup>14</sup> S/2010/514, UN Secretary General Report on Support to African Union Peacekeeping Operations Authorized by the United Nations, 14 October 2010, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/RO%20S%202010%20514.pdf>, (Last visited 08/15/2013)

situation created against Egypt.<sup>15</sup> The African continent currently dominates the agenda of the UNSC.<sup>16</sup> For example, about 26 of the 47 matters considered by the UN Security Council in 2013 directly concern Africa.<sup>17</sup> Yet Africa remains the most vulnerable continent in terms of security.

The UN-AU cooperation is, therefore, extremely important for the maintenance of peace and security in Africa and perhaps for ensuring global security. The history of their cooperation goes back to the mid 1960's, i.e. two years after the establishment of AU's predecessor, the Organization of African Unity.

The cooperative arrangement started with the conclusion of a Cooperative Agreement with the Economic Commission for Africa, a regional arm of the United Nations, on November 15, 1965. Its focus, however, was limited to "cooperation in the accomplishment of their common objectives for the economic and social development."<sup>18</sup> The UN-AU partnership in the maintenance of peace and security, which started with its predecessor the Organization of African Unity, has evolved over the past decade through the testing of new arrangements in Somalia and Sudan.<sup>19</sup>

Over the past four decades the UN Security Council and General Assembly Resolutions systematically have also been building on the cooperation

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<sup>15</sup> S/3721 (1956), 31<sup>st</sup> October 1956

<sup>16</sup> Report of the Chairperson of the AU Commission, *Supra* note 5 at 2

<sup>17</sup> Security Council Resolutions, 2013, See

<http://www.un.org/en/sc/documents/resolutions/2013.shtml>

<sup>18</sup> Cooperation between the Organization of African Unity and the United Nations Economic Commission for Africa, OAU-UNECA, Nov. 15, 1965

<sup>19</sup> S/2011/805, Report of the Secretary-General on United Nations-African Union cooperation in peace and security, 29 December 2011, 9

between the two organizations. The issue has received particular focus in the post-Cold War era during which the proliferation of conflicts has become acute in Africa.

For example, the UN Security Council held a debate on March 28, 2007 under the agenda item, “Relationship between the United Nations and regional organizations, in particular the African Union, in the maintenance of international peace and security.”<sup>20</sup> During the debate, many agreed on the importance of enhancing and properly streamlining partnership with AU, including through capacity-building support.<sup>21</sup> Generally speaking, the need to strengthen the cooperation and build the capacity of AU is deeply embedded in the Security Council resolutions.

The PSC Establishment Protocol also devotes an article that specifically deals with the relationship between AU and UN.<sup>22</sup> The Protocol identifies areas as well as channels of cooperation with international organizations in general and the UN in particular. It envisages cooperation with the UN in a number of areas including early warning,<sup>23</sup> conflict prevention, peace building<sup>24</sup>, peace

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<sup>20</sup> S/PV.5649, Relationship between the United Nations and regional organizations, in particular the African Union, in the maintenance of international peace and security, March 28, 2007

<sup>21</sup> *Id.*

<sup>22</sup> See Article 17 of the PSC Protocol

<sup>23</sup> Art. 12 (2)(c) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union requires the AU Commission to collaborate with the UN to facilitate the effective functioning of the Early Warning System.

<sup>24</sup> Article 13(4) of the PSC Protocol requires the Africa Standby Force, where appropriate, to cooperate with the UN and its agencies in undertaking its functions enumerated under Article 13(3) of the Protocol. These functions include observation and monitoring missions, other types of peace support missions, preventive deployment and peace building.

support,<sup>25</sup> arms control and disarmament<sup>26</sup>, international terrorism, and capacity building.<sup>27</sup>

Subsequent to the AU launching, the AU Assembly of Heads of State and Government also expressed its determination to address the scourge of conflicts in Africa in a collective, comprehensive and decisive manner, within the framework of the AU and its relevant Organs, and with the full support of the wider international community.<sup>28</sup>

The January 9, 2012 report of the Chairperson of the AU Commission on the Partnership between the African Union and the United Nations on Peace and Security outlines the Commission's vision on the strategic partnership between the AU and the UN system in the area of peace and security.<sup>29</sup> This vision of AU-UN partnership was subsequently endorsed by the Assembly of Heads of State and Government.<sup>30</sup> A strong African Union capable of securing peace and stability on the continent is perhaps in the best interests not only of Africa but also of the international community as a whole.<sup>31</sup>

The role of the UN Security Council as an organ with primary responsibility for the maintenance of international peace and security is duly

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<sup>25</sup> Art. 13(15) of the PSC Protocol requires the Commission of the AU to undertake periodic assessment of African peace support capacities in collaboration with the UN.

<sup>26</sup> Art. 7(1)(n) of the PSC Protocol requires the AU Peace and Security Council to promote and encourage the implementation of UN Conventions on arms control and disarmament

<sup>27</sup> See Article 13(16) of the PSC Protocol

<sup>28</sup> Assembly/AU/Dec.21 (II), Decision On The Establishment By The European Union Of A Peace Support Operation Facility For The African Union, July 2003

<sup>29</sup> Report of the Chairperson of the AU Commission, Supra note 5

<sup>30</sup> Assembly/AU/6(XVIII), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 29-30 January 2012

<sup>31</sup> Charles RizkiMajinge, *Future of Peacekeeping in Africa and the Normative Role of the African Union*, 2 GOETTINGEN J. INT'L L. 463 (2010), 463

recognized under article 17 of the African Union Protocol establishing AU's Peace and Security Council. The Protocol on the Establishment of the Peace and Security Council of the AU provides that the PSC would complement the UN in the maintenance of regional peace and security. AU considers the UN as its international partner.<sup>32</sup> UN also views AU as its strategic partner.<sup>33</sup>

This is the starting point for cooperation between the two organizations with a common objective of maintenance of peace and security. AU is currently establishing itself as a major regional player, and it has been involved with UN planning and has become increasingly involved in the provision of troops for peacekeeping missions in Africa.<sup>34</sup>

As an immediate reaction to the formal launching of the African Union on July 9, 2002, the General Assembly of the United Nations adopted a resolution regarding cooperation between the UN and AU.<sup>35</sup> The Resolution acknowledged the need for continuing and closer cooperation between the United Nations system and African Union in peace, security and the fight against international terrorism.<sup>36</sup>

In September 2005, the UN Security Council adopted an important Declaration on strengthening the effectiveness of the Security Council's role in

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<sup>32</sup> EX.CL/110 (V), AU Assembly Decision On The African Standby Force (ASF) And The Military Staff Committee (MSC)

<sup>33</sup> United Nations-African Union partnership – Security Council Meeting, 12 January 2012

See <http://www.unmultimedia.org/tv/webcast/2012/01/united-nations-african-union-partnership-security-council-meeting.html>

<sup>34</sup> Paul Jackson, REGIONAL SECURITY IN SUN-SAHARAN AFRICA, COMPARATIVE REGIONAL SECURITY GOVERNANCE, (2012), 116

<sup>35</sup> G.A. Res. 57/48, Cooperation between the United Nations and the African Union, (Nov. 21, 2002)

<sup>36</sup> Id

conflict prevention, particularly in Africa.<sup>37</sup> Among other things, the Declaration calls for “the strengthening of cooperation and communication between the United Nations and regional or sub-regional organizations or arrangements, in accordance with Chapter VIII of the Charter.”<sup>38</sup>

Besides cooperating with AU in its operations on the African continent, UN has taken special interest in capacity building of the AU. While urging the international community to develop the capacities of the African regional and sub-regional organizations, including the AU Standby Force, the foregoing Declaration endorsed the UN Secretary General’s proposal to establish a ten-year capacity building program for AU.<sup>39</sup>

The subsequent signing of the Ten year action plan on November 16, 2006 is a significant step forward to streamline the cooperation between the UN and AU. Such cooperation would advance the principal purposes of both the UN and AU, i.e. maintenance of peace and security.

The Ten year plan was negotiated in light of the significant expansion of AU’s efforts in political, peace and security matters.<sup>40</sup> It provides a framework for the evolving UN Ten Year Capacity Building Program for the AU.<sup>41</sup> This cooperative framework is based on African Union priorities and United Nations

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<sup>37</sup> S/Res/1625 (2005), Threats to international peace and security (Security Council Summit 2005), (14 September 2005)

<sup>38</sup> Id.

<sup>39</sup> Id

<sup>40</sup> U.N. Doc. A59/285, The Secretary-General, Report of the Secretary General of the United Nations to the 59<sup>th</sup> Session of the General Assembly, (2005)

<sup>41</sup> Abdoulie Janneh, UN Under Secretary General and Executive Secretary of ECA at the Tenth Ordinary Session of the Executive Council of the African Union.(January 25 2007)

comparative advantage.<sup>42</sup> Through this cooperative framework, UN endorsed AU's motto, i.e. "African solutions to African problems."<sup>43</sup>

Under the Action Plan, UN and AU expressed their commitment to work together on issues of peace and human security, human rights, post-conflict reconstruction and regional integration.<sup>44</sup> Generally speaking, this 10-year plan is a strategic framework aimed at enhancing cooperation between the two organizations and to enhance UN system-wide engagement with the AU, its regional and sub-regional organizations, to meet the challenges facing the African continent, focusing initially on peace and security, with a particular emphasis on conflict prevention, mediation and good offices, peacekeeping and peace building.<sup>45</sup> Another noteworthy feature in the cooperation framework is the clear acknowledgment that the UN-AU cooperation is important not just for the stability of Africa, but also for the important role in ensuring international peace and security.

As a response to this UN-AU cooperation framework, the UN took measures to expand its regional consultation mechanism to include the AU Commission and the UN Headquarter departments dealing with political affairs and peacekeeping operations<sup>46</sup>. The UN Security Council indeed adopted other mechanisms of consultation suggested by the Secretary General of the UN, including inviting regional organizations to participate in the Council's public and

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<sup>42</sup> Assembly/AU/Dec.140 (VIII), AU Assembly Decision On Enhancing Un-au Cooperation: Framework For The Ten-year Capacity-building Programme For The African Union, 29-30 January 2007

<sup>43</sup> Assembly/AU/6(XV), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 27 July 2010

<sup>44</sup> Id.

<sup>45</sup> The Secretary-General, Supra note 40 at para. 16

<sup>46</sup> Id

private meetings and encouraging regional organizations to convey their perspectives and analysis to the Security Council prior to examination of regionally relevant issue.<sup>47</sup>

Under the foregoing cooperative framework, UN also supports the development of the African Solidarity Initiative in mobilizing resources for post-conflict reconstruction and development.<sup>48</sup>The UN Secretariat provides mentoring, advice, operational and planning support and long-term capacity building support to the AU Commission for AU's peace support operations such as AMISOM.<sup>49</sup>

This capacity building initiative helps to boost AU's capability in the discharge of its mandate to maintain regional peace and security. Obviously, this would contribute to the maintenance of international peace and security. Moreover it would ease the burden of the UN in the discharge of its security mandates in Africa.

An enhanced and innovative partnership is required in order to meet the 21<sup>st</sup> security challenges of the African continent. This view is supported by the AU which recently warned against the 'deceptive comfort that status quo offers.'<sup>50</sup> The AU Commission Chairperson in his January 2012 report on the Partnership between the African Union and the United Nations on Peace and Security pointed out that most of the security challenges of the African continent

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<sup>47</sup> S/2006/50719, President of the Security Council, Note of the President of the Security Council on the work of the Informal Group on Documentation and Other Procedural Questions, (July 2006)

<sup>48</sup> A/67/280, S/2012/614, Report of the UN Secretary General, Cooperation between the United Nations and regional and other organizations, 9 August 2012, 4

<sup>49</sup> Report of the Secretary-General, Supra note 19 at 7

<sup>50</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 34

“can only be addressed more successfully in partnership with the international community, in particular the United Nations system.”<sup>51</sup>

The Assembly of the Head of States and Governments of the AU outlined the underpinning principles of cooperation with the UN, for the promotion of sustainable peace, security and stability in the African continent. These principles are support to African ownership and priority setting; consultative decision making; division of labor and sharing of responsibilities; and effective use of the respective comparative advantages of the two organizations.<sup>52</sup>

#### **4.1.1 Spheres of Cooperation**

##### **A. UN-AU Cooperation in Peacekeeping**

Given the vulnerability of the African continent to conflict and crisis and the important role of AU in the maintenance of regional peace and security, UN has embarked on cooperation with AU in the area of peace keeping, which has taken shape over the years. As is the case with other regional organizations, UN-AU partnership in peacekeeping has always come as a result of development of particular circumstances on the ground.<sup>53</sup> The case studies under Chapter 5 of this paper demonstrate this reality.

The scope of cooperation in peacekeeping involves the provision of support to AU in planning, development and management of ongoing

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<sup>51</sup> Id at 7

<sup>52</sup> Assembly/AU/6(XVIII), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 29-30 January 2012

<sup>53</sup> Supra not 49

peacekeeping operations and the provision of institutional support to the AU Commission for the operationalization of the Africa Standby Force (ASF).<sup>54</sup> The cooperation arrangements in the area of peacekeeping include the peacekeeping operation in Burundi, Ethiopia and Eritrea, the Democratic Republic of Congo, the Sudan and the AU-UN Hybrid Operation in Darfur (UNAMID), which took over from the AU Mission in Sudan (AMIS).<sup>55</sup> The joint AU-UN hybrid missions in Darfur marks an attempt to depart from the previous form of cooperation between the UN and AU where the AU deploy first and the UN eventually took over full responsibility for the mission.<sup>56</sup>

On April 16, 2008 the high level meeting of the UN Security Council adopted a resolution welcoming the proposal of the UN Secretary General to establish the UN-AU Panel to consider in depth the modalities of how to support peacekeeping efforts undertaken by regional organizations mandated by the Security Council with a view to enhancing the predictability, sustainability and flexibility of financing of United Nations mandated peace operations undertaken by the African Union.<sup>57</sup>

The report of the Panel emphasized the importance of the partnership between the UN and regional organizations, arguing that the complexity of modern peacekeeping means that no single organization is able to address the

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<sup>54</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 14

<sup>55</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 16; See also UN Security Council resolution 1769 (2007) of 31 July 2007, and PSC/PR/Comm. (LXXIX), AU Peace and Security Council communiqué, 22 June 2007

<sup>56</sup> AJayiTitilope, *The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa*, FRIEDRICH EBERT STIFTUNG BRIEFING PAPER 11, November 2008, 3

<sup>57</sup> S/RES/1809 (2008), United Nations Security Council, Resolution on Peace and Security in Africa, 16 April 2008

challenges involved on its own. The report stressed the need for equitable burden-sharing between the UN and the AU, which is faced with the challenge of responding to crisis even as it is developing the capacities to do so. In this respect, the Panel stressed the need for a shared strategic vision, if the UN and the AU are to exercise their respective advantages: the AU's ability to provide a rapid response and the UN capacity for sustained operation. Such a vision, it was stressed, would also reduce the likelihood of duplication of effort and organizations working at cross purposes.<sup>58</sup>

Given the complexity of modern peacekeeping, the Panel recognized that no single organization is able to address the security challenges involved on its own.<sup>59</sup> The Panel accordingly suggested the need for equitable burden-sharing and shared strategic vision between the UN and the AU, based on their respective comparative advantage. UN has a comparative advantage in its capacity for sustained operation; while AU's comparative advantage is its ability to provide a rapid response.<sup>60</sup>

The Panel recommended two new financial mechanisms. The first, based on UN- assessed funding, is designed to support specific AU-led peace operations mandated by the UNSC, on a case-by-case basis. The second mechanism is a

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<sup>58</sup> Report of the Chairperson of the AU Commission, *Supra* note 5 at 3

<sup>59</sup> A/63/666-S/2008/813, Comprehensive review of the whole question of peacekeeping operations in all their aspects, 31 December 2008

<sup>60</sup> Report of the Chairperson of the AU Commission, *Supra* note 5 at 3

voluntary funded multi-donor trust fund, which would focus on comprehensive capacity-building for institution building and conflict prevention and resolution.<sup>61</sup>

Regarding peace-keeping operations undertaken by African Union or under its authority and with the consent of the United Nations, AU advocates for UN funding through assessed contributions which presumably ensure predictable, and sustainable funding for AU-led peace support operations.<sup>62</sup> Though the UN Security Council recognized “the importance of supporting and improving in a sustained way the resource base and capacity of the African Union,”<sup>63</sup> it took a position that “regional organizations have the responsibility in securing human, financial, logistical and other resources for their organizations, including through obtaining contributions by their members and soliciting contributions from donors to fund their operations, and recognizing the challenges in accessing United Nations assessed contributions for funding regional organizations.”<sup>64</sup>

Yet Africa continues to face serious challenges in the area of peace and security.<sup>65</sup> It is important to note that while the United Nations has undertaken various types of peacekeeping partnerships with the African Union and its subregional organizations, the form of this partnership has always come as a result of the specific political and security circumstances of a given conflict.<sup>66</sup>

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<sup>61</sup> Id

<sup>62</sup> ASSEMBLY/AU/3(VIII), AU Assembly Decision On The Activities Of The Peace And Security Council Of The African Union And The State Of Peace And Security In Africa, 29-30 January 2007

<sup>63</sup> S/PRST/2007/7, Presidential Statement of the UN Security Council, March 2007

<sup>64</sup> Supra note 57

<sup>65</sup> Assembly/AU/4(XVII), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 30 June- 1 July 2011

<sup>66</sup> Report of the Secretary-General, Supra note 19 at 10

On 22 October 2010, the Security Council adopted a presidential statement expressing the Council's determination to continue working towards a more predictable and sustainable solution to the challenges of securing sustainable, predictable and flexible financing for AU-led peacekeeping operation.<sup>67</sup>

## **B. UN-AU Cooperation in Conflict Prevention**

Another area of cooperation between UN and AU involves the prevention, mitigation and reduction of conflict. While conflict management remains the core function of both the UN and AU, a relatively growing recognition has been given over the past years to strengthening collective efforts for conflict prevention.<sup>68</sup> Hence conflict prevention increasingly becomes central to the AU-UN partnership.<sup>69</sup> The involvement of the UN, AU and African regional economic communities in the joint preventive diplomacy and peacemaking activities in Mali, Madagascar, Sudan and Burkina Faso demonstrate this trend of the partnership.<sup>70</sup>

Mediation is an important component of the conflict prevention scheme, where UN and AU launched a partnership. This partnership is premised on Article 52 of the Charter of the United Nations which requires the UN Security Council to encourage the development of pacific settlement of local disputes through regional arrangements. This has been primarily done through close cooperation

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<sup>67</sup> S/PRST/2010/21, UN Security Council Presidential Statement, 22 October 2010

<sup>68</sup> Report of the Secretary-General, Supra note 66 at 5

<sup>69</sup> Id

<sup>70</sup> Report of the UN Secretary General, Supra note 48 at 4; See also Press Release: AU Deeply Concerned by the Unfolding Situation in Burkina Faso, 30 October 2014

between the UN Secretariat and AU Commission, in which the UN Secretariat provide help to the AU Commission to build AU's institutional mediation capacity.<sup>71</sup>

AU and UN also embarked on partnership in mediation efforts in specific conflict situations. The AU-UN mediation partnership in Kenya in 2008 is noteworthy in this regard. When AU established the Panel of eminent African Personalities to mediate in the post-electoral conflict in Kenya, the UN supported AU's mediation effort by staffing the Secretariat of the Panel. This was perhaps a successful mediation effort from which valuable lessons should be drawn. Though such partnership could improve the quality of peacemaking in Africa, it is still a work in progress and much has to be done to reach its full potential.

Noteworthy is the common guidelines for mediation in Africa that UN and AU Secretariat have been working on. The guidelines are based on shared values and provide broad principles of cooperation aimed at clarifying roles and strengthening cooperation between the two organizations when undertaking joint mediation efforts.<sup>72</sup> The success of these efforts to make the mediation partnership more coherent ultimately depends on the degree to which this approach is adopted at the strategic level and supported by Member States.<sup>73</sup>

As rightly observed by the UN Secretary General, “[t]he mediation partnership between the two organizations has often taken place in an ad hoc fashion and more needs to be done to improve cooperation at the

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<sup>71</sup> Report of the Secretary-General, *Supra* note 66 at 2

<sup>72</sup> *Id*

<sup>73</sup> *Id* at 7

conceptualization, planning and implementation stages of peace processes and in translating early warning into effective action through enhanced response capabilities.”<sup>74</sup>

### **C. UN-AU Cooperation in Disarmament**

UN-AU cooperation on regional disarmament goes back to January 1, 1986 when the UN established the United Nations Regional Center for Peace and Disarmament in Africa (UNREC) in Lome, Togo as part of the UN Office for Disarmament Affairs.<sup>75</sup> The UN established the Regional Office at the request of AU’s predecessor, i.e. the Organization of African Unity (OAU).<sup>76</sup>

The UNREC is responsible to provide substantive support for “initiatives and other efforts of member states of the African region towards the realization of measures of peace, arms limitation, and disarmament in the region, in co-operation with the Organization of African Unity, as well as co-ordinate the implementation of regional activities in Africa under the World Disarmament campaign.”<sup>77</sup> Following the establishment of the AU, UNREC was further mandated to cooperate with AU to coordinate the implementation of regional activities in Africa leading to peace, arms control and disarmament.<sup>78</sup>

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<sup>74</sup>Id at 6

<sup>75</sup> A/Res/40/151/G, UN General Assembly Resolution, , United Nations Regional Center for Peace and Disarmament in Africa, 16 December 1985

<sup>76</sup>The Assembly of Heads of State and Government of the Organization of African Unity adopted Resolution AHG/Res.138 (XXI) in July 1985 requesting the Secretary General of the United Nations to take the necessary measures to establish a regional office in Africa to promote the objectives of peace, disarmament and development in the African region.

<sup>77</sup> Supra note 75

<sup>78</sup> See

[http://unrec.org/index/index.php?option=com\\_content&view=article&id=113&Itemid=122&lang=en](http://unrec.org/index/index.php?option=com_content&view=article&id=113&Itemid=122&lang=en)

In 2012, the Department of Peacekeeping Operations of the UN, UNOAU and the World Bank launched a one year program to develop AU's disarmament, demobilization and reintegration capacity.<sup>79</sup> The UN, through the United Nations Regional Centre for Peace and Disarmament in Africa, provides support to AU to develop an African common strategy to control small arms and light weapons.<sup>80</sup>

#### **D. UN-AU Cooperation on Counter-terrorism**

Terrorism constitutes one of the most serious threats to international peace and security.<sup>81</sup> The suppression of acts of international terrorism is, therefore, considered as an essential element for the maintenance of international peace and security.<sup>82</sup> AU's position that the primary responsibility for combating and ensuring global cooperation against terrorism rests on the UN is in tandem with the position taken by the General Assembly of the United Nations.<sup>83</sup>

Today, the international community has recognized that addressing the root causes of terrorism is key to effectively preventing and combating terrorism. The United Nations in its recent resolution adopted on 17 December 2013 noted the following:

terrorism will not be defeated by military force, law enforcement measures, and intelligence operations alone...[Security Council underlined] the need to address the conditions conducive to the spread of

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<sup>79</sup> Report of the UN Secretary General, Supra note 48 at 5

<sup>80</sup> Id

<sup>81</sup> S/Res/2129 (2013), 17 December 2013

<sup>82</sup> A/Res/49/60, 17 February 1995

<sup>83</sup> African Union, The Peace and Security Agenda,

Available at [http://www.africa-union.org/root/au/AUC/Departments/PSC/Counter\\_Terrorism.htm](http://www.africa-union.org/root/au/AUC/Departments/PSC/Counter_Terrorism.htm), (Last visited 08/07/2014)

terrorism, as outlined in Pillar I of the United Nations Global Counter-Terrorism Strategy (A/RES/60/288) including, but not limited to, the need to strengthen efforts for the successful prevention and peaceful resolution of prolonged conflict, and the need to promote the rule of law, the protection of human rights and fundamental freedoms, good governance, tolerance, inclusiveness to offer a viable alternative to those who could be susceptible to terrorist recruitment and to radicalization leading to violence.<sup>84</sup>

African concerns over the combating and eradication of the scourge of terrorism have a long history. The African nations adopted a Comprehensive counterterrorism Convention two years prior to the 9/11 terrorist attack. The Convention is known as “The OAU Convention on the Prevention and Combating of Terrorism”, and it was adopted on July 1, 1999 in Algiers, Algeria.<sup>85</sup> The treaty entered in to force subsequent to the 9/11 terrorist attack, i.e. 6 December 2002.<sup>86</sup> The 9/11 terrorist attack provided a new vigor and momentum to fight global terrorism at the international level.<sup>87</sup>

However the importance of Africa in the global counterterrorism campaign was not duly recognized in the immediate aftermath of the 9/11 terrorist attacks against the United States. The perceptual shift evolved only after the US security officials focused on the history of Al quaeda in Africa, and the history of other terrorist groups operating and transitioning through Africa.<sup>88</sup> As rightly pointed out by Wani,

terrorism could spread in Africa for several reasons, notable among them the growth of radical Islam in several parts of the continent; the existence

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<sup>84</sup> Supra note 81

<sup>85</sup> African Union, OAU/AU Treaties, Conventions, Protocols & Charters, available at <http://www.au.int/en/treaties>, (Last visited 06/04/2013)

<sup>86</sup> Id.

<sup>87</sup> Supra note 83

<sup>88</sup> Ibrahim J. Wani, THE AFRICAN UNION ROLE IN GLOBAL COUNTERTERRORISM, AFRICAN COUNTERTERRORISM COOPERATION: ASSESSING REGIONAL AND SUBREGIONAL INITIATIVES, (2007), 41

of so-called failed states ... ; proximity to the Middle East and the Arab World, where many terrorist groups thrive; the general inability of states in Africa to sufficiently secure their vast borders; and the movement across the continent of potential terrorists from other regions. Also are concern are the abject poverty and repressive political environments that leave many young Africans desperate, frustrated and potentially vulnerable to recruitment by terrorist elements.

The UN recognized the importance of coordination at the regional, sub-regional and international levels in order to strengthen the response to international terrorism, which is considered as a global threat to international security.<sup>89</sup>

The Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity adopted a Communiqué, which among other things, expressed Africa's unreserved support to the UN Security Council Resolution 1373, i.e. the landmark resolution of the UN Security Council to combat global terrorism in all its forms and manifestations.<sup>90</sup> Furthermore, the AU High level Intergovernmental Meeting subsequently adopted a Plan of Action on the Prevention and Combating of Terrorism in Africa as a response to the landmark resolution of the UN Security Council 1373 (2001) following the 9/11 terrorist attack in New York. The Plan of Action is premised on the need to strengthen the capacity of African states through intergovernmental cooperation and coordination.<sup>91</sup> The Plan of Action parallels the key provisions of the UN Security Council Resolution 1373 (2001).<sup>92</sup>

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<sup>89</sup> S/Res/1373, 28 September 2001

<sup>90</sup> Supra note 83

<sup>91</sup> Kathryn Sturman, *The AU Plan on Terrorism: Joining the Global War or Leading an African Battle*, AFRICAN SECURITY REVIEW, (2002)

<sup>92</sup> Wani, Supra note 88

Interestingly, there is an overall convergence in the priorities identified by the UN and AU in preventing and combating terrorism. These priorities could be broadly categorized as Counterterrorism legislation, Operational Mechanisms and Capacity building.

The cooperation between the UN Counter-Terrorism Committee Executive Directorate with African Center for the Study and Research on Terrorism of AU is worth mentioning in this regard. The AU Center has made important contribution by participating in the works of the UN Counter-Terrorism Committee Executive Directorate, including through contributions to workshops organized by the Directorate and field visits held on behalf of the Security Council Committee.<sup>93</sup>

However, neither the UN system nor the AU has managed to communicate successfully the respective priorities of each to the other. Bridging this gap is a priority not only for the UN but also for the AU.

#### **4.1.2 Modalities of Cooperation**

The existing modalities of cooperation between the AU and UN include regular meetings, regular consultations<sup>94</sup>, informal consultations,<sup>95</sup> inviting the

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<sup>93</sup> Supra note 79, 5-6

<sup>94</sup> Art. 17(2) requires both the PSC and the Chairperson of the Commission to maintain close and continued interaction with the United Nations Security Council and the UN Secretary General. Including holding periodic meetings and regular consultations on questions of peace, security and stability in Africa. The new cluster for Peace and Security, co-chaired by the UN Department of Political Affairs and the AU Commission that convened its first meeting on January 18, 2007 is worth noting here.

<sup>95</sup> Art. 8(11) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union provides that the PSC may hold informal consultations with...international organizations as may be needed for the discharge of its responsibilities.

UN to attend the deliberations of the PSC<sup>96</sup>, undertaking joint missions,<sup>97</sup> mandating or designating AU to act on behalf of the UN, through the establishment of liaison offices, the appointment of Joint AU/UN Special Envoy, and annual address of the UN Secretary General at the opening session of the AU Summit.

Over the last years, senior officials of the African Union have been invited to brief the Security Council and the UN Secretary General special representatives and envoys have also been invited to brief the Peace and Security Council. These briefings have focused on issues of common interest, including the situations in Burundi, the Central African Republic, the Democratic Republic of the Congo, Guinea-Bissau, Libya, Madagascar, Somalia and the Sudan, the activities of the Lord's Resistance Army and thematic issues relating to peacebuilding, the prevention of genocide and sexual violence in conflict situations.<sup>98</sup>

### **A. Joint Consultation Mechanism**

The relationship between the UN Security Council and the AU Peace and Security Council is at the core of the overall strategic partnership between the two organizations.<sup>99</sup> The UN Security Council and the AU Peace and Security Council designed a joint consultative mechanism, whereby they conduct annual consultative meetings.

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<sup>96</sup> Art. 8(10) of the PSC Protocol provides a power to PSC

<sup>97</sup> Article 13(16) of the PSC Protocol requires the Commission to undertake periodic assessment of African peace support capacities in collaboration with the UN.

<sup>98</sup> Supra note 66 at 3

<sup>99</sup> Supra note 66 at 2

The launching of a joint annual consultative meeting between the two organs of the UN and AU is an important step forward to forge cooperation between the two organizations in the maintenance of international peace and security. This partnership is premised on the importance of effective cooperation between the two organs for successful collective action.<sup>100</sup>

This annual joint consultative mechanism provides the forum for the UNSC and AUPSC to discuss on key peace and security issues of mutual interest and to explore ways to enhance their cooperation.<sup>101</sup>

The first joint consultative meeting was held on June 16, 2007. Thus far they conducted eight joint consultative meetings.<sup>102</sup> During the inaugural meeting, the UN Security Council and the AU Peace and Security Council undertook to develop a stronger and structured relationship, including between their subsidiary bodies, and to hold joint annual meetings either in Addis Ababa or New York. They also encouraged close consultations between the two organs as decisions are being prepared on issues affecting peace and security in Africa.<sup>103</sup>

During the joint consultative meetings, the two organs assess their cooperation in the areas of conflict prevention and resolution, peacekeeping and

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<sup>100</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 10

<sup>101</sup> Supra note 66 at 3

<sup>102</sup> ISS Peace and Security Council Report, Strengthening AUPSC and UNSC ties, 25 June 2014, available at <http://www.issafrica.org/pscreport/on-the-agenda/strengthening-aupsc-and-unsc-ties> (Last visited 10/19/2014)

<sup>103</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 10

peace building, including the maintenance of constitutional order and the promotion of human rights, democracy and the rule of law in Africa.<sup>104</sup>

While these consultations represent a significant step in the right direction, they are yet to translate into a common understanding of the foundation of the cooperation between these two organs.<sup>105</sup>

### **B. Cooperation between the UN Secretariat and the AU Commission**

A close working relationship between the UN Secretariat and the AU Commission is important to enhance cooperation between the UN Security Council and AU Peace and Security Council. And it operates on two levels, i.e. at a political level and at the level of capacity building.<sup>106</sup> Within the framework of the 10-year capacity building program, the UN Secretariat and AU Commission initiated consultative desk-to-desk meetings on the prevention and management of conflicts in Africa. The desk-to-desk meetings bring together the desk officers of the two organizations in the area of peace and security to discuss and exchange information and ideas on country-specific and thematic issues of common interest.<sup>107</sup>

With authorization from the UN, the desk-to-desk meeting has subsequently been broadened to include relevant officers from the Department of Peacekeeping Operations, the Department of Field Support and the Office for the Coordination of Humanitarian Affairs, the Office of the United Nations High

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<sup>104</sup> Report of the Secretary-General, Supra note 19 at 3

<sup>105</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 10

<sup>106</sup> Id at 12

<sup>107</sup> Id at 14

Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office to the African Union (UNOAU) and United Nations field missions.<sup>108</sup> There is also a field level consultation and coordination between AU Liaison Offices and Field Missions in conflict and post-conflict zones routinely with their UN counterparts.<sup>109</sup>

Moreover, UN Security Council and AU Peace and Security Council put in place regular teleconferences between the United Nations Secretariat and the African Union Commission as a consultation mechanism to enhance coordination and consultation at the desk level.<sup>110</sup>

According to the Secretary General of the UN, “[t]he desk-to-desk meetings have provided the United Nations, the African Union and the regional economic communities with a mechanism for cooperation and information sharing, and have led to joint initiatives on country situations and cross-cutting issues of mutual interest.”<sup>111</sup> Those cross cutting issues include unconstitutional change of government, election-related disputes and political violence.

The establishment of the United Nations Office to the African Union (UNOAU) in 2010 is a significant step in the right direction to foster closer cooperation and greater coordination between the UN Secretariat and AU Commission. UNOAU represents the Political Affairs Department, Peacekeeping Operations Department and the Department of Field Support of the UN

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<sup>108</sup> Report of the Secretary-General, Supra note 19 at 5

<sup>109</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 16

<sup>110</sup> Report of the Secretary-General, Supra note 19 at 5

<sup>111</sup> Id

Secretariat at the AU Headquarter in Addis Ababa, Ethiopia.<sup>112</sup> Within the framework of the 10-year capacity-building program for AU, UNOAU co-chairs the peace and security cluster, coordinating the support of the entire UN system to AU in the area of peace and security.<sup>113</sup>

The UN Secretariat also provides mentoring and advisory services to the AU Commission through the United Nations Office to African Union (UNOAU). For example, UNOAU provides continuous advice and mentoring to the AU Commission for the realization of AMANI Africa Calendar.<sup>114</sup> The technical support provided by UNOAU and the UN Department of Peacekeeping Operations for the elaboration of AU Security Sector Reform (SSR) and AU's Disarmament, Demobilization and Reintegration (DDR) agenda are also worth mentioning here.<sup>115</sup>

In 2010, the Secretary-General and the Chairperson of the African Union (AU) Commission launched a Joint Task Force on peace and security with the objective of enhancing the strategic partnership on issues of common interest between the two organizations.<sup>116</sup> The establishment of the Joint Task force, which meets twice a year, has offered the opportunity for both the UN and AU to discuss cooperation in various conflict situations in Africa.<sup>117</sup> Given the mandates of the Task Force, it will have an important role to play in providing political and

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<sup>112</sup> Report of the UN Secretary General, Supra note 48 at 4

<sup>113</sup> Report of the Secretary-General, Supra note 19 at 5

<sup>114</sup> Id at 8; AMANI Africa is an initiative that was born out of the AU-EU (European Union) Strategic Partnership adopted in Lisbon on 7 December 2007.

<sup>115</sup> Id

<sup>116</sup> Id at 4

<sup>117</sup> Report of the Chairperson of the AU Commission, Supra note 5 at 15

strategic guidance, including through assistance to the UN Security Council and AU Peace and Security Council to strengthen their partnership and cooperation.

### **C. Mini-summits or High-level Meetings**

Mini-summits or High-level Meetings are also important avenues of cooperation between the UN Security Council and AU Peace and Security Council. They are organized to strengthen the regular exchanges between the UN Secretariat and the AU Commission and garner coherent regional and international support to address major conflicts and crisis in the African continent.<sup>118</sup> The two Councils involve member states and sub-regional organizations in Africa in the Mini-summits and High-level Meetings.<sup>119</sup>

### **D. AU and UN Security Council Reform**

Most of the African nations were under colonial yoke when the UN Charter was adopted. Among the African nations, only Egypt, Ethiopia, Liberia and the Union of South Africa were the founding members of the United Nations.<sup>120</sup> Though Africa represents more than one billion people, no single African state is a permanent member of the UN Security Council.

AU recognizes the important role the UN has been playing in the promotion of peace and security in Africa. About 26 of the 47 matters considered by the UN Security Council in 2013 directly concern Africa.<sup>121</sup> As stated above, the African continent is the only region that does not have a permanent seat on the

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<sup>118</sup> Report of the Secretary-General, Supra note 19 at 3

<sup>119</sup> Id

<sup>120</sup> See <http://www.un.org/depts/dhl/unms/founders.shtml>

<sup>121</sup> Security Council Resolutions, 2013, available at <http://www.un.org/en/sc/documents/resolutions/2013.shtml>, (Last visited 10/10/2014)

UN Security Council. AU is, therefore, determined to correct the historical injustices against Africa through the Security Council reform.<sup>122</sup> This is perhaps the premise for African nations in advancing African Common position regarding the reform of the Security Council.<sup>123</sup>

Africa has been able to speak cohesively with one voice regarding the UN Security Reform. It established a committee of ten that articulates and coordinates African position on the subject and with a view to building more alliances in support of African position. The AU Commission facilitates the activities of the African Permanent Representatives of the Committee of Ten to the UN in the intergovernmental negotiations on UN Security Council reform and related consultations.

AU advocates for a comprehensive reform of the United Nations System that “takes into account the principles, objectives and ideals of the United Nations Charter for a fairer world based on universalism, equity and regional balance.”<sup>124</sup> Accordingly AU Assembly of Heads of State and Government took a position that Africa should be allocated two permanent seats in the UN Security Council with all the privileges, including the right of veto, and five (5) non-permanent seats on the Security Council.<sup>125</sup>

Africa's non representation as a permanent member in the UN Security Council violates the founding principles of the UN Charter. Africa's

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<sup>122</sup> Assembly/AU/Dec.105 (VI), AU Assembly Decision on UN Reform, 23-24 January 2006

<sup>123</sup> Assembly/AU/Dec.57 (IV), AU Assembly Decision On The Convening Of An Extraordinary Session Of The Executive Council, , 30-31 January 2005

<sup>124</sup> Assembly/AU/Decl. 2 (V), AU Assembly Sirte Declaration on the Reform of the United Nations, , 4-5 July 2005

<sup>125</sup> Id

representation as a permanent member of the UN Security Council is important in many ways. It helps the Security Council to be representative and even for its legitimacy.

#### ***4.2 Cooperation between UN, AU and Regional Economic Communities***

The AU and the RECs share the goal of a peaceful Africa.<sup>126</sup> AU Constitutive Act considers RECs as the “implementing arms” of the AU’s goal of peaceful and prosperous Africa.<sup>127</sup> They are perhaps considered as the key building blocks for economic integration and key actors in ensuring political stability in their respective geographical areas. The Protocol on the Establishment of the Peace and Security Council of the AU outlines the relationship between AU and the Regional Economic Communities (RECs). The Protocol recognized RECs as part of the overall security architecture of the AU.<sup>128</sup>

The operational modalities of their relationship is defined by the January 2008 Memorandum of Understanding (MOU) on Cooperation in the area of peace and security between the African Union, Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa.<sup>129</sup> The MOU defines the scope and mechanisms of cooperation between AU and RECs.<sup>130</sup>

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<sup>126</sup> UN Office of the Special Advisor on Africa & The African Union Permanent Observer Mission to the United Nations, Africa’s Regional Economic Communities Briefing to the UN Member States, 2

<sup>127</sup> Article 3 of the Constitutive Act of the African Union

<sup>128</sup> Article 16 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union

<sup>129</sup> Fredrik Soderbaum & Rodrigo Tavares, REGIONAL ORGANIZATIONS IN AFRICAN SECURITY, Routledge, 20

<sup>130</sup> See <http://www.peaceau.org/uploads/mou-au-rec-eng.pdf>

The MOU is premised on the need for strengthening and deepening their cooperation and enhancing their capacity to collectively address the scourge of conflicts and ensure the maintenance of peace, security and stability of the continent.<sup>131</sup> Under the MOU the signatories committed to institutionalize their cooperation with a view to achieving their shared goal of ridding the African continent of the scourge of conflicts and laying the foundation for sustainable peace, security and stability.<sup>132</sup>

Under Article VI(1) of the MOU, AU is recognized as the regional organization with primary responsibility to maintain and promote peace, security and stability in Africa.<sup>133</sup> Equally important is the recognition given to the contributions RECs could make towards the promotion and maintenance of peace, security and stability in the continent.<sup>134</sup> The development and implementation of the Africa Peace and Security Architecture perhaps depends up on the cooperation and commitment of RECs.<sup>135</sup>

The guiding principles of the Cooperation between AU and the RECs are adherence to the principles of subsidiarity, complementarity, and comparative advantage.<sup>136</sup> The MOU also identifies areas of cooperation including the following: the operationalization and functioning of the African Peace and

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<sup>131</sup> See <http://www.peaceau.org/uploads/mou-au-rec-eng.pdf>

<sup>132</sup> Article III(1) of the Memorandum of Understanding (MOU) on Cooperation in the area of peace and security between the African Union, Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa, available at <http://www.peaceau.org/uploads/mou-au-rec-eng.pdf>, (Last visited 05/20/2013)

<sup>133</sup> Id, Article IV(1)

<sup>134</sup> Id, Article IV(iii)

<sup>135</sup> Intergovernmental Authority for Development, Peace and Security Situation in the IGAD Region, 18 October 2010, 12

<sup>136</sup> Memorandum of Understanding, Supra note 132 at Article IV(iv)

Security Architecture (including the continental early warning system and the African Standby Force); the prevention, management and resolution of conflicts; Post conflict reconstruction and development; arms control and disarmament; counter-terrorism; the prevention and combating of transnational organized crime; border management; capacity building and any other shared priorities and common interest.<sup>137</sup> AU and RECs also cooperate in exchange of information, exchange of experience and joint need assessment in the regions.<sup>138</sup>

The modalities of cooperation between AU and the RECs include exchange of information, meetings including regular annual meeting between the Chairperson of the AU Commission and the Chief Executives of the RECs, regular consultations, institutional presence through establishing RECs liaison offices at the AU, joint activities and field coordination.<sup>139</sup>

RECs are encouraged to anticipate and prevent conflicts, to undertake peacemaking and peace building efforts to resolve conflicts, including through the deployment of peace support missions.<sup>140</sup> RECs are not only required to make their involvement in the maintenance of international peace and security in conformity with the objectives of the AU Peace and Security Council Establishment Protocol but also to continuously inform the Chairperson of the Commission about their activities in this regard.<sup>141</sup>

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<sup>137</sup> Id, Article V

<sup>138</sup> Kai Schaefer, THE AFRICA-EU PEACE AND SECURITY PARTNERSHIP AND AFRICAN REGIONAL ORGANIZATIONS, STRENGTHENING THE AFRICA-EU PARTNERSHIP ON PEACE AND SECURITY, (2012), 27

<sup>139</sup> Memorandum of Understanding (MOU), Supra note 132 at Article XV

<sup>140</sup> Id, Article V

<sup>141</sup> Id, Article XX

In the area of deployment of peace support missions, RECs assume the responsibility to make available the regional brigades, which they are operating for deployment outside of their territorial jurisdiction upon request by the AU Peace and Security Council.<sup>142</sup>

Kai identified the following as weaknesses of the RECs in the discharge of their security mandates: reluctance of member states on the political level to empower the RECs to discharge their security mandates given competing interests and varied priorities of member states; reluctance of member states to provide sufficient funds for the RECs; Overlap of Membership and Mandates in the RECs; the limitation some of the RECs encounter because of the prevailing crises especially in North Africa and the Sahel Saharan states and the gaps in the experience of RECs in terms of their exposure to activities related to the maintenance of regional peace and security.<sup>143</sup>

The MOU also defines the relationship between the RECs and AU, on the one hand, and the UN on the other hand. Not only AU and RECs undertook to harmonize their views at the forums of the UN but also they agreed to mobilize the support of the UN in the objectives AU and RECs set out under the MOU.<sup>144</sup> AU assumes a leadership role in coordinating this cooperation with the UN.<sup>145</sup>

This partnership involves the UN, AU and the regional economic communities, including ECOWAS, the Southern African Development Community (SADC) and IGAD. Operationally, the United Nations has previously

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<sup>142</sup> Id, Article XX(3) & (4)

<sup>143</sup> Schaefer, *Supra* note 138 at 27-28

<sup>144</sup> Memorandum of Understanding (MOU), *Supra* note 132 at Article XXI

<sup>145</sup> Id, Article XXI

worked closely with the African Union and the regional economic communities in mediation processes, including in Côte d'Ivoire, Guinea, Guinea-Bissau, Kenya, Madagascar, Somalia, the Sudan/Darfur and the Sudan/South Sudan. Cooperation is still ongoing in many of these situations.<sup>146</sup>

Regarding relations with ECOWAS, ECOWAS member states reaffirmed their commitment to the principles enshrined in the UN Charter and the Charter of the Organization of African Unity.<sup>147</sup> Given the primary responsibility given to the UN Security Council for the maintenance of international peace and security, ECOWAS has duly recognized this role of the UN. There can be no doubt that legally ECOMOG would require Security Council authorization for any non-consensual enforcement action by reference to article 53(1) of the UN Charter.

The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of ECOWAS not only explicitly requires ECOWAS to cooperate with the UN and the African continental organization,<sup>148</sup> but also require the Chairman of the Mediation and Security Council to submit report to the AU and the UN.<sup>149</sup>

The UN has collaborated with ECOWAS predominantly in the area of peacekeeping.<sup>150</sup> ECOWAS missions in Liberia and Sierra Leone in 1990 and

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<sup>146</sup> Report of the Secretary-General, Supra note 19 at 2

<sup>147</sup> See Article 2 of the ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security

<sup>148</sup> Id, Article 41

<sup>149</sup> Id, Article 28

<sup>150</sup> Titilope, Supra note 56 at 3

1997 respectively served as precursory efforts to UN subsequent missions in both countries.<sup>151</sup>

For example, the UN-ECOWAS cooperation in the Liberian crisis was the first peace-keeping mission undertaken by the United Nations in cooperation with a peace-keeping mission already set up by another organization, in this case ECOWAS.<sup>152</sup> ECOWAS and the UN had a division of labor. Whereas the UN assumed the role of monitoring and verifying the implementation of the ECOWAS sponsored peace Agreement, known as the Cotonou Agreement signed between the Liberian warring factions, ECOWAS assumed the primary responsibility of supervising the implementation of the military provisions of the Cotonou Agreement.<sup>153</sup>

ECOWAS discharged its mandate through ECOMOG, the ECOSOC Monitoring Group established by ECOSOC in 1990 to help restore peace and security in Liberia. The UN, on the other hand, discharged this important mandate through the UN Observer Mission in Liberia (UNOMIL), which was established by the UN Security Council in September 1993. Interestingly, ECOWAS assumed a leadership role in the peace process in Liberia.

When the violence escalated in Liberia, ECOWAS once again deployed a Nigerian-led force in Liberia (ECOMIL) in August 2003 until the UN Mission in Liberia (UNMIL) took over the mission in September 2003.<sup>154</sup> AU supported

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<sup>151</sup> Id

<sup>152</sup> S/Res/866 (1993), 22 September 1993

<sup>153</sup> Id

<sup>154</sup> S/Res/1509 (2003), 19 September 2003; See also Esther Pan, AFRICAN PEACEKEEPING OPERATIONS, 2 December 2005

ECOWAS in the Liberian peace process, including by appointing AU Special Envoy in Liberia.

Subsequent to ECOWAS intervention in Liberian crisis, the UN Security Council welcomed the ECOWAS effort towards the resolution of conflict in Liberia and further called upon ECOWAS to provide assistance in the implementation of the Peace Accord, known as the Yamoussokuru IV Accord.<sup>155</sup> ECOWAS also imposed an arms embargo on Liberia that would support ECOWAS in discharging its security mandate.

Ajayi identified the following as challenges confronted in the cooperation between UN and ECOWAS in the areas of their peacekeeping:

Difficulties that confronted the UN co-operation in Liberia and Sierra Leone included lack of clear mandates, disparities in logistics and remuneration, and divergent approaches to issues such as sanctions, and elections. As such, even though there were some useful consultations between the UN Security Council and ECOWAS, the above factors created a disconnect between the political decisions that were made and their implementation in the field.<sup>156</sup>

Regarding SADC, the Department of Political Affairs of the UN established a liaison team with SADC at its Headquarter in Gaborone with a view to enhancing UN cooperation with SADC in the areas of conflict prevention, mediation and elections.<sup>157</sup> The signing of the Framework for Cooperation on September 21, 2010 between UN and SADC provide a defined framework for cooperation on these areas.<sup>158</sup> The Framework is aimed at strengthening and

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<sup>155</sup> S/Res/788 (1992), 19 November 1992

<sup>156</sup>Titilope, Supra note 56 at 3

<sup>157</sup> Department of Political Affairs, Support to the AU (NEPAD), available at [http://www.un.org/africa/osaa/2011\\_un\\_system/DPA\\_NEPAD%202011.pdf](http://www.un.org/africa/osaa/2011_un_system/DPA_NEPAD%202011.pdf), (Last visited 05/03/2013)

<sup>158</sup> United Nations, Southern African bloc and UN agree to boost cooperation on peace and security issues, 21 September 2010, available at

drawing upon the capacities of both the UN and SADC, including SADC's knowledge and understanding of the region and the mediation, peacemaking and peacebuilding experience of the Department of Political Affairs (DPA).<sup>159</sup> The UN considers the signing of the Framework as "the first step towards a very valuable partnership."<sup>160</sup>

IGAD has played a leading role in the Somali and Southern Sudan peace processes. After UN forces finally withdrew from Somalia in 1995, IGAD took the initiative to convene a peace and reconciliation conference that eventually led to the signing of a Declaration on Cessation of Hostilities in the Horn of Africa.<sup>161</sup> IGAD is the focal point of all engagements directed at Somalia and also participates in the International Contact Group meetings on Somalia.<sup>162</sup> The International Contact Group in which the UN participates is used as a platform for cooperation between IGAD and the UN.

IGAD has also been at the lead of the Somali and Southern Sudan Peace processes.<sup>163</sup> IGAD led the talks that created the Somalia's Transitional Federal Government in 2004. IGAD also spearheaded the efforts that brought about the signing of the Comprehensive Peace Agreement that paved the way for the independence of South Sudan.

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<http://www.un.org/apps/news/story.asp?NewsID=36037&Cr=peace&Cr1=security#.UsmqOPRDsZg> (Last visited 09/10/2013)

<sup>159</sup> Id

<sup>160</sup> Id

<sup>161</sup> SC/8148, UN Security Council Presidential Statement, 07/14/2004

<sup>162</sup> Intergovernmental Authority on Development, Peace and Security Situation in the IGAD region, 18 October 2010, 9

<sup>163</sup> UN Office of the Special Adviser in Africa & The African Union Permanent Observer Mission to the United States, Africa's Regional Economic Communities Briefing to UN Member States, 7



## **CHAPTER 5**

### **CASE STUDIES: UN PEACEKEEPING OPERATIONS IN AFRICA**

Of the many challenges facing Africa, the quest for peace and security is undoubtedly the most pressing. Over the past two decades, the continent has witnessed a number of long-term, severe and, in some cases, inter-related crises and violent conflicts. African states are grappling with several difficult security challenges. While interstate wars and liberation struggle dominated the 1970s and 1980s, the subsequent decades have been characterized by intra-state violence.<sup>1</sup>

The security dynamics in Africa has especially transformed over the past decade.<sup>2</sup> The crisis in the Darfur region of the Sudan, the recent crisis in Southern Sudan, the terrorist threats in Sahel region and Somalia, and the ongoing crisis in Somalia, the ongoing crisis in Burkina Faso, the less-than-transparent governments and ongoing uncertainty in Sierra Leone, and Angola, the maritime piracy in West Africa and Somalia, and the multi-state conflict in Democratic Republic of the Congo (DRC) are just some examples.

The AU Commission identified the following as contemporary security challenges of the African continent: Governance related intrastate conflict; Terrorism; Maritime piracy; border problems and climate change resulting

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<sup>1</sup> PSC/PR/2.(CCCVII), Report of the Chairperson of the AU Commission on the Partnership between the African Union and the United Nations on Peace and Security: Towards Greater Strategic and Political Coherence, 9 January 2012, 5

<sup>2</sup> Chatham House, Africa's Security and Stability: Key Issues and Opportunities for Progress, Meeting Summary, 7 November 2012, available at <http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/071112summary.pdf> (last visited 10/11/2013)

migration which ends up to be a security challenge.<sup>3</sup> Transnational organized crime groups also exploit the spaces created by such insecurities and engage in activities detrimental both to human and international security. Such activities include drugs, arms, and human trafficking, cyber crime, money laundering, and other activities that feed into the creation of financing opportunities for terrorists and other violent groups.<sup>4</sup>

The UN Security Council recently determined that the unprecedented extent of the Ebola outbreak in Africa constitutes a threat to international peace and security.<sup>5</sup> This perhaps demonstrates the increasing emphasis given to human security by the UN Security Council.

### ***5.1 Contemporary Security Challenges***

The following provides a general overview of the contemporary security challenges of the African continent.

#### **5.1.1 Terrorism as a security challenge**

Terrorism constitutes one of the most serious threats to international peace and security.<sup>6</sup> The growing threat of terrorism in Africa also continues to pose a serious challenge to the consolidation of peace and security on the

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<sup>3</sup>United Nations-African Union partnership – Security Council Meeting, 12 January 2012, available at <http://www.unmultimedia.org/tv/webcast/2012/01/united-nations-african-union-partnership-security-council-meeting.html>, (Last visited 10/25/2014)

<sup>4</sup>Kwesi Aning, *Identifying and Responding to Africa's Security Challenges*, in *REWIRING REGIONAL SECURITY IN A FRAGMENTED WORLD*, US Institute of Peace Press, 149 (July 2011), 149

<sup>5</sup>S/RES/2177 (2014), 18 September 2014

<sup>6</sup>S/RES/2178 (2014), 24 September 2014

continent. The Chairperson of the AU Commission in her September 2, 2014 report on Terrorism and Violent Extremism in Africa stated the following regarding the growing challenges of terrorism in Africa:

Over the past decade, the threat of terrorism in Africa has assumed greater proportions. Regions that previously did not perceive the seriousness of the threat, or were considered to be immune from terrorism, have been targeted by terrorists. During the same period, the threat of terrorism has spread from North and East Africa to Western and Central Africa covering the Sahel, which expands from the Atlantic Ocean to the Red Sea and Indian Ocean.<sup>7</sup>

The UN Security Council also recognized terrorism as an important element in an increasing number of conflict situations in Africa<sup>8</sup> and that countering incitement to terrorism, motivated by extremism and intolerance, and addressing the conditions conducive to the spread of terrorism, can complement conflict prevention efforts,

The terrorist threat in Africa is a complex one, with growing links between terrorism and transnational organized crime. This is further compounded by the fact that the continent is increasingly becoming a transit route for the global narcotics trade, with its potential devastating impact on societies and state structures, as well as by the proliferation of weapons.<sup>9</sup>

The AU Commission identified five categories of terrorist threats on the African continent; namely,

- (i) terrorist attacks on African interests; (ii) terrorist attacks on Western and other foreign interests; (iii) use of African territories as safe havens;

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<sup>7</sup> PSC/AHG/2(CDLV), Report of the Chairperson of the Commission on Terrorism and Violent Extremism in Africa, 2 September 2014, 1

<sup>8</sup> S/RES/2171 (2014), 21 August 2014, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2171%20\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2171%20(2014)), Last visited on 09/20/2014

<sup>9</sup> Report of the Chairperson of the AU Commission, Supra 1 at 6-7

(iv) use of Africa as a terrorist breeding ground and source of recruitment and financing; and (v) Africa as a transit point for terrorists and fund-raising tied to other illicit activities.<sup>10</sup>

### 5.1.2 Border Disputes and Conflicts

Another source of concern relates to border disputes and conflicts. The artificial and poorly demarcated borders of many African countries during the colonial era are considered the most potent source of conflict and political instability for the African continent.<sup>11</sup>

Since African countries gained independence, the borders have been a recurrent source of conflicts and disputes in the continent. It is estimated that less than a quarter of African borders have been properly delimited and demarcated. This situation gives rise to “undefined zones” within which the application of national sovereignty poses problems. In these zones, a local dispute between two communities can rapidly escalate and lead to inter-State tensions. When these zones have natural resources, their management can prove to be difficult and be a source of misunderstanding.<sup>12</sup> Given this porous nature of the African borders, governance-related intrastate conflicts have also spilled over to entire regions, as has been the case in the Great Lakes region, West Africa and the Horn of Africa.<sup>13</sup>

As rightly articulated by Ikome, “Africa’s colonial boundaries have continued to manifest a disturbing lack of homogeneity and functional polities in certain states, and, rather than contributing to peaceful relations, have remained a

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<sup>10</sup> Report of the Chairperson of the Commission, Supra note 7 at 2

<sup>11</sup> Francis Nguendilkome, *Africa’s International Borders as Potential Sources of Conflict and Future Threats to Peace and Security*, INSTITUTE FOR SECURITY STUDIES PAPER, May 2012, No. 233

<sup>12</sup> Report of the Chairperson of the AU Commission, Supra note 1 at 7

<sup>13</sup> Ikome, Supra note 11

major source of inter-state conflict, apart from fostering the regionalisation of intra-state conflict.”<sup>14</sup>

### 5.1.3 Maritime Piracy

There is a growing concern in Africa over the persistence and spread of maritime piracy, which is an international crime pursuant to relevant international instruments, including UN Security Council resolution 1918 (2010).<sup>15</sup>

The past decade has seen a rise in Maritime Piracy.<sup>16</sup> In Africa, the pirate attacks are largely confined to the Gulf of Guinea, near Nigeria and the Niger River delta, and Somalia’s Gulf of Aden.<sup>17</sup> Though there was a significant drop in maritime piracy in the Somalia’s Gulf of Aden in 2013,<sup>18</sup> piracy is on the rise in the Gulf of Guinea.<sup>19</sup> In 2013, pirate attacks in the Gulf of Guinea increased by 33%.<sup>20</sup> Most of these pirate attacks took place in Nigeria’s Niger Delta region.<sup>21</sup> However there have also been attacks in Benin, Cote d’Ivoire,

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<sup>14</sup> Id

<sup>15</sup> Assembly/AU/6(XV), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 27 July 2010

<sup>16</sup> Christopher Alessi& Stephanie Hanson, *Combating Maritime Piracy*, COUNCIL ON FOREIGN RELATIONS, 23 March 2012

<sup>17</sup> Id

<sup>18</sup>S/2014/740, Report of the Secretary General on the situation with respect to Piracy and Armed Robbery at sea off the coast of Somalia, 16 October 2014, 1. Such decrease in the Gulf of Aden has been attributed to the presence of armed guards on ships, increased international naval presence and proactive engagement of the government of Somalia. (See Rick Gladstone, “Global Piracy Hits Lowest Level Since 2007”, Report Says,” New York Times, January 15, 2014) Note that the root of Somali’s piracy problem has been the lack of an effective central government in Mogadishu, tied with limited economic opportunities throughout the country.

<sup>19</sup>“Drop in Sea Piracy Helped by Big Somali improvement Watchdog Says,” BBC, January 15, 2014

<sup>20</sup>“Suspected Pirate Attack on Tanker Off Angola,” Maritime Executive, January 22, 2014, available at <http://www.maritime-executive.com/article/Suspected-Pirate-Attack-on-Tanker-Off-Angola-2014-01-22>, (last visited 09/21/2014)

<sup>21</sup> Ben-Ari Nirit, *A bumpy road to Maritime Security*, AFRICA RENEWAL, December 2013

Ghana, Guinea and Togo.<sup>22</sup> Generally speaking, maritime security in West Africa is precarious.<sup>23</sup> The acts of piracy in the Gulf of Guinea have been primarily driven by political and social grievances.<sup>24</sup>

Both UN and AU recognize maritime piracy as one of the security challenges of the African continent. The UN Security Council in its resolutions and Presidential Statements recognized maritime piracy in Africa as a threat to international peace and security.<sup>25</sup> Since 2008 when maritime piracy in the Somali's Gulf of Aden became a major global concern, the AU has advocated a comprehensive approach towards combating piracy and armed robbery at sea.<sup>26</sup> Given the magnitude of the problem, the AU Assembly of Heads of State and government adopted the 2050 Africa's Integrated Maritime Security Strategy (2050 AIM Strategy), which is designed to address the serious concern at the growing insecurity in the African maritime space.<sup>27</sup>

#### **5.1.4 Governance related intrastate conflicts**

Governance refers to “the exercise of political, economic and administrative authority to manage nation's affairs (in the best interests of the people) and the complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights

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<sup>22</sup> Id

<sup>23</sup> Abdel-Fatau Musah, *West Africa: Governance and Security in a Changing Region*, AFRICA PROGRAMME WORKING PAPER SERIES, International Peace Institute, February 2009, 2

<sup>24</sup> Alessi, *Supra* 16

<sup>25</sup> S/RES/1950 (2010), 23 November 2010

<sup>26</sup> 2050 Africa's Integrated Maritime Strategy, African Union, 2012

<sup>27</sup> Assembly/AU/Dec.496(XXII), Decision on the Adoption and Implementation of the 2050 Africa's Integrated Maritime Strategy, 30-31 January 2014

and obligations and mediate their differences”.<sup>28</sup> Governance related intrastate conflict is one of the most important security challenges that African countries currently face.<sup>29</sup>

The AU Peace and Security Council in its Communiqué of 27 October 2014 spelt out governance related issues which according to the Council are “potent triggers of violent conflicts in Africa”.<sup>30</sup> These include marginalization, human right abuses, refusal to accept electoral defeat, constitutional manipulation, mismanagement and uneven distribution of resources, lack of socio-economic opportunities and corruption.<sup>31</sup>

Empirical data from conflict zones in Africa speak unequivocally to the correlation between bad governance and political instability. The AU Peace and Security Council in its 360<sup>th</sup> meeting held on 22 March 2013 acknowledged such correlation as follows: “a number of African countries remain trapped in a vicious cycle of conflict, linked to multiple factors, including governance deficit.”<sup>32</sup>

Bad governance indeed leads to deteriorating human development conditions, which reduce productivity and further weaken political institutions, eventually weakening the state as an entity. This vicious cycle is also potentially a source of tensions across groups and leading to conflict.<sup>33</sup>

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<sup>28</sup> United Nations Development Programme, *Reconceptualising Governance*, New York, January 1997

<sup>29</sup> John Bugnacki, *CRITICAL ISSUES FACING AFRICA: GOVERNANCE & CORRUPTION*, 4 August 2014, available at <http://www.americansecurityproject.org/critical-issues-facing-africa-governance-corruption/> (Last visited on 09/11/2014)

<sup>30</sup> PSC/PR/COMM.(CDLXIII), Communiqué of AU Peace and Security Council, 463<sup>rd</sup> Meeting, 27 October 2014, 2

<sup>31</sup> *Id.*

<sup>32</sup> Communiqué PSC/PR/COMM.CCCLX, 22 March 2013

<sup>33</sup> Jakkie Cilliers, Barry Hughes & Jonathan Moyer, *AFRICAN FUTURES 2050: THE NEXT FORTY YEARS*, Institute for Security Studies, January 2011, 9

Moreover, such weakened states are frequently unable to exercise a monopoly of force within their own formal boundaries creating a situation which Jackson characterized as “a situation where at a macro and micro level, the state exists as an island of stability within a broader sea of instability beyond its control.”<sup>34</sup> Such situations offer fertile ground for exploitation by terrorists and transnational organized criminals.<sup>35</sup>

The emerging trend of election-related conflicts and violence, for example, is a worrying development that ensued from bad governance. And such development not only undermines the nascent democracies in several African states but also could pose a threat to peace and security of the African continent.

As noted by the Panel of the Wise in its Report on Strengthening the Role of the African Union in the Prevention, Management and Resolution of Election-related Disputes and Violent Conflicts in Africa, election outcomes are increasingly contested in Africa since the new wave of democratization in the early 1990s.<sup>36</sup> This situation signals weaknesses in the governance of elections and the rules of orderly political competition, which perhaps could potentially lead to the recourse to armed rebellion to assert political claims and secessionist demands.<sup>37</sup> The gravity of such tendency poses a threat to the viability of the

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<sup>34</sup> Paul Jackson, *Regional Security in Sub-Saharan Africa*, COMPARATIVE REGIONAL SECURITY GOVERNANCE, 2012, 117

<sup>35</sup> PSC/AHG/2(CDLV), Report of the Chairperson of the Commission on Terrorism and Violent Extremism in Africa, 2 September 2014, 2

<sup>36</sup> See Assembly/AU/6 (XIII) Annex II, endorsed by the 13<sup>th</sup> Ordinary Session of the Assembly of the Union held in July 2009 – decision Assembly/AU/Dec.254(XIII) Rev. I

<sup>37</sup> PSC/PR/2.(CCCVII), Report of the Chairperson of the AU Commission on the Partnership between the African Union and the : United Nations on Peace and Security: Towards Greater Strategic and Political Coherence, 9 January 2012., 6

democratic processes in the Continent, as well as to peace, security and stability in Africa.<sup>38</sup>

Mention should also be made of the uprisings in North Africa in the past decade. The grievances that have driven the North Africa revolts have a universal ring to them: widespread dissatisfaction with authoritarian governments; increasing income inequalities, high poverty levels, and declining living standards for middle classes; and disproportionately high levels of youth unemployment, leading to social alienation. Modern tools of mobilization, such as the social media, have only contributed to sharpening the organizational tools of the new groups and constituencies.

As stressed by the PSC ministerial meeting of 26 April 2011, the uprisings in North Africa should be used as an opportunity for member States to renew their commitment to the AU democratic and governance agenda, give added momentum to the efforts deployed in this respect and implement the political and socio- economic reforms which are called for in every particular national situation.<sup>39</sup>

### **5.1.5 Coups d'état as another security challenge in Africa.**

In 2008 only, there were three coups d'état in Africa, i.e. in the Islamic Republic of Mauritania on 6 August 2008, and in the Republic of Guinea on 23 December 2008, as well as the attempted coup d'état in the Republic of Guinea

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<sup>38</sup> Assembly/AU/6(XIX), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 15-16 July 2012

<sup>39</sup> Report of the Chairperson of the AU Commission, Supra note 1 at 6

Bissau on 5 August 2008.<sup>40</sup> The military Coup d'état in Burkina Faso ousting President Blaise Compaore on October 30, 2014 is the latest coup in Africa.<sup>41</sup> According to AU, the resurgence of the scourge of coups d'état on the Continent constitutes not only a dangerous political downturn and a serious setback to the democratic processes, but also a threat to peace, security and stability of the Continent.<sup>42</sup>

### 5.1.6 Climate change as a new threat

Climate change refers to “any change in climate over time, whether due to natural variability or as a result of human activity”.<sup>43</sup> A new threat, relating to climate change, is clouding the African horizon. There is a widespread consensus that the African continent will be “the hardest hit as a consequence of the climate change impacts.”<sup>44</sup>

Although Africa has contributed least to global warming, the continent is likely to suffer the most from the resulting consequences, whether they relate to scarce water resources, damage to coastal infrastructure and cities, issues related

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<sup>40</sup> Assembly/AU/Dec.220(XII), AU Assembly Decision On The Resurgence Of The Scourge Of Coups D'état In Africa, 1-3 February 2009

<sup>41</sup> “Burkina Faso’s army chief has declared he is taking over as head of state after the ousting of President Blaise Compaore, See <http://www.sbs.com.au/news/article/2014/11/01/burkina-faso-coup-army-seizes-power>, (Last visited 11/01/2014)

<sup>42</sup> AU Assembly, Supra note 40 at 1-3

<sup>43</sup> IPCC, Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), available at <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-spm.pdf>, (Last visited on 10/27/2014)

<sup>44</sup> Mahamat K. Dodo, *Examining the Potential Impacts of Climate Change on International Security: EU-Africa Partnership on Climate Change*, SPRINGER OPEN JOURNAL, 17 April 2014

to the decrease of food security for the general population and environmentally–induced migration.<sup>45</sup>

A comprehensive assessment by the Africa, Climate Change, Environment and Security Dialogue Forum (ACCES) concluded that “Burundi, Chad, the DRC, Republic of Congo, Kenya, Ethiopia, Niger, Nigeria and Sudan are the most vulnerable countries in Africa in the context of climate change and security, and that the Sahel region (stretching from Dakar in the west to Mogadishu in the east) is the most threatened region in the continent.”<sup>46</sup> It is therefore clear that this phenomenon will impact negatively on the quest for peace and security in the African continent.<sup>47</sup>

### **5.1.7 Competing Use of transboundary resources**

Across much of Africa state politics is dominated by a combination of the poverty of most people, fierce competition for scarce resources and a key role played by the state in allocation of those resources.<sup>48</sup> Given the scarcity of water in Africa, the use of transboundary resources, especially transboundary rivers, is one potential source of conflict in Africa. For example, river Nile that has almost one-fifth of the African Nations as its co-riparians could potentially trigger conflict in Africa.<sup>49</sup>

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<sup>45</sup> Id

<sup>46</sup> Cilliers, *Supra* note 33 at 41

<sup>47</sup> Report of the Chairperson of the AU Commission, *Supra* note 1 at 7

<sup>48</sup> Jackson, *Supra* note 34 at 118

<sup>49</sup> David Shinn, A Vision for the Horn of Africa, Remarks at a Conference Hosted by Advocacy for Ethiopia and the Ethiopian National Priorities Consultative Process, Arlington, Virginia, 9 April 2010

As population grows in the region and demands for water increase, this situation cries out of equitable allocation of Nile water. On the technical side through organs like the Nile Basin Initiative, there has been considerable progress among the riparian states over more efficient use of the water. At the political level, however, there are still major differences between the positions of Egypt and Sudan, on the one hand, and the other eight riparian states, on the other. So far, the situation has not resulted in conflict. It is important to take steps now to insure there is no future conflict over Nile water usage and allocation.<sup>50</sup>

### **5.1.8 Transnational Organized Crimes**

According to UNODC, “Transnational crime by definition involves people in more than one country maintaining a system of operation and communication that is effective enough to perform criminal transactions, sometimes repeatedly.”<sup>51</sup> Transnational crime is considered as one of the major threats to human security, impeding social, economic, cultural and democratic developments.<sup>52</sup>

The spread of new security threats, such as transnational Organized Crimes, have added to the concern for the mass of the people on the African continent.<sup>53</sup> The June 2008 AU, Memorandum of Understanding on cooperation in the area of peace and security between the African Union, the Regional Economic Communities and the Coordinating Mechanisms of the Regional

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<sup>50</sup> Id

<sup>51</sup> UNODC, *Transnational Organized Crime in the West African Region*, 2005, 14

<sup>52</sup> Aning, *Supra* note 4 at 150

<sup>53</sup> Jackson, *Supra* note 34 at 113

Standby Brigades of Eastern Africa and Northern Africa identified transnational organized crime as one of security challenges of the African continent. The threat and challenges are enormous given the existence of fragile states that would serve as potential breeding grounds for transnational organized crimes.<sup>54</sup>

According to the UN Office on Drugs and Crime (UNODC), “alarm bells are ringing about the volume of cocaine transiting the region (roughly 50 tons a year). West Africa ... has become a hub for cocaine trafficking ... worth almost \$2 billion a year. This is more than a drugs problem. It is a serious security threat.”<sup>55</sup>

Today Transnational Organized Crime’s (TOC) threat is characterized by at least six trends. TOC groups are (1) increasingly global in reach; (2) involved in multiple forms of criminal activity; (3) expanding their criminal markets to include large-scale financial fraud and cyber crime; (4) willing to protect illicit activities through violent and ruthless means; (5) linked to international terrorist groups; and (6) devising novel organizational strategies to deter capture.<sup>56</sup> For example, the serious threats posed by transnational organized crime in the Sahel region are linked with terrorism.<sup>57</sup>

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<sup>54</sup> Aning, *Supra* note 4 at 150

<sup>55</sup> UNODC, *Drug Trafficking as a security Threat in West Africa*, October 2008, 1

<sup>56</sup> Aning, *Supra* note 4 at 152

<sup>57</sup> S/RES/2164 (2014), 25 June 2014

### 5.1.9 Ethnicity as a source of Security challenge

In many ways African security is ethnic related.<sup>58</sup> Ethnicity is “the embodiment of values, institutions; and patterns of behavior, a composite whole representing a people’s historical experience, aspirations and world view.”<sup>59</sup> Deprivation of ethnicity amounts to depriving the people of their sense of direction or purpose.<sup>60</sup> Every African conflict virtually has some ethno-regional dimension.<sup>61</sup>

Deng succinctly explained the co-relation between ethnicity and conflicts in Africa as follow:

In most African countries, the determination to preserve national unity following independence provided the motivation behind one-party rule, excessive centralization of power, oppressive authoritarian regimes, and systematic violation of human rights and fundamental liberties. These in turn have generated a reaction, manifested in heightened tension and the demand for a second liberation. Managing ethnic diversity within the unity of the colonial borders is a challenge that African states are reluctant to face, but cannot wish away.<sup>62</sup>

For example, the December 2013 civil war in Sudan that was ignited by a political struggle between the South Sudan President SalvaKirr and his former vice President RiekMachar eventually escalated into ethnic violence between their respective ethnic groups, i.e. Dinka and Nuer ethnic groups respectively.<sup>63</sup>

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<sup>58</sup> Paul Jackson, *Regional Security in Sub-Saharan Africa*, COMPARATIVE REGIONAL SECURITY GOVERNANCE, 2012, 118

<sup>59</sup> Francis M. Deng, *Ethnicity: An African Predicament*, Brookings Institute, Summer 1997, available at <http://www.brookings.edu/research/articles/1997/06/summer-africa-deng>

<sup>60</sup> Id

<sup>61</sup> Id

<sup>62</sup> Id

<sup>63</sup> Internal Violence in South Sudan, Council on Foreign Relations, available at <http://www.cfr.org/global/global-conflict-tracker/p32137#!/?marker=33>, (Last visited 10/30/2014)

The over two decade's long conflict in Somalia also has an ethnic dimension manifested in the clan context.

The Darfur crisis in Sudan's western region that caused death to 300,000 people and displacement to 2.3 million people is rooted in an ethnic conflict "pitting Sudan's Arab-dominated centre against the "Black-African" marginalized majority at the periphery."<sup>64</sup>

The thirty year war between Ethiopia and Eritrea had an ethnic dimension. The 1994 Rwanda genocide was ignited when Hutus began slaughtering the Tutsis in Rwanda.

## **5.2. Case Studies**

The UN remains a major security influence in Africa. Of the current sixteen missions worldwide, nine are in Africa. However these nine accounted for \$ 4,998,891,380 of the \$7.06 billion earmarked for peacekeeping as a whole for the Periods from July 1, 2014 to June 30, 2015.<sup>65</sup> The current biggest peacekeeping mission is in Democratic Republic of Congo with around 21,048 uniformed personnel, 3,680 civilian personnel and 483 UN volunteers.<sup>66</sup> This has replaced Liberia, which had been previously the biggest mission.<sup>67</sup> Examining the institutional experience of the UN in the area of its principal mandate to maintain international peace and security is key in understanding the challenges,

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<sup>64</sup> Francis M. Deng, , *The Darfur Crisis in Context*, FORCED MIGRATION REVIEW, January 2005, 44; See also Darfur Conflict, Thomson Reuters Foundation, Updated 31 July 2014, available at <http://www.trust.org/spotlight/Darfur-conflict>, (Date last visited on 10/31/2014)

<sup>65</sup> Peacekeeping Factsheet as of 30 September 2014, available at <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml>, (Last visited on 10/27/2014)

<sup>66</sup> Id.

<sup>67</sup> Jackson, Supra note 58 at 116

shortcomings as well as strengths of the UN security mechanism in Africa, and perhaps to propose concrete suggestions that would make it more effective to meet the security challenges of the 21<sup>st</sup> century in Africa. Accordingly, an attempt is made hereunder to analyze selected case studies of conflict situations in Africa in which the UN, AU and sub-regional security mechanisms took part.

### **5.2.1 The Case of Somalia**

The problem in Somalia dates back to 1991 when its state structure collapsed following the fall of President Muhammed Siad Barre. Since then, about fifteen mediation efforts have been undertaken to restore peace and order in Somalia.<sup>68</sup> The fourteenth initiative, spearheaded by Intergovernmental Authority for Development (IGAD), resulted in the establishment of the Transitional Federal Government (TFG) in 2004.<sup>69</sup> TFG is the legitimate government duly recognized by the international community at large, including the UN and AU.<sup>70</sup>

Many international actors, including UN, AU, the European Union, Arab League, the International Contact Group on Somalia, and Intergovernmental Authority for Development (IGAD), have been involved in international efforts to avert the crisis in Somalia. The discussion here, however, is limited to UN, AU and IGAD's involvement following the establishment of the TFG in 2004.

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<sup>68</sup> AU Doc. PSC/PR/2(LV), The Chairperson, Information Note on the situation in Somalia, Peace and Security Council 55<sup>th</sup> Meeting, (17 June 2006)

<sup>69</sup> John Prendergast and Colin Thomas-Jensen, , *Blowing the Horn*, FOREIGN AFFAIRS 62 (Mar./Apr. 2007)

<sup>70</sup> Id.

## A. The UN, AU, IGAD and Somalia

Following the breakdown of political order in Somalia in 1991, the UN Security Council determined that the situation in Somalia constituted a threat to international peace and security and accordingly imposed a chapter VII arms embargo on Somalia in January 1992.<sup>71</sup> The UN operation in Somalia (UNOSOM I) was formed under Security Council Resolution 751(1992) to monitor the March 1992 ceasefire and provide security for U.N. personnel and humanitarian supplies.<sup>72</sup>

Prior to the adoption of the foregoing resolution by the UN Security Council, Djibouti took the lead in the Somalia peace process by organizing two conferences to help bring the warring Somali factions together in July and August 1991.<sup>73</sup> Sudan and Eritrea on the other hand proposed to send peacekeeping troops to Somalia.<sup>74</sup> In 1992, IGADD and OAU designated Ethiopia as the main coordinator of the Somali peace process. Such efforts by the regional organizations, IGADD and OAU were overshadowed by the interventions of the UN and the United States.

The deteriorating humanitarian situation led the UN Security Council to adopt a resolution authorizing member states to employ all necessary means to establish a secure environment for humanitarian relief operations in Somalia

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<sup>71</sup> S.C. Res. 733 (1992) (January 23, 1992)

<sup>72</sup> Edward Newman, *THE UN SECRETARY GENERAL FROM THE COLD WAR TO THE NEW ERA: A GLOBAL PEACE AND SECURITY MANDATE*, Macmillan Press Ltd, 136-7

<sup>73</sup> Abdelwahab El-Affendi, *The Impasse in the IGAD Peace Process for Sudan: The Limits of Regional Peacemaking?*, *AFRICAN AFFAIRS*, Vol. 100, No. 401 (Oct., 2001), Oxford University Press, 581, 583

<sup>74</sup> Id

under Chapter VII of the Charter.<sup>75</sup> This led to the establishment of Unified Task Force (UNITAF), which was mandated to ensure the safe delivery of humanitarian assistance in coordination with UNOSOM I.

On March 26, 1993, the Security Council decided on a prompt and phased transition from UNITAF to the expanded UN Operations in Somalia (UNOSOM II)<sup>76</sup> with a view to undertaking a comprehensive and effective disarmament program.<sup>77</sup>

On June 6, 1993, the Security Council condemned the June 5<sup>th</sup> unprovoked armed attack against the personnel of UNOSOM II.<sup>78</sup> This was followed by the Council's invitation to the UN Secretary General "to consult...with regional organizations in his efforts to reconcile the parties and rebuild Somali political institutions."<sup>79</sup> On November 4, 1994, the Security Council decided that continuation of UNOSOM II beyond March 1995 could not be justified because the UN objectives in Somalia were being undermined by the lack of sufficient cooperation from the Somali parties.<sup>80</sup> The mission was eventually withdrawn in March 1995.<sup>81</sup> Paradoxically, the Council determined in that same resolution "that the situation in Somalia continues to threaten peace and security."<sup>82</sup>

Although the UN tended to abdicate its responsibility after the Security Council decided to withdraw UNOSOM II in March 1995, it has not completely

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<sup>75</sup> S.C. Res. 767 (1992) (July 24, 1992)

<sup>76</sup> S.C. Res. 814(1993) (March 26, 1993)

<sup>77</sup> Id

<sup>78</sup> S.C. Res. 837 (1993) (6 June 1993)

<sup>79</sup> S.C. Res. 878 (1993) (October 29, 1993)

<sup>80</sup> S.C. Res. 954 (1994) (November 4, 1994)

<sup>81</sup> Id.

<sup>82</sup> Id

ignored the conflict situation in Somalia. However, its involvement is limited especially if one compares it its involvement in the Sudan. The UN appears to have modeled its level of involvement in the over two decade's long Somalia crisis on that of the United States.<sup>83</sup>

Subsequent to UNOSOM's departure, the UN Secretary General established the United Nations Political Office in Somalia (UNPOS) on April 15,1995. Its mission is "to advance the cause of peace and reconciliation through contacts with Somali leaders, civil organizations and the states and organizations concerned."<sup>84</sup>

Subsequent efforts of the Security Council focused on the implementation of the arms embargo against Somalia. In 2002, the Council established a panel of experts that was mandated to investigate violation of the arms embargo.<sup>85</sup>

Subsequent to this development, the slogan of African solutions to African problems became popular.<sup>86</sup> IGAD also took the leadership in the Somalia peace and reconciliation process under the auspices of IGAD.<sup>87</sup>

After the establishment of the TFG in 2004, the Security Council welcomed AU's continued support of reconciliation efforts in Somalia.<sup>88</sup> Both the PSC and IGAD had been insisting on the urgency for deploying a peace

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<sup>83</sup>Ever since US had its military casualties in the early nineties, its involvement has been primarily limited to providing financial, technical and military assistance to the actors in Somalia. Its collaboration with Ethiopia is just one example.

<sup>84</sup> See <http://www.unpos.org>

<sup>85</sup> S/Res/1425 (2002), 22 July 2002)

<sup>86</sup>Katharina P. Coleman, INTERNATIONAL ORGANIZATIONS AND PEACE ENFORCEMENT: THE POLITICS OF INTERNATIONAL LEGITIMACY, Cambridge University Press, 2007, 186

<sup>87</sup> Assembly/AU/Dec.65 (IV), AU Assembly Decision on Somalia, 30-31 January 2005

<sup>88</sup> S/Res/1587 (2005), 15 March 2005

support mission to seize the momentum and stabilize the situation.<sup>89</sup> The first decision came from the IGAD Heads of State and Government on January 31 2005, in which it decided to deploy IGAD Peace Support Mission (IGASOM), to be followed by an AU Peace Support Mission.<sup>90</sup> IGASOM's mandate was to provide security support to the Transitional Federal Government of Somalia in order to ensure its relocation to Somalia and guarantee the sustenance of the outcome of the IGAD peace process.<sup>91</sup> IGAD also called upon the Security Council to provide exemption to the arms embargo against Somalia for the sake of facilitating the deployment.<sup>92</sup> The PSC, the Executive Council and the Assembly of AU followed suit supporting the decision of IGAD.<sup>93</sup>

Nonetheless, the implementation of these decisions was difficult until recently due to the Security Council arms embargo against Somalia.<sup>94</sup> The initial reaction from the Security Council was a statement issued in July 2005 that failed to address the issue of arms embargo but simply urged the Transitional Federal Institutions of Somalia to conclude a national security and stabilization plan.<sup>95</sup> A month after fighting broke out in Somalia between the Alliance for the Restoration of Peace and Counter-terrorism and the Sharia courts in February 2006, the Security Council issued a presidential statement, for the first time

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<sup>89</sup> PSC/PR/BR/PS/(XI), Press Statement, The African Union Peace and Security Council, (8 January 2007), available at <http://www.africaunion.org/root/au/News/Communique/2007/Press%20statment%20Somalia.doc> (Last visited, 12/02/2008)

<sup>90</sup> Assembly/AU/Dec.65 (IV), AU Assembly Decision on Somalia, 30-31 January 2005

<sup>91</sup> Id

<sup>92</sup> Communique of the 26<sup>th</sup> Session of the IGAD Council of Ministers (November 29, 2005)

<sup>93</sup> S/2006/122, The Secretary General, Report of the Secretary General on the Situation in Somalia, (06/21/2006)

<sup>94</sup> Id.

<sup>95</sup> The Chairperson, Supra note 80 at para. 13

welcoming the possible deployment of IGASOM, to be followed by the AU Peace Support Mission.<sup>96</sup> The Council finally gave the green light on its readiness to consider the requested exemption to the arms embargo.

However the subsequent press statement issued on 31 May 2006 took the Security Council back to its original position of insisting on strict compliance with the arms embargo. Such a stance was simply absurd. And paradoxically, the Security Council was insisting on the need for the Transitional Federal Institutions of the TFG to continue working towards establishing effective national governance in Somalia.<sup>97</sup> Under the circumstances, where the embargo even extended to limiting the provision of training to the TFG, it was incomprehensible to expect effective governance in Somalia.

Although long overdue, the UN Security Council eventually adopted Resolution 1725, granting the requested exemption to arms embargo.<sup>98</sup> The Resolution mandated IGASOM to undertake activities aimed at providing security support and institutional capacity building for the Transitional Federal Institutions and creating conducive conditions for dialogue and reconciliation in Somalia.<sup>99</sup>

Alarmed by the growing precarious situation in Somalia, the TFG invited Ethiopia to help.<sup>100</sup> Ethiopia's military intervention, at the express invitation of the TFG, created a situation that, according to the PSC, "represents a new and historic opportunity."<sup>101</sup>

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<sup>96</sup> Id.

<sup>97</sup> S/Res/1676 (2006), May 10, 2006

<sup>98</sup> S/Res/1725 (2006), (December 2006)

<sup>99</sup> Id.

<sup>100</sup> A.U. Doc. EX.CL/319 (X), The Chairperson, Report of the Chairperson of the African Union Commission, submitted to the 8<sup>th</sup> Ordinary Session of the Assembly, paragraph 94

<sup>101</sup> PSC.PR/BR/PS (XI 8), Press Statement on the Situation in Somalia, (January 2007)

When it became clear that IGAD would be unable to deploy IGASOM, the PSC decided that the African Union Mission in Somalia (AMISOM) would be deployed for six months to contribute to the initial stabilization phase in Somalia.<sup>102</sup> AMISOM is anticipated to have a total strength of 8,000 military personnel and 270 police officers.<sup>103</sup>

Accordingly, the PSC requested the UN and the Security Council to provide all the support necessary for the deployment, including a review of Resolution 1725 (2006). AU's call for financial, logistical and technical support for the deployment of AMISOM suggests the areas where AU requires the assistance of the global community, including the Security Council of the UN.

In January 2007, AU urged the UN to lead the TFG initiative for an inclusive inter-Somali dialogue, which the AU considered as critical endeavor for sustainable peace in Somalia.<sup>104</sup> UN played an important role in the promotion of an all-inclusive political process in Somalia which resulted in the signing of the June 9, 2008 Agreement, under the auspices of the UN, between the Transitional Federal Government (TFG) of Somalia and the Alliance for the Re-Liberation of Somalia (ARS).<sup>105</sup>

The PSC also urged the Security Council to consider authorizing a UN operation in Somalia that would take over from AMISOM at the expiration of its six-month mandate. This call triggered the adoption of Security Council Resolution 1744 in February 2007. Under this resolution, the Council welcomed

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<sup>102</sup> S/2007/115, UN Secretary-General Report on the Situation in Somalia, (February 28, 2007)

<sup>103</sup> Report of the Chairperson of the Commission, *Supra* note 1 at 17

<sup>104</sup> Assembly/AU/Dec.142(VIII), AU Assembly Decision on Somalia, 29-30 January 2007

<sup>105</sup> Assembly/AU/2 (XI), AU Assembly Decision on the Report of the Peace and Security Council on its activities and the State of Peace and Security In Africa, 30 June-1 July 2008

AU's intention to establish a mission in Somalia (AMISOM) and authorized member states of AU to establish the mission for a period of six-months.<sup>106</sup> AMISOM's mandate includes: supporting dialogue and reconciliation; providing protection to the Transitional Federal Institutions; providing security for key infrastructure; providing assistance in the implementation of the National Security and Stabilization Plan; and, creating the necessary security conditions for the provision of humanitarian assistance.<sup>107</sup>

AU's original plan was to have AMISOM for an initial stabilization phase, to be followed by an eventual deployment of a UN peacekeeping mission.<sup>108</sup>

The Security Council further requested the UN Secretary-General to send a technical assessment team to report on the political and security situation with the possibility of a UN peacekeeping operation following the AU deployment.<sup>109</sup> Although the role of regional organizations in helping resolve the situation is one among several factors that must be taken into account while considering new UN peacekeeping operations,<sup>110</sup> the hesitation of the Security Council to transform the AU mission to a UN operation largely suggests that the Council prefers to follow a wait-and-see approach.

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<sup>106</sup> S/Res/1744 (2007), 21 February 2007)

<sup>107</sup> Id.

<sup>108</sup> Report of the Chairperson of the Commission, *Supra* note 1 at 17-18

<sup>109</sup> Id.

<sup>110</sup> S/PRST/1994, Presidential Statement, Statement of the President of the UN Security Council, (May 3, 1994)

On May 3, 1994 the Security Council decided that several factors must be taken into account when discussing new peacekeeping operations, including whether regional or sub-regional organizations could help resolve the situation.

The AU PSC in its Communique of June 29, 2008 once again called upon the UN to deploy peacekeeping operation in Somalia that will support the long-term stabilization and post-conflict restoration in Somalia. The response of the Security Council was renewal of AMISOM's mandates for a further period of six months on August 19, 2008.<sup>111</sup>

Successive AU calls to the UN Security Council to provide greater support to AMISOM and to fully assume its responsibilities towards Somalia and its people through the deployment of a UN operation to take over AMISOM have not born any fruit.<sup>112</sup> Though the UN technical and logistical support to AMISOM was authorized on account of the council's expressed intent to deploy a United Nations peacekeeping operation as a follow-on force to AMISOM at the right time under the right conditions,<sup>113</sup> it has not been realized yet.

Given the security challenges presented by Somalia, the UN Secretary General recommended the deployment of a multinational force with full military capabilities instead of a UN peacekeeping mission.<sup>114</sup> Not only was the attempts to raise such a multinational force a failure, but the UN Security Council also refused to transform AMISOM in to a UN peacekeeping force or perhaps to deploy its own peacekeeping force.<sup>115</sup> The UN Security Council, through its

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<sup>111</sup> S/Res/1831 (2008), 19 August 2008

<sup>112</sup> Assembly/AU/5(XVI), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 30-31 January 2011, See also Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, Doc. Assembly/AU/4(XVII), 30 June- 1 July 2011

<sup>113</sup> S/2011/805, Report of the Secretary-General on United Nations-African Union cooperation in peace and security, 29 December 2011, 10

<sup>114</sup> Report of the Chairperson of the Commission, Supra note 1 at 17-18

<sup>115</sup> Id

successive resolutions, responded by authorizing AU Member States to maintain the mission in Somalia.<sup>116</sup>

Despite AU's authorization of an increase in AMISOM's strength from 8,000 to 20,000 in October 2010, the UN Security Council authorized an increase to only 12,000 troops.<sup>117</sup> This decision limited the scope of the UN logistical support to AMISOM because the UN Security Council decided to provide a logistical support package only for a maximum of 12,000 AMISOM uniformed personnel.<sup>118</sup> This is just another example where the UN Security Council became reluctant to fully endorse the recommendations of the AU Peace and Security Council.

The establishment of the United Nations Support Office for AMISOM (UNSOA) to facilitate the delivery of the UN support to AMISOM elevated the level of UN's engagement in the peace process in Somalia.<sup>119</sup> It especially plays an important role in facilitating the provision of logistical support to AMISOM. However, given the seriousness of the security challenges on the ground, the UN logistical support is inadequate to cover all the critical mission support elements.<sup>120</sup>

As of June 2007, the situation got more complicated by the proliferation of acts of piracy and armed robbery at sea against vessels off against the coast of Somalia. Under the circumstances, such reluctance of the UN may cast some

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<sup>116</sup> Id

<sup>117</sup> Id

<sup>118</sup> Id

<sup>119</sup> Id

<sup>120</sup> Id at 19

doubt upon the even-handedness of the UN when it comes to a crisis in Africa, the marginalized continent.

The TFG supported and facilitated AMISOM's deployment while the insurgents advocated against it. This is indeed one of the challenges the mission has had to encounter in its operation. AU has deployed forces in Somalia. AU member states support the AU mission in different ways including through troop contribution and the provision of logistics. Thus far Djibouti, Kenya, Sierra Leone, Uganda, Ethiopia and Burundi that have contributed 22,126 uniformed personnel. It took many years for the African nations to deliver their promise to contribute such number of troops to AMISOM. It is currently operating under the AU command. Resource and logistics constraints are among the major factors that held back the African nations from delivering their promises. UN only provides logistical support while the European Union funds payment for troop allowance and other related expenses.

IGAD's decision for an imposition of targeted sanctions against all those elements seeking to undermine the peace efforts in Somalia was endorsed by AU.<sup>121</sup> This was followed by the UN Security Council's sanctions against Eritrea on December 23, 2009.<sup>122</sup> The sanctions include arms embargo, travel restrictions and a freeze on the assets of political and military leaders for, among other things,

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<sup>121</sup> Assembly/AU/4 (XII), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 1-3 February 2009

<sup>122</sup> UN Security Council Resolution 1907(2009), 23 December 2009

providing political, financial, and logistical support to armed groups engaged in undermining peace and reconciliation in Somalia and regional stability.<sup>123</sup>

Recognizing the imperative of political engagement in Somalia, the Chairperson of the AU Commission appointed former President Jerry John Rawlings of Ghana as the AU High Representative for Somalia to galvanize international support and attention for Somalia, and the engagement of the population in governance processes, in order to enhance the legitimacy of the TFG.<sup>124</sup>

In April 2010, AMISOM, the United Nations Political Office for Somalia (UNPOS) and the IGAD Office of the Facilitator for Somalia signed a memorandum of understanding to coordinate their efforts in Somalia.<sup>125</sup> The Memorandum provides the framework for coordinating their activities in the promotion and maintenance of peace, security and stability in Somalia.<sup>126</sup>

Subsequent to the signing of the Memorandum, UN, AU and IGAD convened two mini-summits regarding Somalia during the African Union summits in Kampala in July 2010 and in Addis Ababa in January 2011.<sup>127</sup> The second mini-summit was co-chaired by UN, AU and IGAD.<sup>128</sup> Following these mini-summits, UN and AU developed a strategic concept for AMISOM in early

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<sup>123</sup> Assembly/AU/3(XVI), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 2 February 2010

<sup>124</sup> Assembly/AU/5(XVI), AU Assembly Decision On The Report Of The Peace And Security Council On Its Activities And The State Of Peace And Security In Africa, 30-31 January 2011

<sup>125</sup> S/2011/805, Report of the Secretary-General on United Nations-African Union cooperation in peace and security, 29 December 2011, 12-13

<sup>126</sup> Id

<sup>127</sup> Id at 4

<sup>128</sup> Id

2012, which was subsequently endorsed by the UN Security Council and AU Peace and Security Council.<sup>129</sup>

The AU's peacekeeping posture in Somalia points to the emergence of a different peacekeeping doctrine; instead of waiting for a peace to keep, the AU views peacekeeping as an opportunity to establish peace before keeping it.<sup>130</sup>

Subsequent to the February, 27 2013 PSC's endorsement to enhance AMISOM with a view to facilitating the recovery of the areas under the Al-Shabaab's control and building the capacity of Somalia's national defense, public safety institutions and civilians, AMISOM has been able to register positive gains on the ground, signaling some optimism in the future of Somalia. However, as of this writing, the situation still remains fragile. In this connection, the AU Chairperson in her recent report on Somalia stated the following:

Despite the peace and security gains recorded in those areas recovered from Al-Shabaab, the overall security situation in Somalia remains volatile. Al-Shabaab continues to carry out a dual-track asymmetric campaign focused on the conventional targeting of vulnerable AMISOM and SNA defensive positions and emplacement of Improvised Explosive Devices (IEDs) at AMISOM and SNA supply lines. On 21 February 2014, a group of 9 Al-Shabaab militants launched a complex attack on Villa Somalia. During the attack, 14 people were killed, including Government officials. On 5 July 2014, Al-Shabaab attacked the Federal Parliament, killing 4 people and injuring 7 others.<sup>131</sup>

Under the circumstances, AMISOM's mission is likely to continue facing enormous challenges.

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<sup>129</sup> A67/280- S/2012/614, Report of the UN Secretary General, Cooperation between the United Nations and regional and other organizations, 9 August 2012, 5

<sup>130</sup> Report of the Chairperson of the Commission, Supra note 1 at 19

<sup>131</sup> Report of the Chairperson of the Commission on the Situation in Somalia on the occasion of the 462<sup>nd</sup> Meeting of the Peace and Security Council, available at <http://cpauc.au.int/en/content/report-chairperson-commission-situation-somalia-occasion-462nd-meeting-peace-and-security-co> (last visited 10/05/2014)

## **B. Challenges encountered**

Challenges facing Somalia in general are diverse, formidable and complex. The discussion here is, however, limited to those challenges the UN, AU and IGAD, have encountered in undertaking the peace support initiative in Somalia, including the challenges in the cooperation between these organizations.

The conflict in Somalia highlighted the crisis inherent in African peace initiatives at the international, regional, sub-regional and local levels. On the international level, it shows the reluctance of the UN Security Council to get physically involved in the African conflicts. United Nations has largely delegated the peacekeeping operation to the AU. Its involvement in the area of peacekeeping in Somalia has been less active. Clearly, UN's involvement in Somalia remains well behind AU and IGAD.

Inadequate funding is one of the major challenges for both the deployment of AMISOM and the capacity building endeavors of the Transitional Federal Institutions (TFI) in Somalia. Unlike the UN, AU doesn't have a system of assessed contribution to fund peace support operations. Inadequate funding has been one of the biggest obstacles shared by other African political and security organizations in filling the gap created by the inaction of the UN Security Council.<sup>132</sup>

Funding AMISOM was, indeed, one of the thorny issues within the African Union. The AU Assembly has been consistently calling upon the UN to examine, within the context of Chapter VIII of the UN Charter, the possibility of

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<sup>132</sup> Eric, See Supra note 36 at 41

funding through assessed contributions, peace-keeping operations undertaken by AU or under its authority and with the consent of the UN.<sup>133</sup> Similarly, the Chairperson of the AU Commission had been blaming the international community for its failure to provide immediate and sustained support to the TFI and for the peace support operation in Somalia.<sup>134</sup>

The fact that the Security Council is still hesitant to transform AMISOM into a UN peace-keeping operation makes the situation even more compelling.<sup>135</sup>

As articulated by the Chairperson of the AU Commission, the limitations in AU's management capacity to oversee large-scale peace support operations is another daunting challenge.<sup>136</sup>

The UN Secretary General noted in his series of reports that the African Union continues to face serious, financial, logistical, and force-generation constraints in completing the deployment of AMISOM.<sup>137</sup>

The delay of responsiveness on the part of the UN Security Council to demands of AU is the third major challenge. The delayed response of the Security Council to AU's demand for waiver of the arms embargo undermined the results of the Somali National Reconciliation Conference—a unique and unprecedented opportunity for national reconciliation in Somalia.<sup>138</sup> This also has contributed to the present challenges of AMISOM's deployment in Somalia. In addition to the skepticism and the 'wait and see' approach of the Security Council to transform

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<sup>133</sup>See Assembly/AU/Dec. 145 (VIII), Assembly Decision, (January 2007)

<sup>134</sup>PSC/PR/2(LXIX), The Chairperson, Report of the Chairperson of the AU Commission on the Situation in Somalia, January 19, 2007, para. 35

<sup>135</sup> Security Council, See Supra note 115

<sup>136</sup>The Chairperson of the AU Commission, Supra note 134 at para. 36 (January 19, 2007)

<sup>137</sup>See S/2008/466, Report of the Secretary General on the Situation in Somalia, 16 July 2008

<sup>138</sup> Id. at 35

AMISOM into a UN operation, the Council's failure to timely respond might pose a vexing dilemma for the AU, especially when the AU admittedly has limitations in its management capacity to oversee large-scale operations. This, along with other internal problems, can undermine the role of the AU stabilization force and provide the insurgents the opportunity to drag out and aggravate the crisis.

Another challenge concerns the lack of regular consultations between the UN Security Council and AU Peace and Security Council. Though the AU Peace and Security Council has often expressed a desire to be consulted more regularly on the contents of the UN Security Council resolutions or presidential statements that impact joint endeavors, the experience suggests that there is a long way to go. However it should be noted that the recent UN Security Council visit to Somalia is a step in the right direction for a meaningful cooperative effort. Joint United Nations-African Union experience highlights the need for more informal communication and consultation between the two bodies.

Equally challenging for the efficacy of the stabilization force is the delay on the part of AU member states in contributing troops to AMISOM. This is perhaps one factor for the extended fragile security situation in Somalia. It also appears that the lessons of Somalia in the beginning of 1990s resulted in a distinctive reluctance of African nations to volunteer troops to the AU Stabilization Force. In this respect, Berman and Sams argued that the council's reliance on burden sharing is particularly troubling as concerns Africa, where the

demand for peace keepers is arguably the greatest and the indigenous supply faces the most obstacles.<sup>139</sup>

The proliferation of initiatives and the involvement of many actors, sometimes with competing interests, such as the EU, Arab League, the International Contact Group on Somalia, IGAD, AU, UN, Yemen, Egypt and Sudan, is another serious challenge for the peace support initiative in Somalia. The absence of administrative structures and institutions in Somalia and the existence of underground residual elements of the Union of Islamic Courts are also challenges that need to be overcome to make the peace support initiative a success.<sup>140</sup>

UN experience in Somalia has affected the UN's approach to the division of labor with regional organizations in the management of international security.<sup>141</sup> Its enforcement operation back in the 90s made the UN wary of operating multidimensional peace missions. UN's reluctance to deploy UN peacekeeping operations demonstrate how much its earlier experience adversely affected the political will of many Western Europeans and Americans to commit themselves for UN peacekeeping in Somalia. The wait and see approach of the Security Council in African conflicts was practically demonstrated by the Security

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<sup>139</sup> Eric G. Berman and Katie E. Sams, *The Peacekeeping Potential of African Regional Organizations*, In Jane Boulden, *DEALING WITH CONFLICT IN AFRICA: THE UNITED NATIONS AND REGIONAL ORGANIZATIONS*, Palgrave Macmillan, 35, 44-45

<sup>140</sup> See Supra note 123 at para. 31

<sup>141</sup> Margaret A. Vogt, *Regional arrangements, The United Nations and Security in Africa*, *INTERNATIONAL SECURITY MANAGEMENT AND THE UNITED NATIONS*, United Nations University Press, 1999, 295, 307

Councils' increasing application of political considerations rather than security and humanitarian needs in intervening in African conflicts.<sup>142</sup>

### 5.2.2 The Case of Democratic Republic of Congo (DRC)

The war in the Democratic Republic of Congo (DRC) is considered as one of the worst humanitarian crises since World War II.<sup>143</sup> The International Rescue Committee estimates that the conflict and humanitarian crisis in DRC have caused 5.5 million deaths since 1998.<sup>144</sup> The DRC crisis also involved many external actors, including its neighboring states.

The DRC crisis can be traced back to the colonial period, and thereafter in the political situation after independence.<sup>145</sup> Post colonial DRC (formerly known as Zaire) under the late President Mobutu SeseSeko is characterized by a lack of national cohesion where several of its border towns such as, the mineral rich Goma, essentially becoming economic appendages of its neighboring African countries.<sup>146</sup> The ethnic makeup and tension in the Great Lakes region<sup>147</sup> where DRC is located further made the states' relations in the Great Lakes region somewhat unstable.<sup>148</sup>

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<sup>142</sup> Charles RizikiMajinge, *The Future of Peacekeeping in Africa and the Normative Role of the African Union*, GOETTINGEN JOURNAL OF INTERNATIONAL LAW, 2 (2010) 2, 463, 466

<sup>143</sup> IosifKovras, *UN's Moral Responsibility in the Spill-Over of Genocide from Rwanda to the Democratic Republic of Congo*, 19 AFR. J. INT'L & COMP. L. 145 (2011), 147

<sup>144</sup> International Rescue Committee, Congo Crisis, available at <http://www.rescue.org/> (Last visited, 10 October 2014)

<sup>145</sup> Francois Van As, *African Peacekeeping Past Practices, Future Prospects and its Contribution to International Law*, 45MIL. L & L WAR REV, (2006),329, 333

<sup>146</sup> DR Congo: Conflict Profile, published by Peace Direct

<sup>147</sup> The Great Lakes Region is made-up of Uganda, Rwanda, Burundi, Tanzania, and DRC.

<sup>148</sup> H. Mathee, *Central African Military Intervention in the 1990s: The Case of the DRC*, in DU PLESSIS AND HOUGH op cit, 254

The current DRC crisis is the product of three overlapping conflicts which are more complex than a competition over mineral resources, involving ethnic conflict over land, autocratic rule, citizenship and local political power.<sup>149</sup>

The first conflict started in 1996, and it ended up with the overthrow of late President of Zaire Mobutu SeseSeko in 1997.<sup>150</sup> The beginning of this conflict is closely connected to the Rwanda genocide in 1994, where the Tutsi led Rwandese government invaded DRC in pursuit of extremist Hutu militias that instigated the slaughtering of over 800,000 Tutsis in Rwanda.<sup>151</sup> Note that president Mobutu let the Hutu Interahamwe militia, which was responsible for the Rwanda genocide, to regroup in the eastern part of Zaire under the pretext of hosting refugee camps.<sup>152</sup> The Rwandan government which was upset with President Mobutu's complacency provided support to the Congolese Rebels, known as the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL).<sup>153</sup> Supported by Rwanda, AFDL used the opportunity to overthrow the late President Mobutu SeseSeko and they installed the late President Laurent Kabila in 1997.<sup>154</sup> Kabila then renamed the country as Democratic Republic of Congo (DRC), which was formerly known as Zaire.<sup>155</sup>

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<sup>149</sup> Kovras, *Supra* note 143 at 145

<sup>150</sup> *Id*

<sup>151</sup> H. Dashwood, *Mogabe, Zimbabwe, and Southern Africa: The Struggle for Leadership*, INTERNATIONAL JOURNAL (Winter 2001-2002), 80

<sup>152</sup> *Id*

<sup>153</sup> *Supra* note 146

<sup>154</sup> *Id*: Uganda and Rwanda helped Kabila because they wanted to secure their borders against rebel attacks.

<sup>155</sup> United Nations, MONUSCO Background, available at <http://www.un.org/en/peacekeeping/missions/monusco/background.shtml>, (Last visited 09/20/2014)

The second conflict signified the end of the late Congolese President Laurent Kabila's dependence on Rwanda and Uganda.<sup>156</sup> This happened in 1997 after President Kabila's former allies, i.e. Uganda<sup>157</sup> and Rwanda, started backing DRC rebels, the Congo Liberation Movement (CLM) and the Congolese Rally for Democracy (CRD) respectively, following a rift between Kabila and the two former allies.<sup>158</sup>

A third conflict running concurrently and continuing to the present is taking place in the country's eastern provinces between armed factions.<sup>159</sup> The competition among armed groups for control of minerals, notably gold and cassiterite, has been a major factor in this conflict.<sup>160</sup> The fact that the mineral resources in eastern DRC are controlled by rebel groups has played a significant role in financing the violence.<sup>161</sup>

DRC has effective control only on part of its territory.<sup>162</sup> Vast areas of the North, some provinces in the South around Katanga and large areas of the east are either of dubious loyalty or are under the control of micro-level regional players that may or may not be loyal to Kinshasa.<sup>163</sup> The difficult geographical terrain, and the involvement of multiple external actors conducting proxy war

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<sup>156</sup>Kovras, Supra note 143

<sup>157</sup> During the same period the Ugandan government was fighting against the insurgent groups supported by Sudan and operating from DRC. See *Africa Confidential*, May 9, 1997, 1, 5-6

<sup>158</sup> Supra note 146: Rwanda rejected Kabila's demands of removing the Rwandan forces from DRC because the Interahamwe continued to use eastern DRC as a base. Rwanda further claimed that Kabila was supporting the Rwandese rebels, which Kabila denied. Uganda was mainly concerned about Ugandan dissidents using northern DRC as a springboard to launch attacks against Uganda.

<sup>159</sup>Kovras, Supra note 143

<sup>160</sup>Ruben De Koning, *Controlling Domestic Resources in the Democratic Republic of the Congo*, SPIRI POLICY BRIEF, July 2010

<sup>161</sup> Id

<sup>162</sup> Paul Jackson, *Regional Security in Sub-Saharan Africa*, COMPARATIVE REGIONAL SECURITY GOVERNANCE, 2012, 117

<sup>163</sup> Id

worsened the security situation in DRC.<sup>164</sup> Local, national and regional forces, including forces from neighboring countries, are involved in the DRC conflict.<sup>165</sup>

Though DRC had its first free elections in 2006 which brought President Joseph Kabila in power, the situation on the ground remained fragile.<sup>166</sup> The competition for the plunder of mineral resources among various armed groups has remained a central reason for the continued violence and the fragile situation in DRC.<sup>167</sup> The crisis in DRC not only resulted in the collapse of the state but the UN considered it as a threat to regional peace and security.<sup>168</sup>

#### **A. UN, AU & SADC on the DRC Crisis**

AU's predecessor, the Organization of African Unity, first got involved in the DRC crisis in 1996 when it reacted to the silence of the UN Security Council at the regional summit organized in Nairobi, Kenya.<sup>169</sup> However, OAU was not prepared to handle the DRC crisis of this magnitude because of its structural weakness combined with its shortfall of resources needed to support this type of initiative in the DRC. While recognizing the need for a continuing process of genuine national Reconciliation in DRC, the UN Security Council called upon AU's predecessor, OAU, to help all the Congolese in organizing a national

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<sup>164</sup> Id

<sup>165</sup> Id

<sup>166</sup> Supra note 146

<sup>167</sup> Id

<sup>168</sup> Kovras, Supra note 143

<sup>169</sup> T. Murithi, *Towards a Symbiotic Partnership: The UN peace building commission and the evolving African Union/NEPAD Post-Conflict Reconstruction Framework*, A DIALOGUE OF THE DEAF: ESSAYS ON AFRICA AND THE UNITED NATIONS, (Johannesburg: Jacana, 2006), 243

dialogue and to finalize agreement on the facilitator for a national dialogue.<sup>170</sup> OAU's involvement in the DRC crisis was, therefore, limited at the beginning.

This provided a vacuum for SADC's involvement in DRC. Nevertheless, SADC was not initially forthcoming to get involved in the DRC crisis. DRC, Angola and Zimbabwe intentionally avoided the discussion of the DRC crisis at the monthly meeting of SADC Inter-State Defense and Security Committee (ISDSC) by not sending their delegates to the meeting.

After a while, only Defense ministers of Angola, Zambia, Namibia and Zimbabwe met in Harare and agreed that SADC will support DRC's government to ensure its survival.<sup>171</sup> The SADC defense Ministers decided to intervene in the DRC with a view to secure DRC's sovereignty, restoring its law and order, and protect the government of Kabila which the Ministers consider as legitimate.<sup>172</sup> However the ISDSC did not have a mandate to make such a decision. More so, there were only four SADC member states present at the August ISDSC 1998 meeting.<sup>173</sup> Paradoxically, President Mugabe of Zimbabwe, who was the then chair of SADC, announced on behalf of SADC that it was unanimously agreed that military aid should be sent to secure Kabila's position.<sup>174</sup>

This decision was opposed by South Africa, which is a SADC member and the hegemonic power in Southern Africa, on the ground that military

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<sup>170</sup> S/RES/1279 (1999), 30 November 1999

<sup>171</sup> Y. Bangura, *Comments on Regional Security and the War in Congo*, in MandazaIbbo, ed, REFLECTIONS ON THE CRISIS IN THE DEMOCRATIC REPUBLIC OF CONGO (Harare, Southern African Regional Institute for Policy Studies, 1999), 27-8

<sup>172</sup> Majinge, *Supra* note 142 at 482

<sup>173</sup> K. Sams, and Berman E., PEACEKEEPING IN AFRICA: CAPABILITIES AND CULPABILITIES, United Nations Publication, (UNIDIR/ 2000/3), 177-8

<sup>174</sup> *Id*

intervention is not the right approach to resolve the crisis in DRC.<sup>175</sup> Such position is perhaps understandable given its geographical distance from DRC and lack of any particular interest in DRC. The attitude of South Africa in the DRC conflict opened a floodgate of interventions by other states with stakes. Noteworthy is the military interventions of the three SADC member states, i.e. Zimbabwe, Namibia and Angola. Their military interventions under a Mutual Defense Pact on the one hand and South Africa's attempt to maintain neutrality deeply polarized SADC.<sup>176</sup> The other SADC members chose to remain silent following the foregoing decision by SADC. SADC was, therefore, divided in its initial response.<sup>177</sup>

Another challenge for SADC to devise a strategy of its own to help DRC was the fact that none of the Great Lakes countries are members of SADC.<sup>178</sup>

Interestingly, South Africa shifted its position in September 1998, and declared that military intervention in DRC is reasonable at the mini SADC Summit in Durban, South Africa.<sup>179</sup> However South Africa made it clear that it would not send troops to DRC.<sup>180</sup>

Though Zimbabwe, Namibia and Angola invoked alliance claims under SADC Treaty, their military intervention was outside SADC's institutional

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<sup>175</sup> Id

<sup>176</sup> Van As, *Supra* note 145 at 333

<sup>177</sup> Jane Boulden, (ed.), *RESPONDING TO CONFLICT IN AFRICA: THE UNITED NATIONS AND REGIONAL ORGANIZATIONS*, May 2013, 65

<sup>178</sup> Institute of Security Studies, *PEACE SECURITY AND COOPERATION FRAMEWORK FOR THE DRC: HOPES AND CHALLENGES*, 8 March 2013

<sup>179</sup> Dashwood, *Supra* note 151 at 84-87

<sup>180</sup> Id

framework.<sup>181</sup> However, the intervention played an important role in protecting the DRC capital, Kinshasa, against advancing rebel forces.<sup>182</sup> Even though SADC Summit did not initially approve the intervention in DRC, it subsequently adopted a declaration welcoming this SADC initiative and commending Angola, Namibia and Zimbabwe for providing troops to assist the peace process in DRC.<sup>183</sup> Unfortunately, the OAU did not even try to comment on the interventions in the DRC.

SADC found a common ground in pursuing diplomatic initiatives, led by South Africa, Mozambique and Zambia.<sup>184</sup> This diplomatic effort was supported by OAU and the UN.<sup>185</sup> Months of SADC's diplomatic efforts in the Lusaka peace process led to the signing of the Lusaka Ceasefire Agreement in July 1999.<sup>186</sup> The Agreement provided a road map for the resolution of the conflict in DRC. It basically established the political imperative to hold the Inter-Congolese Dialogue among the DRC government representative, the armed opposition, the political opposition and civil society.<sup>187</sup>

UN's first operation in DRC is traced back to November 30, 1999 when UN authorized the establishment of the UN Observer Mission in DRC (commonly referred to as MONUC), following the signing of the Lusaka Ceasefire

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<sup>181</sup> Van As, *Supra* note 145 at 333

<sup>182</sup> *Id.*

<sup>183</sup> Majinge, *Supra* note 142 at 482-3

<sup>184</sup> Kurt Shillinger, ed., *AFRICA'S PEACEMAKER?: LESSONS FROM SOUTH AFRICAN CONFLICT MEDIATION*, (2010), 70

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> World Movement for Democracy, *A SHORT HISTORY OF THE DEMOCRATIC REPUBLIC OF CONGO AND THE INVOLVEMENT OF NGOS IN THE PEACE PROCESS*, available at <http://www.wmd.org/resources/whats-being-done/ngo-participation-peace-negotiations/history-conflict-democratic-republic>, (Last visited 08/12/2014)

Agreement between DRC and five regional States, i.e. Angola, Namibia, Rwanda, Uganda and Zimbabwe.<sup>188</sup>

MONUC's initial mandate was to oversee the key components of the Lusaka peace agreement, including the observation of the ceasefire and disengagement of forces and to maintain liaison with all parties to the Ceasefire Agreement.<sup>189</sup> However MONUC's mandate changed over the course of time. In 2000, the UN Security Council expanded MONUC's mandate to "facilitate humanitarian assistance and human rights monitoring, with particular attention to vulnerable groups including women, children, and demobilize child soldier."<sup>190</sup>

Despite the continued violence in DRC, the implementation of the Lusaka Peace Agreement was continuously missed.<sup>191</sup> Whilst the majority of Kabila's Southern African allies withdrew, rebel groups remained active in the four Eastern provinces of South Kivu, North Kivu, Ituri, and Maniema. In 2004 Rebel fighting in the region intensified and widespread riots began in protest in response to the UN's failure to act.

As a reaction to this development, the UN Security Council expanded MONUC's mandate to include to protecting civilians, humanitarian and UN personnel, to discourage violence using force, if necessary, and to allow UN

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<sup>188</sup> Jakkie Cilliers & Mark Malan, *PEACE KEEPING IN DRC: MONUC AND THE ROAD TO PEACE*, 2001, Institute of Security Studies, available at <http://www.issafrica.org/publications/monographs/monograph-66-peacekeeping-in-the-drc.-monuc-and-the-road-to-peace-jakkie-cilliers-and-mark-malan>, (Last visited 06/10/2011)

<sup>189</sup> S/RES/1279 (1999), 30 November 1999

<sup>190</sup> S/RES/1291 (2000), 24 February 2000

<sup>191</sup> Supra note 187

personnel to operate freely, particularly in the eastern part of DRC.<sup>192</sup> MONUC also increased its personnel for the discharge of this mandate.<sup>193</sup>

This led to the next phase under which MONUC was mandated relating to the transition and organization of elections in DRC.<sup>194</sup> Following the 2006 election in DRC, MONUC's mandate was redefined with changes evolving on the ground. The UN Secretary General identified the following as pillars for the revised task:

Assist the government of the DRC in (a) building a stable security environment, (b) consolidating democracy, (c) planning security sector reform and participating in its early stages, (d) protecting human rights and strengthening the rule of law, (e) contribute actively, if requested to do so by the government, to the coordination of international assistance.<sup>195</sup>

Given its importance for governance and the future stability for DRC, MONUC gave priority to the Security Sector Reform in DRC.<sup>196</sup> In terms of implementing this mandate, the UN Security Council advocated for a national approach and a nationally owned process in pursuing the Security Sector Reform.<sup>197</sup>

Despite the February 25, 2008 decision to reform the armed forces and the national Congolese police under the Security Sector Reform, MONUC fell short of achieving this important objective of the Mission. Terrie attributed this to the lack of a "doctrinal based campaign plan that clearly identified the role and

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<sup>192</sup> S/RES/1565 (2004), 1 October 2004

<sup>193</sup> Id

<sup>194</sup> S/RES/1621 (2005), 6 September 2005

<sup>195</sup> S/2007/156, Twenty-Third Report of the Secretary General on the United Nations Organizations Mission in the Democratic Republic of Congo, 20 March 2007

<sup>196</sup> N. Dahrendorf, , THE CASE OF THE DRC (2007), MONUC AND THE RELEVANCE OF COHERENT MANDATES, 4

<sup>197</sup> S/PRST/2007/3, Statement by the President of the Security Council, 21 February 2007

task of its military forces in achieving the wider objectives of the mission.”<sup>198</sup> The lack of capacity of the DRC armed force, the continued proliferation of arms further made the accomplishment of MONUC’s mission difficult.

In early 2007, MONUC undertook the task of coordinating demilitarization and reintegration of foreign groups.<sup>199</sup> MONUC’s task under this phase included ensuring the total withdrawal of foreign groups from the Congolese territory under the Disarmament, Demobilization, and Reintegration system (DDR).<sup>200</sup> MONUC established temporary reception center where combatants could surrender their weapon to be destroyed by MONUC.<sup>201</sup> MONUC repatriated about 14,100 soldiers during this process.<sup>202</sup>

MONUC had implemented multiple political, military, rule of law and capacity-building tasks as mandated by the UN Security Council resolutions.<sup>203</sup> MONUC also endeavored to help the resolution of ongoing conflicts in various DRC provinces.<sup>204</sup>

MONUC remained on the ground until it was renamed and transformed into United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (DRC MONUSCO) in July 2010. Such transformation was triggered by the need to overcome the challenges ensuing from DRC entering into a new phase of its transition towards peace consolidation.<sup>205</sup> MONUSCO is given

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<sup>198</sup> J. Terry, , *The Use of Force in UN peacekeeping: The Experience of MONUC (2009)*, AFRICAN SECURITY REVIEW, 18, 28

<sup>199</sup> Dahrendorf, Supra note 196 at 10

<sup>200</sup> S/200/1970, 9<sup>th</sup> Report of the UN Secretary General on MONUC

<sup>201</sup> Id

<sup>202</sup> Dahrendorf, Supra note 196 at 10

<sup>203</sup> United Nations, Supra note 155

<sup>204</sup> Id

<sup>205</sup> S/Res/1925 (2010), 28 May 2010

an additional power to use all means necessary to carry out its mandate relating to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Government of the DRC in its stabilization and peace consolidation efforts.

The UN Security Council duly recognized the linkage between “the illicit exploitation and trade of natural resources and the proliferation and trafficking of arms is among the major factors fuelling and exacerbating conflicts in the Great Lakes region”.<sup>206</sup> In establishing MONUSCO, the UN Security Council expressed its serious concern over the humanitarian and human rights situation in the areas affected by armed conflicts in DRC, especially the targeted attacks against the civilian population, the widespread sexual violence, the recruitment and use of child soldiers and extrajudicial executions.<sup>207</sup>

UN Security Council authorized MONUSCO a maximum of 19,815 military personnel, 760 military observers, 391 police personnel and 1,050 personnel of formed police units.<sup>208</sup> This was in addition to the civilian, judiciary and correction components.<sup>209</sup> The Intervention Brigade of MONUSCO is a more aggressive kind of force which is mandated to use military force to restore peace and security under Chapter VII of the UN Charter.<sup>210</sup> This mandate allows the Intervention Brigade to conduct offensive operations in the protection of civilians.<sup>211</sup>

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<sup>206</sup> S/Res/1925 (2010), 28 May 2010

<sup>207</sup> Id

<sup>208</sup> Id

<sup>209</sup> Id

<sup>210</sup> S/Res/2078 (2012), 28 November 2012

<sup>211</sup> Security Council Report, July 2013 Monthly Forecast: Africa, Democratic Republic of Congo, available at

A technical committee was also established to define the regional benchmarks anticipated under the UN Security Council Resolution 2098 (2012).<sup>212</sup> MONUSCO strongly feels that only good army could address the problem by armed forces.<sup>213</sup> Hence its underlying emphasis is working on the Security Sector Reform, which would help DRC to have its own strong army.<sup>214</sup>

MONUSCO has been playing an important role in coordination with the DRC army for the restoration of state authority in the areas previously controlled by the rebellion.<sup>215</sup> The restoration of state authority in the areas previously controlled by March 23 (M23) rebellion is worth mentioning in this regard.<sup>216</sup>

The continued cycle of conflict and persistent violence by Congolese and foreign armed groups in eastern DRC led into the signing of the Addis Ababa Peace, Security and Cooperation Framework for the DRC and the Region on February 24, 2013.<sup>217</sup> The Movement of March 23 (M23) rebel group plunged the eastern DRC in chaos, which was perhaps the immediate triggering factor for the negotiation of the Framework.<sup>218</sup> This Framework was signed by ten

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[http://www.securitycouncilreport.org/monthly-forecast/2013-07/democratic\\_republic\\_of\\_the\\_congo\\_2.php](http://www.securitycouncilreport.org/monthly-forecast/2013-07/democratic_republic_of_the_congo_2.php), (Last visited 09/13/2013)

<sup>212</sup>Id

<sup>213</sup>Press briefing by Martin Kobler, Special Representative of the UN Secretary General for the Democratic Republic of Congo and Head of MONUSCO, on the situation in the Democratic Republic of Congo, 13 January 2014, available at <http://webtv.un.org/search/martin-kobler-monusco-on-democratic-republic-of-the-congo-security-council-media-stakeout-13-january-2014/3049463582001?term=drc>, (Last visited 03/09/2014)

<sup>214</sup> Id

<sup>215</sup> PSC/PR/COMM.2(CDVI), Communiqué of the AU Peace and Security Council, 406<sup>th</sup> Meeting, 13 November 2013

<sup>216</sup> Id

<sup>217</sup> Peace, Security and Cooperation Framework for the Democratic Republic of Congo and the region, 24 February 2013, available at <http://www.peaceau.org/en/article/peace-security-and-cooperation-framework-for-drc-and-the-region-signed-in-addis-ababa#>, (Last visited 03/10/2013)

<sup>218</sup>Institute for Security Studies, PEACE, SECURITY AND COOPERATION FRAMEWORK FOR THE DRC: HOPES AND CHALLENGES, 8 March 2013

countries, namely DRC, Central African Republic, Angola, Burundi, the Republic of Congo, Rwanda, South Africa, South Sudan, Uganda, Zambia and Tanzania.<sup>219</sup>

The UN, AU, SADC and the International Conference on the Great Lakes Region signed the Framework as witnesses. These organizations put their efforts together for the signing of the Framework though UN led the initiative.<sup>220</sup>

The Addis Ababa Framework describes the extent of the conflict and the violence as follows: The consequences of this violence have been nothing short of devastating. Acts of sexual violence and serious violations of human rights are used regularly and almost daily as weapons of war. Displacement figures are among the highest in the world and persistently hover near two million people. The implementation of the country's reconstruction, security sector reform and poverty alleviation program is regularly disrupted.<sup>221</sup>

The countries of the region recognized that the path followed thus far was untenable and the Framework Agreement is meant to address the root causes of the conflict.<sup>222</sup>

The Addis Ababa Framework provided the principles of engagement among the countries of the region and the international community at large, including the UN Security Council. As far as the UN Security Council is concerned, the Framework provides that the Security Council would remain seized of the importance of supporting the long-term stability of DRC and the

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<sup>219</sup> Peace, Security and Cooperation Framework for the Democratic Republic of Congo and the region, 24 February 2013

<sup>220</sup> Institute for Security Studies, PEACE, SECURITY AND COOPERATION FRAMEWORK FOR THE DRC: HOPES AND CHALLENGES, 8 March 2013

<sup>221</sup> Supra note 217 at para.3

<sup>222</sup> Id

Great Lakes region.<sup>223</sup> It also anticipates a strategic review of MONUSCO with a view to supporting DRC to address security challenges and extend state authority.<sup>224</sup> The Framework further provided an oversight mechanism for the proper implementation of the Framework under which the signatories, UN, AU and SADC could work together.<sup>225</sup>

In February 2013, the SADC Summit, which called for a peaceful and durable resolution of the conflict in eastern DRC, decided to deploy a peace-keeping force in DRC.<sup>226</sup> This decision challenged existing peace-keeping procedure and could have far-reaching consequences for all future peace-keeping operations.<sup>227</sup>

## **B. Challenges Encountered**

The complexity of the conflict in DRC made the UN mission long and very expensive.<sup>228</sup> It is not an easy venture to evaluate the success of the UN operation in DRC given the complexity of the problem in a vast country like DRC. The UN was clearly slow in initially responding to the DRC crisis. It took the UN over three years to authorize the deployment of peacekeeping force in DRC reflecting the strategic marginality of the African continent. This is not to undermine the important role the UN has been playing in the maintenance of

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<sup>223</sup> Id

<sup>224</sup> Id

<sup>225</sup> Id at para.7

<sup>226</sup> Garth Cilliers, BRAVE MOVE BY SADC FOR DRC PEACE KEEPING MAKES HISTORY DRC PEACE MISSION CHALLENGES EXISTING PEACE-KEEPING PROCEDURE, 26 February 2013

<sup>227</sup> Id

<sup>228</sup> 6<sup>th</sup> Report of House of Commons International Development Committee, Conflict and Development: Peace Building and Post-conflict Reconstruction, 2005-6, 113

peace and security in DRC since the late 90s but to emphasize on the importance of timely response to mitigate the damages.

Though MONUC's initial role was limited to monitoring the implementation of the Lusaka Agreements, its mandates progressively expanded to include intervention and assistance. UN has also been involved in the reconstruction of DRC by assisting this war ravaged country in the establishment of rule of law, Security Sector Reform and the improvement of human rights.

Though UN has the largest peacekeeping in the DRC, it has not done enough to addressing the root causes of the conflict, especially the unlawful exploitation of mineral resources, which still put the security situation in eastern DRC fragile. Among other things, the absence of credible political process and the international community's selective and inconsistent engagement adversely impacted on the effectiveness of the UN.<sup>229</sup>

As articulated by Ricci, the lack of familiarity with the environment and the culture of the population also attributed for MONUC's inefficiency. Inadequate financial resources and inadequate number of peacekeepers given the vast size of DRC also attribute to MONUC's inefficiency.<sup>230</sup>The challenges, facing the mission include inadequate financial resources and the inadequate number of peacekeepers who are too few, given the vast size of DRC.

The Addis Ababa Peace, Security and Cooperation Framework recognized this shortcoming of the UN operations in DRC. The proper

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<sup>229</sup> The Perils of Peacekeeping without Politics, MONUC and MONUSCO in the DRC, Rift Valley Institute Briefing, 18 April 2013

<sup>230</sup>Majinge, Supra note 142 at 467

implementation of the Framework, which is perhaps designed to address the root causes of the problem in DRC, is critical to realize the security objectives of the UN. The appointment of Mary Robinson as a special representative of the UN Secretary General in DRC helps a lot to facilitate cooperation among international actors and more importantly in the implementation of the Addis Ababa Peace, Security and Cooperation Framework.

Given the track record in the region where implementation of previous peace agreements regarding DRC crisis was a serious problem, the implementation of the Framework has already encountered some challenges. These include:

(i) the continued presence of negative forces in eastern DRC, including the Democratic Forces for the Liberation of Rwanda (FDLR); (ii) the delay in the implementation of the Conclusions of the Kampala Direct Dialogue between the DRC Government and the M23, as contained in their statements adopted in Nairobi on 12 December 2013; (iii) the illegal exploitation of natural resources in eastern DRC; and (iv) the persistence of impunity despite the reforms that the Congolese Government is endeavouring to bring about.<sup>231</sup>

The fact that the Framework is vague would further put some doubt on the genuine commitment of the signatories to address the root causes of the DRC crisis. Moreover the involvement of multiple actors in the implementation of the Framework may adversely impact on the smooth implementation of the

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<sup>231</sup> PSC/PR/COMM/(CDLII), Communiqué of the Peace and Security Council, 452<sup>nd</sup> Meeting, 22 August 2014, 1

Framework. Yet one should remain optimistic taking into account the positive steps thus far taken towards the implementation of the Framework. UN should therefore assert its leadership role if sustainable peace is to be achieved in DRC.

### **5.2.3 The Case of Liberia**

In 1989, a civil war broke out in Liberia following a fraudulent election under President Samuel Doe's regime.<sup>232</sup> This resulted in the collapse of the Liberian government and a major humanitarian crisis with a high refugee influx that threatened the security of the sub-region.<sup>233</sup> In July 1990, President Doe requested for the deployment of ECOWAS peacekeeping force alleging that the rebellion led by Charles Taylor's National Patriotic Front would devastate the entire sub-region.<sup>234</sup>

#### **A. UN and ECOWAS on Liberia Crisis**

ECOWAS member states were initially divided on how to respond to this call. Whereas Nigerian President Ibrahim Babangida, who is a personal friend of President Doe, favored military intervention, the two leading Francophone states in ECOWAS, i.e. Cote d'Ivoire and Burkina Faso, expressed support to Taylor's rebellion and opposed ECOWAS' intervention in Liberia.<sup>235</sup> ECOWAS heads of state and government formed a Standing Mediation Committee composed of Nigeria, Gambia, Ghana, Mali and Togo to identify a peaceful

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<sup>232</sup>HilaireMcCoubrey & Justin Morris, *Regional Peacekeeping in the Post-Cold War Era*, KLUWER LAW INTERNATIONAL, 2000, 141

<sup>233</sup> Id at 141-2

<sup>234</sup> Coleman, *Supra* note 86 at 75

<sup>235</sup> Id

solution to the crisis in Liberia.<sup>236</sup> The committee's initial attempt to negotiate a ceasefire did not succeed because of President's Doe's refusal to step down.<sup>237</sup> The rebel leader, Taylor, on the other hand aspired to gaining ground and political power.<sup>238</sup>

In July 1990, the ECOWAS Sub-Committee on Defense convened a two days meeting in Sierra Leone and drew up a plan for military intervention force in Liberia.<sup>239</sup> On August 7, 1990, the ECOWAS Standing Mediation Committee met and adopted the ECOWAS Peace Plan for Liberia.<sup>240</sup> Accordingly it established an ECOWAS Military Observer Group (ECOMOG) to help resolve the internal armed conflict in Liberia on August 7, 1990.<sup>241</sup> The Committee further made a call for an immediate cessation of hostilities and deployed ECOWAS Ceasefire Monitoring Group (ECOMOG, and codenamed Operation Liberty by Nigeria) on August 24, 1990.<sup>242</sup>

Despite the resistance from some ECOWAS member states, the ECOWAS Authority ultimately not only endorsed the ECOWAS SMC peace plan but also considered it as a "timely initiatives taken on behalf of the entire

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<sup>236</sup> David Wippman, *Enforcing the Peace: ECOWAS and the Liberian Civil War*, in Lori Fisler Damrosch, Ed., *ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS*, 157 - 203 New York: Council on Foreign Relations, 1993

<sup>237</sup> Natalie Brown, *ECOWAS AND THE LIBERIA EXPERIENCE: PEACEKEEPING AND SELF PRESERVATION*, US Department of State, *Small Wars Journal*, 9

<sup>238</sup> Id

<sup>239</sup> Clement E. Adibe, *The Liberian Conflict and the ECOWAS-UN Partnership*, *THIRD WORLD QUARTERLY*, Vol. 18 No. 3, 1997, 471-488

<sup>240</sup> Id.

<sup>241</sup> Comfort Ero, *ECOWAS and the Subregional Peacekeeping in Liberia*, *The Journal of Humanitarian Assistance*, 25 September 1995

<sup>242</sup> Coleman, *Supra* note 86 at 73

community'.<sup>243</sup> This after the fact unanimous endorsement was made at an emergency meeting in November 1990 following the killing of President Doe.<sup>244</sup>

ECOMOG was originally mandated to arrange and supervise a cease-fire in Liberia to be followed by the establishment and sustenance of an interim government leading to democratic elections within twelve months.<sup>245</sup> Its role shifted into that of enforcement after the rival forces murdered President Doe few weeks after ECOMOG's arrival in Liberia which left a governmental power vacuum.<sup>246</sup> The hostile reception from the rebel army in Liberia is an important factor that triggered the need for ECOMOG's peace enforcement mandate.<sup>247</sup> It was the first peace enforcement operation by an African sub-regional organization.<sup>248</sup>

ECOWAS neither sought nor obtained the UN mandate to take enforcement action in Liberia.<sup>249</sup> The Standing Mediation Committee (SMC) that established ECOMOG only sought international financial support for the intervention.<sup>250</sup> In a letter addressed to the UN Secretary General two days after ECOMOG's creation, Nigeria's Minister of External Affairs stated the following:

In view of our shared responsibility for the maintenance of international peace and security, we have no doubt that you will lend your considerable

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<sup>243</sup> ECOWAS Heads of State and Government, Final Communique, Bamako, Mali, 28 November 1990

<sup>244</sup> Daniel Daktori, *Minding the Gap: International Law and Regional Enforcement in Sierra Leone*, 20 FLA. J. INT'L L. 329 (2008), P 335

<sup>245</sup> McCoubrey, Supra note 232 at 142

<sup>246</sup> Id

<sup>247</sup> Coleman, Supra note 86

<sup>248</sup> Id

<sup>249</sup> Id at 77

<sup>250</sup> Mark Weller, ed., REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS, Cambridge International Document Series, 67-70

moral support to the ECOWAS initiative in Liberia. We are also confident that [you will] generously contribute materially towards the attainment of the stated ECOWAS objective in the Republic of Liberia.<sup>251</sup>

This raises a legally contentious issue as to whether ECOWAS intervention is consistent with Article 53 of the UN Charter that requires regional organization to get the UN Security Council authorization for undertaking enforcement actions. Though ECOMOG's initial intervention *strictusensu* goes against the Charter of the UN, ECOWAS attributed the blame on the UN Security Council for its failure to be forthcoming to resolve the Liberian crisis.<sup>252</sup>

Except ECOWAS, other international actors such as UN and OAU did not intervene in Liberia except for an international condemnation of one faction or another by the UN.<sup>253</sup> At the time, the focus of the international community was on the conflicts in the Gulf, former Yugoslavia and Somalia.<sup>254</sup>

Despite calls for UN effective engagement and eventual takeover from ECOWAS of the mission in Liberia, UN was not forthcoming to do so.<sup>255</sup> The Secretary General of the UN wrote to the ECOWAS Chairman that he was "wishing the organization's initiative in Liberia every success".<sup>256</sup> The UN

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<sup>251</sup> Letter from Nigeria's Minister of External Affairs of the Federal Republic of Nigeria to the United Nations Secretary General, 9 August 1990 in Mark Weller, ed., REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS, Cambridge International Document Series, 75-6

<sup>252</sup> Coleman, *Supra* note 86 at 78

<sup>253</sup> Andrea Kathryn Talentino, MILITARY INTERVENTION AFTER THE COLD WAR, Ohio University Press, 2005, 203

<sup>254</sup> Ero, *Supra* note 241

<sup>255</sup> Majinge, *Supra* note 142 at 463

<sup>256</sup> The situation in Liberia, initial proceedings, Decision of 22nd January 1991, (2974 Meeting) Statement of the President, available at [http://www.un.org/en/sc/repertoire/8992/CHAPTER%208/AFRICA/item%2002\\_Liberia.pdf](http://www.un.org/en/sc/repertoire/8992/CHAPTER%208/AFRICA/item%2002_Liberia.pdf) (Last visited 11/03/2013)

Secretary General Boutros BoutrosGhali considered ECOMOG's intervention as a landmark event that heralded 'a new division of labor between the United Nations and regional organizations'.<sup>257</sup>

The UN Security Council had its first deliberation on the Liberian crisis in January 1991 and formally commended the actions of the ECOWAS in May, 1992, characterizing the Yamoussoukro Four Accord as presenting an appropriate framework for the peaceful resolution of the conflict.

It is important to note that the UN Security Council adopted fifteen resolutions between January 1991 and November 1996 on DRC crisis and the President of the UNSC issued nine presidential statements relating to the situation in Liberia and none of these resolutions condemned ECOMOG's intervention.<sup>258</sup> Instead, they commended ECOMOG for its effort; called upon member states to provide financial assistance to this effort; and called upon African states to contribute troops to ECOMOG.<sup>259</sup> For example, In January 1991, the UN Security Council president commended efforts made by the ECOWAS Heads of state and government to promote peace and normalcy in Liberia.<sup>260</sup>

Two years after ECOMOG's intervention, the UN Security Council adopted Resolution 788, determining that the deterioration of the situations in Liberia constitutes a threat to international peace and security, particularly in West Africa as a whole.<sup>261</sup> Through this resolution, the UN Security Council gave

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<sup>257</sup> Coleman, Supra note 86 at 98

<sup>258</sup> Van As, Supra note 145 at 339

<sup>259</sup> Id.

<sup>260</sup> Coleman, Supra note 86 at 99

<sup>261</sup> S/Res/788 (1992), 19 November 1992

formal endorsement to ECOMOG intervention by commending ECOWAS for its efforts to restore peace, security and stability in Liberia.<sup>262</sup> While imposing arms embargo against Liberia, the UN Security Council made exception to arms deliveries destined to ECOWAS forces in Liberia.<sup>263</sup> This is an important step to facilitate ECOMOG's operation in Liberia.

The July 25, 1993 Peace Agreement signed between the three Liberian parties called upon the UN and ECOMOG to assist in the implementation of the Peace Agreement.<sup>264</sup> UN Security Council responded to this call through the adoption of Resolution 866 under which it established the UN Observer Group in Liberia (UNMIL) to be co-deployed with ECOMOG.<sup>265</sup> It became the first peace-keeping mission undertaken by the United Nations in cooperation with a peace-keeping mission already set up by a regional organization.<sup>266</sup> The resolution provides the following as mandates of ECOMOG:

- (a) To receive and investigate all reports on alleged incidents of violations of the cease-fire agreement and, if the violation cannot be corrected, to report its findings to the Violations Committee established pursuant to the Peace Agreement and to the Secretary-General;
- (b) To monitor compliance with other elements of the Peace Agreement, including at points on Liberia's borders with Sierra Leone and other neighbouring countries, and to verify its impartial application, and in particular to assist in the monitoring of compliance with the embargo on delivery of arms and military equipment to Liberia and the cantonment, disarmament and demobilization of combatants;
- (c) To observe and verify the election process, including the legislative and presidential elections to be held in accordance with the provisions of the Peace Agreement;

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<sup>262</sup> Id

<sup>263</sup> Id

<sup>264</sup> S/Res/866 (1993), 22 September 1993

<sup>265</sup> Id

<sup>266</sup> Id

- (d) To assist, as appropriate, in the coordination of humanitarian assistance activities in the field in conjunction with the existing United Nations humanitarian relief operation;
- (e) To develop a plan and assess financial requirements for the demobilization of combatants;
- (f) To report on any major violations of international humanitarian law to the Secretary-General;
- (g) To train ECOMOG engineers in mine clearance and, in cooperation with ECOMOG, coordinate the identification of mines and assist in the clearance of mines and unexploded bombs;
- (h) Without participation in enforcement operations, to coordinate with ECOMOG in the discharge of ECOMOG's separate responsibilities both formally, through the Violations Committee, and informally.<sup>267</sup>

The UN Security Council also endorsed the plan of the UN Secretary-General to conclude an agreement with the Chairman of ECOWAS defining the roles and responsibilities of UNOMIL and ECOWAS in the implementation of the Peace Agreement.<sup>268</sup>

UNOMIL was originally designed to remain unarmed, while ECOMOG troops were to provide security for UNOMIL.<sup>269</sup> By February 1994, UNOMIL was established on the ground with a military, medical, engineering, communication, transportation and electoral component.<sup>270</sup> ECOMOG's mandate in Liberia came to an end on February 2, 1998.<sup>271</sup>

Some key members of the UN Security Council were also in favor of ECOMOG's peace plan. For example, the United States Ambassador to the UN stated the following in support of ECOMOG intervention:

The dispatch of a six nation West African peacekeeping force in 1990 demonstrated unprecedented African determination to take the lead in

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<sup>267</sup> Id

<sup>268</sup> Id

<sup>269</sup> Ero, *Supra* note 241

<sup>270</sup> Id

<sup>271</sup> TapitapiaSanna, *Mandate of ECOMOG ends*, Panafrikan News Agency, 2 February 1998

regional conflict resolution ... we have supported this effort from its inception.<sup>272</sup>

US further complemented ECOWAS mediation efforts as supportive of the UN Security Council goals 'of regional solutions to regional problems'.<sup>273</sup>

The earliest involvement of the Organization of African Unity (OAU) in Liberia crisis came in July 1990 by sending two delegations, i.e. one to Liberia and the second one to countries of the sub-region involved in ECOWAS Standing Mediation Committee.<sup>274</sup> Upon the reports of the delegations, the then OAU Secretary-General Salim Ahmed Salim issued a statement outlining the probable necessity of establishing an OAU formal mechanism for tackling internal conflicts in Africa.<sup>275</sup> However, the Organization of African Unity (OAU) did not intervene in Liberia because of lack of resources and political will reinforced by vivid memories of its perceived failure in Chad in 1981.<sup>276</sup> But it expressed its total support of ECOWAS initiatives in Liberia.<sup>277</sup>

The Organization of African Unity not only endorsed ECOMOG's intervention but also made considerable efforts to legitimize its military intervention.<sup>278</sup> This really helped ECOMOG to generate international legitimacy

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<sup>272</sup> E. Perkins, *UN Security Council Provisional Verbatim Record of the 3138<sup>th</sup> meeting*, in Weller, *THE LIBERIAN CRISIS*, 266

<sup>273</sup> Subcommittee on African Affairs of the US Senate Foreign Relations Committee, Statement by Herman Cohen, Assistant Secretary of State for African Affairs, 27 November 1990.

<sup>274</sup> Bello BasiruGwarzo, *The Press and Foreign Policy: An Examination of the Role of the Nigerian Press in the Government Decision to Intervene in the Liberian Civil War in the 1990*, *AMERICAN INTERNATIONAL JOURNAL OF SOCIAL SCIENCE*, vol. 3 No.3, May 2014 , 106, 112

<sup>275</sup> Id.

<sup>276</sup> Ero, *Supra* Note 241

<sup>277</sup> OAU Council of Ministers, Resolution on the Armed Conflict in Liberia, Addis Ababa, Ethiopia, 1 March 1991, Document 123, M., Weller, (ed), *REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT*, p. 140

<sup>278</sup> Coleman, *Supra* note 86 at 99

for its military intervention in Liberia.<sup>279</sup> OAU's support was consequential in getting endorsement and assistance for ECOWAS' action in the UN Security Council. Moreover OAU appointed Cannan Banana as the Special Representative of the OAU Secretary General to liaise with the UN and ECOWAS in resolving the Liberian crisis.

Acting Executive Secretary of ECOWAS had even claimed that as the Liberian war developed, all along ECOWAS was in touch with the UN, warning that the situation was getting worse, but there was no help forthcoming. Therefore ECOWAS countries decide to act together.

Among ECOWAS member states, Ghana, Guinea, Nigeria and Sierra Leone contributed troops.<sup>280</sup> Other ECOWAS member states and two non-ECOWAS states, i.e. Tanzania and Uganda, also subsequently contributed troops to ECOMOG.<sup>281</sup> However Nigeria which is the strongest sub-regional military power took the lead.

In a short span of time ECOMOG was able to establish control over the capital Monrovia thwarting Taylor's attempt to seize power though unable to save President Doe.<sup>282</sup> Based on its experience in Liberia, ECOWAS member states adopted the 1993 revised ECOWA Treaty which provides for the establishment of peace-keeping or enforcement forces where necessary.<sup>283</sup>

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<sup>279</sup> Id

<sup>280</sup> McCoubrey, Supra note 232 at 142

<sup>281</sup> Id at 143

<sup>282</sup> Coleman, Supra note 86 at 73

<sup>283</sup> McCoubrey, Supra note 232 at 142

The UN Secretary-General, Boutros Boutros-Ghali stated that the situation in 'Liberia represent(ed) a good example of systematic cooperation between the United Nations and regional organisations, as envisaged in Chapter VIII of the Charter.'<sup>284</sup>

One of the challenges of an ad hoc force such as ECOMOG is the lack of joint training that makes their operation a bit difficult. This also holds true for the other peacekeeping operations in Africa.

The division between Anglophone and Francophone within ECOWAS is also another source of problem for ECOWAS to take actions in Liberia.<sup>285</sup> After series of efforts, ECOMOG managed to commence the disarmament of the warring groups in November 1996 and elections were conducted under UN and ECOWAS supervision on 19 July 1997.<sup>286</sup> The rebel leader, Charles Taylor, was elected as president partly because of his threat to renew hostilities unless he is elected as president.<sup>287</sup> Subsequent to the election, UNOMIL and ECOMOG withdrew from Liberia in September and November 1999 respectively.<sup>288</sup>

In 1999 another civil war broke in Liberia which eventually forced President Taylor to relinquish his power and went into exile in Nigeria.<sup>289</sup> Once again, ECOWAS got involved in peacekeeping efforts but with a UN mandate

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<sup>284</sup>C. Shiner, *A disarming start*, AFRICA REPORT, May-June 1994, 64

<sup>285</sup>McCoubrey, Supra note 232 at 142

<sup>286</sup> Id

<sup>287</sup> Coleman, Supra note 86

<sup>288</sup>S/2003/875, Report of the Secretary-General to the Security Council on Liberia, 11 September 2003, para. 3

<sup>289</sup> Coleman, Supra note 86

and with the understanding that UN peacekeeping mission will take over the responsibility.<sup>290</sup>

On June 28, 2003, the UN Secretary-General wrote a letter to the President of the Security Council calling for the deployment of a multinational force, under the lead of a Member State, to reverse Liberia's drift towards total disintegration.<sup>291</sup> Four days later, ECOWAS leader convened a Summit in Dakar and decided to deploy a vanguard force to Liberia to help to stabilize the security situation and facilitate the handover of power by President Taylor.<sup>292</sup>

On August 1, 2003, the UN Security Council adopted resolution 1497 authorizing the establishment of multinational force in Liberia to support the implementation of the June 17, 2003 Ceasefire Agreement.<sup>293</sup> Resolution 1497 enumerates the following as tasks of the multinational force:

establishing conditions for initial stages of disarmament, demobilization and reintegration activities, to help establish and maintain security in the period after the departure of the current President and the installation of a successor authority, taking into account the agreements to be reached by the Liberian parties, and to secure the environment for the delivery of humanitarian assistance, and to prepare for the introduction of a longer-term United Nations stabilization force to relieve the Multinational Force.<sup>294</sup>

The first team of the ECOWAS Mission in Liberia (ECOMIL) was deployed on August 4, 2003.<sup>295</sup> Two weeks after ECOMIL's deployment, a Comprehensive Peace Agreement was signed by the parties in Liberia.<sup>296</sup>

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<sup>290</sup> Id

<sup>291</sup> Report of the Secretary-General, Supra note 288 at para. 10

<sup>292</sup> Id

<sup>293</sup> S/Res/1497 (2003), 1 August 2003

<sup>294</sup> Id

<sup>295</sup> Id.

<sup>296</sup> Id.

On September 19, 2003, the UN Security Council adopted resolution 1509 establishing a stabilization force by the name United Nations Mission in Liberia (UNMIL).<sup>297</sup> UNMIL was mandated to provide support for implementation of the Ceasefire Agreement, support for humanitarian and human rights assistance, support for security reform, and support for implementation of the peace process.<sup>298</sup> The resolution specifically provides for coordination and collaboration with ECOWAS in the discharge of UNMIL mandate.<sup>299</sup>

The UN Security Council further decided that UNMIL would consist of up to 15,000 United Nations military personnel, including up to 250 military observers, and 160 staff officers, and up to 1,115 UN police officers, including formed units to assist in the maintenance of law and order throughout Liberia, as well as the appropriate civilian component.<sup>300</sup> Upon request from the UN Security Council, ECOWAS transferred its peacekeeping duties from its forces, i.e. ECOMIL, to UNMIL on October 1, 2003.<sup>301</sup> In November 2005, Ellen Johnson-Sirleaf was elected as the president of Liberia in what international observers called a free and fair election.<sup>302</sup>

UN and ECOWAS play important role in facilitating a smooth transition towards the free and fair election in the country bringing about a durable peace in

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<sup>297</sup> S/Res/1509 (2003) 19 September 2003

<sup>298</sup> Id

<sup>299</sup> Id, See paragraphs 3(n)-(q)

<sup>300</sup> Id

<sup>301</sup> UNMIL, United Nations Mission in Liberia, See

<http://www.un.org/en/peacekeeping/missions/unmil/background.shtml>

<sup>302</sup> Esther Pan, African Peacekeeping Operations, Council on Foreign Relations, 2 December 2005

Liberia. To borrow the words of President Ellen Johnson-Sirleaf, Liberia is now “celebrating ten consecutive years of peace and progress.”<sup>303</sup>

The UN multinational force deployed in Liberia was mandated to support the transitional government and to assist in the implementation of a comprehensive peace agreement for Liberia.<sup>304</sup> The Peace Agreement declared an immediate end to the war and provided for the establishment of a national Transitional Government in Liberia, in charge of the implementation of the comprehensive peace agreement.<sup>305</sup>

ECOMOG has provided a modicum of security, especially around Monrovia, and its contingents were less prone to human rights abuses than Liberian factions in the civil war.<sup>306</sup> However, ECOMOG’s economic excesses, including black marketeering, theft, looting, and the wholesale exploitation of Liberia’s natural resources, diminished its popular support.

## **B. Challenges encountered**

ECOWAS involvement in Liberia demonstrates the significant role that regional organizations can play in international legal enforcement and offers insights into contemporary conflicts in Africa and elsewhere throughout the world.

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<sup>303</sup> Address by Her Excellency Madam Ellen Johnson Sirleaf to the 68<sup>th</sup> Session of the United Nations General Assembly, 24 September 2013

<sup>304</sup> S/2003/875, Report of the Secretary-General to the Security Council on Liberia, 11 September 2003

<sup>305</sup> Id

<sup>306</sup> Coleman, *Supra* note 86 at 78

ECOMOG's peace enforcement operation is considered as a test case for regional conflict management.<sup>307</sup> It has indeed served as a model for other African organizations considering regional peace enforcement operations.

The problems encountered by ECOMOG include financial constraint, issues of mandating and command and control within ECOMOG and relations between ECOWAS, OAU and UN.<sup>308</sup> The financial burden for ECOWAS operation was primarily shouldered by Nigeria.<sup>309</sup> Few other states such as the United States also provided financial support.<sup>310</sup> Yet ECOWAS suffered financial constraints to finance ECOMOG operations.

It took years for the UN to actively engage and intervene in the Liberian crisis. Given the magnitude of the problem, the situation would have been worse had it not been for the swift actions of ECOWAS that played an important role in stabilizing the situation in Liberia. One popular reason has been the United Nations fear of getting entangled in one more ethnic conflict with its long drawn out problems. This may have informed Javier de Cuellar's initial statements concerning the crisis being a local one.

#### **5.2.4 The Case of Ethiopia/Eritrea War**

Eritrea was a maritime province of Ethiopia since time immemorial. It was separated from Ethiopia by a historical incident in 1885 when Italy occupied coastal positions in Ethiopia. Italy maintained its colonial hegemony in Eritrea

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<sup>307</sup> Id at 73

<sup>308</sup> McCoubrey, Supra note 232 at 142-3

<sup>309</sup> Majinge, Supra note 142 at 476

<sup>310</sup> Id

until 1941. During the colonial period the Eritrean port of Assab played an important role in the relationship between Ethiopia and Italy/Eritrea. The Treaty of 1928 on the use of the Port of Assab by Ethiopia which was signed between Ethiopia and Italy guaranteed a free zone in the Port of Assab and it also envisaged the cession of free port facilities to the former.<sup>311</sup>

After the defeat of Italy in 1941, Eritrea became a mandated territory under British rule until it was finally decided by the UN General Assembly that Eritrea should be federated with Ethiopia.<sup>312</sup> The decision by the Ethiopian Emperor to dissolve the federation and unify Eritrea with Ethiopia in 1961 unleashed the 30 years' war of independence by Eritreans which culminated in the de facto independence of Eritrea in 1991.<sup>313</sup> Almost two years later a referendum was held and Eritrea formally declared its independence with full support of the Ethiopian Government though it turned Ethiopia landlocked.<sup>314</sup>

However Ethiopia, Eritrea and the international community at large were optimistic about the booming cooperation between the two countries following Eritrea's independence. Tekle considered the relationship as one that opened "new chapters in their respective histories".<sup>315</sup>

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<sup>311</sup>Hauria, Commentary: Facts don't start and end at Upsilon, available at [www.geocities.com~dagmawj](http://www.geocities.com~dagmawj)(Last visited 10/20/2013)

<sup>312</sup>Martin Plaut& Patrick Gilkes, *Conflict in the Horn: Why Eritrea and Ethiopia are at War*, BRIEFING PAPER NEWS SERIES, No. 1 March 1999

<sup>313</sup> Id

<sup>314</sup>Andreas Eshete, THE ETHIO-ERITREAN CONFLICT: POLITICAL AND LEGAL DIMENSIONS, A paper presented at a public meeting organized by Law Forum for Peace, UNECA, 9 December 1998, Addis Ababa, Ethiopia

<sup>315</sup>A. Tekle, (Ed)., ERITREA AND ETHIOPIA: FROM CONFLICT TO COOPERATION,1994, The Red Sea Press Lawrenceville, NJ, 1

Immediately after the referendum, Ethiopia and Eritrea entered into cooperation arrangements to cooperate in a number of areas of mutual concern. The Friendship and Cooperation Agreement that was signed in September 2003, for example, provides for cooperation in a number of areas including “preservation of the free flow of goods and services, capital and people; Ethiopia’s continued free access to Eritrea’s sea ports, paying for port services in its currency (the birr); cooperation in monetary policy and continued use of the birr by both countries until Eritrea issued its own currency; harmonization of customs policies; and cooperation and consultation in foreign policy.”<sup>316</sup>

Ethiopia and Eritrea entered into a large-scale and deadly armed conflict in May 1998 under the pretext of a border war. Though the border between Ethiopia and Eritrea was never demarcated, it was not the sole reason for the eruption of the border war between the two countries. The war was rather a culmination of the controversy on trade, fiscal, and access to the sea issues between the two countries. With the introduction of Eritrea’s local currency, known as Nakfa, Ethiopia took a position that the trade between the two countries should be conducted like any international trade through the use of convertible foreign currency. This had a spillover effect on the port fee and port usage.

The war was formally started with Eritrea’s mobilization of the mechanized army to the Ethiopian border town of Badme on 12 May 1998 and

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<sup>316</sup>See The Friendship and Cooperation Agreement between the Transitional Government of Ethiopia and the Government of Eritrea, available in the Archives of the Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia

Ethiopia's statement that Eritrea invaded its sovereign territory on, 13 May 1998.<sup>317</sup>The conflict resulted in the displacement of 1.2 million people.<sup>318</sup>

#### **A. UN and OAU on the Ethiopia-Eritrea conflict**

Immediately after the eruption of the war, United States and Rwanda launched a mediation effort by putting forward a four point peace proposal. This proposal demanded the withdrawal of Eritrean forces from Badme (the flash point of the war) and their redeployment to positions they held before 6 May 1998 and the reconstitution of the civilian administration. While Ethiopia accepted the peace plan, Eritrea rejected it.

The OAU Assembly of Heads of State and Government deliberated on the conflict situation at its 34th Ordinary Session that was held in Ouagadougou, Burkina Faso from June 1-10, 1998.<sup>319</sup> The Summit established a High-Level Delegation consisting of the heads of states of Burkina Faso, Djibouti, Zimbabwe and Rwanda, and the OAU chairperson, to facilitate negotiations between Ethiopia and Eritrea.<sup>320</sup>

On June 26, 1998, i.e. over a month after the war erupted, the UN Security Council made its initial reaction by adopting resolution 1177.<sup>321</sup> While commending the efforts of the OAU for its effort to the peaceful settlement of the conflict, the UN Security Council condemned the use of force, and demanded that

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<sup>317</sup> See Ethiopia's Submission to the Ethiopia Eritrea claims Commission

<sup>318</sup> S/2000/643, Report of the Secretary General on Ethiopia and Eritrea, 30 June 2000

<sup>319</sup> See <http://www.au.int/en/content/ouagadougou-8-10-june-1998-assembly-heads-state-and-government-thirty-fourth-ordinary-session>, (Last visited on 10/28/2013)

<sup>320</sup> Id

<sup>321</sup> S/Res/1177 (1998), 26 June 1998

both parties to immediately cease hostilities and refrain from further use of force.<sup>322</sup>

The OAU then took over the mediation effort and developed an OAU Framework Agreement to guide the peace process between Ethiopia and Eritrea. OAU further elaborated Modalities for the implementation of the Framework Agreement and Technical arrangements.

On January 29, 1999, i.e. about six months after the war erupted, UN Security Council adopted its second resolution expressing its strong support for the mediation efforts of the OAU and for the Framework Agreement as approved by the Central Organ Summit of the OAU Mechanism for Conflict Prevention, Management, and Resolution.<sup>323</sup> The resolution further affirmed that “the OAU Framework Agreement provides the best hope for peace between the two parties.”<sup>324</sup> While welcoming Ethiopia’s acceptance of the Framework Agreement, the UN Security Council calls for cooperation with the OAU and full implementation of the Framework Agreement without delay.<sup>325</sup> The resolution also endorsed the appointment of a UN special envoy to the Horn to bolster the OAU peace initiative.<sup>326</sup> The resolution further urged both Ethiopia and Eritrea to remain committed to the peace process and to abstain from use of military force against each other.<sup>327</sup>

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<sup>322</sup> Id

<sup>323</sup> S/Res/1226 (1999), 29 January 1999

<sup>324</sup> Id

<sup>325</sup> Id

<sup>326</sup> Id

<sup>327</sup> Id

Nine months after the eruption of the war between Ethiopia and Eritrea the UN Security Council determined that the situation between Ethiopia and Eritrea constitutes a threat to peace and security.<sup>328</sup>

Following the outbreak of renewed fighting between Eritrea and Ethiopia, the UN Security Council adopted resolution 1227 on February 10, 1999 condemning both Ethiopia and Eritrea for their recourse to use force.<sup>329</sup> The resolution further called the two countries to immediately halt the hostilities and to resume diplomatic efforts to find a peaceful solution to the conflict.<sup>330</sup>

In May 2000, i.e. two years after the eruption of the war, UN Security Council decided to send a special mission to Eritrea and Ethiopia. The Special mission which was composed of the Ambassadors of the United States of America, France, Mali, Namibia, The Netherlands, Tunisia, and United Kingdom of Great Britain and Northern Ireland.<sup>331</sup> The Security Council Special Mission made two visits to the capitals of the two countries within a span of two days.<sup>332</sup> The Mission also held consultation with officials of the OAU about the status of the Ethiopia/Eritrea peace process and the challenges encountered in pursuing the OAU peace plan.<sup>333</sup> In the wordings of the Special Mission's report, the special mission's understanding of the complexities of the problem grew after the

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<sup>328</sup> S/Res/1227 (1999), 10 February 1999

<sup>329</sup> Id

<sup>330</sup> Id

<sup>331</sup> S/2000/413, Security Council Special Mission Visit to Eritrea and Ethiopia, 9 and 10 May 2000

<sup>332</sup> Id

<sup>333</sup> Id

visit.<sup>334</sup>This signifies the importance of Security Council's closer and timely engagement over the matters on its table.

Immediately after the Security Council's Special Mission visit, a renewed fighting erupted between Eritrea and Ethiopia which triggered the adoption of another Security Council resolution on May 12, 2000.<sup>335</sup>

The resolution recognized that the "renewed hostilities constitute an even greater threat to the stability, security and economic development of the sub-region".<sup>336</sup> Strongly condemning the renewed fighting between the two countries, the Security Council demanded the two countries "the earliest possible reconvening, without preconditions, of substantive peace talks, under OAU auspices, on the basis of the Framework Agreement and the Modalities and of the work conducted by the OAU".<sup>337</sup> Interestingly, the Security Council also decided to meet within 72 hours "to take immediate steps to ensure compliance with this resolution in the event that hostilities continue".<sup>338</sup>

Five days later, the UN Security Council imposed an arms embargo against both Ethiopia and Eritrea under Chapter VII of the UN Charter.<sup>339</sup>The arms embargo was imposed for one unless the UN Secretary-General reports that a peaceful definitive settlement of the conflict has been concluded.<sup>340</sup>The Council

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<sup>334</sup> Id

<sup>335</sup> S/Res/1297 (2000), 12 May 2000

<sup>336</sup> Id

<sup>337</sup> Id

<sup>338</sup> Id

<sup>339</sup> S/Res/1298 (2000), 17 May 2000

<sup>340</sup> Id

also established a special committee composed of member countries of the UN Security Council to ensure compliance with the resolution.<sup>341</sup>

Ethiopia was bewildered by the arms embargo feeling betrayal by its treatment as an aggressor.<sup>342</sup> And it perhaps became the turning point of Ethiopia's relations with the UN over its dispute settlement endeavor.<sup>343</sup> The Ethiopian Parliament condemned the UN Security Council Resolution for the imposition of a provocative arms embargo.<sup>344</sup> This set in a distrust by Ethiopia in the UN's role as a neutral mediator.

This development ignited another round of mediation effort led by the OAU. The OAU facilitated a proximity talk between Ethiopia and Eritrea from 29 May to 10 June 2000 which led into the signing of the Cessation of Hostilities Agreement between the two countries on June 19, 2000.<sup>345</sup> The proximity talk took place under the Chairmanship of Algeria, i.e. the then Chair of the OAU i.e. Algeria.<sup>346</sup> United States and European Union were also involved in the proximity talk. Note that the UN did not directly participate in the proximity talk.<sup>347</sup>

Under the Cessation of Hostilities Agreement, Ethiopia and Eritrea agreed to an immediate cessation of hostilities. They further agreed on the

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<sup>341</sup> Id.

<sup>342</sup> The Ethiopian nationals also expressed their loss of confidence on the United Nations and the Security Council through an open letter addressed to the members of the UN Security Council. The Ethiopians questioned the inherent injustice and double standard reflected in the UN Security Council Resolution 1227 (1999) that imposed arms embargo on both Ethiopia and Eritrea. *See Focus Ethiopia*, Vol. 1 issue, 9 March 1999

<sup>343</sup> Getachew Metaferia, *ETHIOPIA AND THE UNITED STATES: HISTORY, DIPLOMACY, AND ANALYSIS*, Algora Publishing, 2009, 125

<sup>344</sup> FDRE, The House of People's Representatives Resolution 01/1999, On the War of Aggression by Eritrea against Ethiopia.

<sup>345</sup> S/2006/601, 19 June 2000

<sup>346</sup> Id

<sup>347</sup> Id

deployment of a peacekeeping mission by the UN under the auspices of the OAU.<sup>348</sup> The agreement established a temporary security zone along the common borders of the two countries and also defined the mandates of the peacekeeping mission.<sup>349</sup> The mandate included monitoring of cessation of hostilities; monitoring the redeployment of Ethiopian troops; ensuring the observance of the security commitments agreed under the Cessation of Hostilities Agreement; and monitoring the Temporary Security Zone.<sup>350</sup>

The Cessation of Hostilities Agreement also calls upon the UN and OAU to establish a Military Coordination Commission, to be composed of representatives of both parties under the chairmanship of the head of the peacekeeping mission.<sup>351</sup> The primary tasks of the Military Coordination Commission is coordinating and resolving issues relating to the implementation of the mandate of the mission, in particular, military issues arising during the implementation period.<sup>352</sup>

The Cessation of hostilities Agreement provided for the deployment of peacekeeping forces and the creation of a 25 kilometers buffer zone inside the territory of Eritrea. The agreement required Ethiopia to withdraw its troops from positions it occupied after 6 February, which were not under the Ethiopian administration. Eritrea, on the other hand, agreed to settle its troops 25 kilometers away from the Ethiopian settlements. The agreement further envisaged the

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<sup>348</sup> Id

<sup>349</sup> Id

<sup>350</sup> Id

<sup>351</sup> Id

<sup>352</sup> Id

formation of a military coordination commission to facilitate the settlement of a peacekeeping mission and monitor the implementation of the agreement.

On July 31, 2000, the UN Security Council adopted resolution 1312 (2000) establishing the United Nations Mission in Ethiopia and Eritrea (UNMEE) consisting of up to 100 military observers and the necessary civilian support staff until 31 January 2001, in anticipation of a peacekeeping operation subject to future Council authorization.<sup>353</sup> The resolution mandated UNMEE to establish and maintain liaison with Ethiopia and Eritrea; to visit their military headquarters and other units in all areas of operation of the mission deemed necessary by the UN Secretary-General; to establish and put into operation the mechanism for verifying the cessation of hostilities; to prepare for the establishment of the Military Coordination Commission, and to assist in planning for a future peacekeeping operation as necessary.<sup>354</sup>

On September 15, 2000, the UN Security Council authorized the deployment within UNMEE of up to 4,200 troops, including up to 220 military observers.<sup>355</sup> The Security Council broadened UNMEE's mandate under resolution 1320.

UNMEE's mandate included monitoring the cessation of hostilities; assist, as appropriate, in ensuring the observance of the agreed upon security commitments agreed by the parties; monitoring and verifying the redeployment of Ethiopian troops from positions taken after 6 February 1999 which were not under Ethiopian administration before 6 May 1998; monitoring the positions of

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<sup>353</sup> S/Res/1312 (2000), 31 July 2000

<sup>354</sup> Id

<sup>355</sup> S/Res/1320 (2000), 15 September 2000

Ethiopian forces once redeployed; simultaneously, monitoring the positions of Eritrean forces that are to redeploy in order to remain at a distance of 25 kilometers from positions to which Ethiopian forces shall redeploy; monitoring the temporary security zone (TSZ) to assist in ensuring compliance with the Agreement on Cessation of Hostilities; chairing the Military Coordination Commission (MCC); coordinating and providing technical assistance for humanitarian mine action activities in the TSZ and areas adjacent to it, and coordinating the Mission's activities in the TSZ and areas adjacent to it with humanitarian and human rights activities of the United Nations and other organizations in those areas.<sup>356</sup>

This was followed by the signing of the comprehensive peace agreement between Ethiopia and Eritrea on December 12, 2000. The peace agreement is premised on the acceptance by both parties of the OAU Framework Agreement and the Modalities for its Implementation.<sup>357</sup>

The UN Secretary General and the OAU Secretary General signed on the Peace agreement as a witness.<sup>358</sup> The Peace Agreement is aimed at bringing an end to the conflict between the two countries. Among other things, the peace agreement provides for the establishment of the boundary commission and claims commission. The Boundary commission was mandated to delimit and demarcate the boundaries of the two countries in accordance with the colonial treaties and

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<sup>356</sup>Id

<sup>357</sup> S/2000/1183, See Paragraph 2 of the Preamble of the Comprehensive Peace Agreement between Ethiopia and Eritrea, 13 December 2000

<sup>358</sup> Id

international law. The Eritrea-Ethiopia Boundary Commission awarded its delimitation decision on April 13, 2002.<sup>359</sup>

Though both Ethiopia and Eritrea accepted the Commission's delimitation decision, Ethiopia subsequently sought interpretation, correction and consultation of certain aspects of the Commission's delimitation decision that has become a serious source of tension between the two countries.<sup>360</sup> The Boundary Commission rejected Ethiopia's request and the boundary between the two countries.<sup>361</sup> Following unsuccessful attempts by the Boundary Commission to enter dialogue with both Ethiopia and Eritrea in August and November 2006, the commission made a decision to mark the border through virtual demarcation, using image processing and terrain modeling in the emplacement of boundary pillars on the ground.<sup>362</sup> Accordingly, the Boundary Commission made available to Ethiopia and Eritrea a list of pillars and maps illustrating the emplacement so that it could resume its demarcation operations.<sup>363</sup> Since the two countries did not comply with the commission's request within the one year deadline, the commission ended its work with the virtual demarcation.<sup>364</sup>

The Claims Commission, on the other hand, was authorized to determine compensation issues accruing from the war. The Commission also gave its awards on the claims. The awards have not yet been enforced.

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<sup>359</sup> S/2008 (2006), 7 April 2008

<sup>360</sup> S/2002/732, 8 July 2002

<sup>361</sup> Supra note at 358

<sup>362</sup> John Prendergast, U.S. LEADERSHIP IN RESOLVING AFRICAN CONFLICT: THE CASE OF ETHIOPIA-ERITREA, 7 SEPTEMBER 2001, United States Institute of Peace

<sup>363</sup> Id.

<sup>364</sup> Id.

On April 18, 2001, UNMEE declared the formal establishment of the Temporary Security Zone.<sup>365</sup> UNMEE remained an effective buffer separating the two countries which had concentrated their troops along the common border.

In 2002, the UN Security Council adjusted UNMEE's mandate to assist the Boundary Commission in its work, including demining in support of the demarcation process.<sup>366</sup> The resolution also mandated UNMEE to provide administrative and logistical support to the field offices of the Eritrea-Ethiopia Boundary Commission.<sup>367</sup> Though Ethiopia signed the Status of Force Agreement, Eritrea became reluctant to sign the Agreement until the end of UNMEE's mission.<sup>368</sup>

In January 2004, UN Secretary General Kofi Annan appointed the former Canadian Foreign Minister Lloyd Axworthy as his special representative to help the Ethiopia-Eritrea peace process move forward.<sup>369</sup> Eritrea rejected the appointment and never let the special representative visit Eritrea.

Due to changes in political and security environment in UNMEE's mission area, the Security Council decreased UNMEE's military component to 2,300 troops, with a mandate renewal every four months.<sup>370</sup>

The Military Coordination Commission, which was perhaps the only forum where the two governments meet face to face, stopped its regular meeting

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<sup>365</sup> Supra note 358

<sup>366</sup> S/Res/1430 (2002), 14 August 2002

<sup>367</sup> Id

<sup>368</sup> S/2008 (2006), 7 April 2008

<sup>369</sup> SG/SM/9139-SG/A/864-AFR/822, 30 January 2004, Secretary General names Lloyd Axworthy Special Envoy for Ethiopia and Eritrea, available at <http://www.un.org/press/en/2004/sgsm9139.doc.htm>, (Last visited on 10/29/2013)

<sup>370</sup> S/RES/1681 (2006), 31 May 2006

since July 2006 because of Eritrea's violation of the integrity of the Temporary Security Zone.<sup>371</sup> This was triggered by Eritrea's decision to restrict all UNMEE's helicopter flights in Eritrean air space, including in the Temporary Security Zone in 2005.<sup>372</sup> Such restriction hampered the operation and security of UNMEE.<sup>373</sup> In January 2008, Eritrea took further actions deploying its army in the Temporary Security Zone and blocking fuel supplies to UNMEE.<sup>374</sup> It considers the EEBC's virtual demarcation the end of the border dispute and argues that the continued presence of UNMEE or Ethiopian troops on its territory is tantamount to occupation.

On July 30, 2008, the UN Security Council adopted resolution 1827 terminating the mandates of UNMEE effective July 31, 2008.<sup>375</sup> The underlying reason that triggered the termination was Eritrea's obstructions which undermined the basis of UNMEE's mandate.<sup>376</sup>

## **B. Challenges Encountered**

According to the Secretary General of the United Nations, the non-implementation of the Boundary Commission's decision, and the erosion of other aspects of the Algiers Agreements such as Eritrea's restrictions of UNMEE's flights and the invasion of the Temporary Security Zone, have undermined the prospects for a lasting peace between the two countries.<sup>377</sup>

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<sup>371</sup> Supra note 367

<sup>372</sup> S/2005/668, 25 October 2005

<sup>373</sup> Id.

<sup>374</sup> International Crisis Group, BEYOND THE FRAGILE PEACE BETWEEN ETHIOPIA AND ERITREA: AVERTING NEW WAR, 17 June 2008

<sup>375</sup> S/Res/1827 (2008), 30 July 2008

<sup>376</sup> Id.

<sup>377</sup> S/2008/226, 7 April 2008

Kroslak characterized the Ethiopia/Eritrea situation as “unfinished peace in the Horn of Africa.”<sup>378</sup> Though both the boundary commission and the claims commission gave their final awards, the decisions have not been implemented until today. There is, therefore, now a cold peace between the two countries. The approach pursued by the UN Security Council appears to be weak, especially its failure to put pressure on Eritrea for its obstruction to UNMEE’s operation in Eritrea and the temporary security zone. More so, its approach was only confined on the border issue rather than pursuing a comprehensive approach to bring a lasting solution to the conflict between the two countries.

Moreover, UNMEE’s lack of a clear mandate of enforcing the decision of the Eritrea-Ethiopia Boundary Commission crippled the effectiveness of the mission. The UN Security Council acted indecisively even when it was clear that the actions of the two countries were undermining the peace process. As is the case with other conflict situations in Africa, the UN Security Council pursued a wait and see approach in the discharge of its security mandate.

The lack of trust by the Ethiopian government is another factor that impeded the effectiveness of the UN Security Council in pursuing its conflict resolution endeavor.

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<sup>378</sup> Daniela Kroslak, *Unfinished Peace in the Horn of Africa*, THE DAILY STAR, 8 August 2008

## **Conclusion and Recommendations**

*"Peace cannot be kept by force; it can only be achieved by understanding", Albert Einstein*

The African continent has had its share of violence, from ancient tribal wars through colonial conflicts to current day internal strife and destruction. In the past forty years only there have been at least thirty major conflicts which claimed the lives of seven million people, and displaced more than twenty million people.

Following the end of the cold war, a number of welcome indications such as the establishment of the OAU conflict prevention mechanism and the end of the 30 years war in Ethiopia, signaled that Africa was headed into a more predictable era. The African countries also apparently moved to a new era taking charge of the regional security issues.

However the end of the Cold War era in and of itself did not remove the underlying causes of conflict and tension in Africa. Destabilizing factors continued unabated. Africa currently portrays the image of a continent riddled with territorial disputes, ethnic conflicts, civil wars, violence, conflict over natural resources, maritime piracy, governance related conflicts and fragility of states.

Somalia is if anything worse than a failed state: it has become virtually a phantom state, since the fall of President Muhammed Siad Barre in 1991. The Somali conflict is multidimensional. It is a clan conflict. It is a national conflict because of the conflict between the South and the North. It is also a platform for proxy war between Ethiopia and Eritrea. It also has a wider international

dimension because of the interest of the international community to fight terrorism in Somalia. Despite a sign of progress because of the engagement of the international community, including the UN, AU and IGAD, Somalia is still in a state of civil war.

The 1998 war between Ethiopia and Eritrea, which resulted in the death of over 70,000 lives, remains unresolved and they rather entered into proxy war in Somalia. The tension between the two countries, therefore, continues.

The conflict in the Great Lakes area that involves six African countries has been around for over sixteen years now. Democratic Republic of Congo is the site of one of the world's ongoing humanitarian crisis. Up to 1,200 people continue to die each day from conflict-related causes, mostly disease and malnutrition but ongoing violence as well.

The conflict in Darfur that flared in 2003 caused the death of over 300,000 population and the displacement of more than 2.3 million people is far from over. The level of violence has once again stepped up in 2013 causing displacement for nearly 400,000 people in the first half of 2014.<sup>379</sup>

The twenty years of civil war in Sudan had claimed the lives of two million people and caused the greatest displacement of people in Africa. The civil war that broke out in December 2013 in South Sudan few years after its

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<sup>379</sup>Darfur Conflict, Thomson Reuters Foundation, Updated 31 July 2014, available at <http://www.trust.org/spotlight/Darfur-conflict>

independence resulted in the death of 10,000 people and the displacement of more than 1 million people.<sup>380</sup>

The border dispute between Djibouti and Eritrea resulted a no peace no war situation between the two countries. The war with the Lord's Resistance Army in Uganda that started in 1986 has displaced an estimated one million people since 1986.

The fragile security situation in the North of Mali and the continuing activities of terrorist organizations, including Al Shabab in Somalia, Al-Qaida in the Islamic Maghreb (AQIM), and the Movement for Unity and Jihad in West Africa (MUJAO) continue to be threats to peace and security in Africa.<sup>381</sup> Unfortunately, armed conflicts cost Africa equivalent to or more than what it received in international aid.<sup>382</sup>

The UN Undersecretary-General for Peacekeeping Operations Hervé Ladsous in his October 28, 2014 statement to the Fourth Committee of the United Nations stated the following regarding the state of security in Africa:

The conflicts of today, while fewer in number, are deeply rooted. For example, the Democratic Republic of Congo, Darfur, and South Sudan today, are in a second or third wave of conflict. And many are complicated by regional dimensions that are key to their solution ...Conflicts today are also increasingly intensive, involving determined armed groups with access to sophisticated armaments and techniques. They involve a mix of armed groups as well as transnational criminal networks and, in Mali, terrorist organizations. In the past year, we have

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<sup>380</sup>Council on Foreign Relations, Internal Violence in South Sudan, available at <http://www.cfr.org/global/global-conflict-tracker/p32137#!/?marker=33>, (Last visited 11/02/2014)

<sup>381</sup> S/RES/2164(2014), 25 June 2014

<sup>382</sup>The UN Secretary General Report on Conflict Prevention in Africa, January 2008

also seen the outbreak of the devastating Ebola virus which may have enduring security, economic and social impacts.<sup>383</sup>

UN itself clearly sees the need for stable Africa. It has increasingly put a great deal of efforts to address the security challenges of Africa in the post cold war era. The United Nations' operation in Africa has dramatically increased with the end of the Cold War with an emphasis on conflict resolution, peace building, conflict prevention and mediation. UN has also focused its attention on human security, and environmental security as these also affect security of the African continent in the present era. Noteworthy is the recent resolution of the UN Security Council 2177 which recognized the unprecedented extent of the Ebola outbreak in Africa as a threat to international peace and security.<sup>384</sup> These issues continue to demand the undivided attention of the international community.

Of the 50 matters presented to the UN Security Council in 2014 (i.e. until November 2, 2014), 25 of them directly concern Africa.<sup>385</sup> Out of the current 16 UN peacekeeping operations, 9 are in Africa.<sup>386</sup> In the area of peace building, UN has laid the ground to closely work with Africa. The UN has indeed been advancing Security Council reform in which Africa coordinates its position through the African Union.

UN has also undertaken a number of measures to promote cooperation with the African Union and African sub-regional organizations, such as

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<sup>383</sup>Statement of UN Undersecretary-General for Peacekeeping Operations Herve Ladsous to the Fourth Committee of the United Nation, 28 October 2014

<sup>384</sup>S/RES/2177(2014), 18 September 2014

<sup>385</sup>See <http://www.un.org/en/sc/documents/resolutions/2014.shtml>, (Last visited on 11/02/2014)

<sup>386</sup>See <http://www.un.org/en/peacekeeping/operations/current.shtml>, (Last visited on 11/02/2014)

ECOWAS, SADC, and IGAD, with a view to addressing the security challenges of the African continent. There is now a more streamlined cooperation between the UN, AU and the African sub-regional organizations in the domain of peace and security.

Although UN has been able to register notable achievements in the maintenance of peace and security in Africa in the past decades, it has experienced various setbacks in fulfilling its primary obligations of maintaining international peace and security in the African continent.<sup>387</sup> The foregoing chapters illustrate the extent of the challenges as well as the weaknesses of the UN in the discharge of its security mandate in Africa. As once articulated by the UN Secretary General, “a considerable gap remains between rhetoric and reality”. Therefore, it is still work in progress.

Of course, assessing the effectiveness of the UN Security mechanism in addressing the contemporary security challenges of the African continent is a very vexing issue. Here, it is contended that UN has a significant role to play in effectively overcoming the contemporary security challenges of Africa. As stated above, there is some goodness in having the UN, especially the UN Security Council providing greater attention to the security challenges in Africa. However, the way to strengthen the African security requires a more robust action and serious commitment on the part of the UN.

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<sup>387</sup>Francois Van As, *African Peacekeeping Past Practices, Future Prospects and its Contribution to International Law*, 45 MIL.L & L WAR REV, 329(2006), 320

Such analyses are important due to the never declining security problems in Africa. After over two decades since the end of the Cold War, several conflicts remain unsettled in Africa. And Africa has continued to be riddled with conflicts and internal strife.

Given the contemporary security challenges of Africa, including governance related intrastate conflicts, terrorist threats, Transnational Organized Crimes, maritime piracy, border problems, ethnicity, serious, gross, and systematic human rights violations, and climate change, and their far reaching impact in the global security, Africa is not only a vital concern of the African nations and their regional organizations, but also of the international community at large. These contemporary security challenges act as powerful reminders for revisiting the UN peace and security architecture. The track record of the UN peace and security architecture are indeed further reminders that the UN should provide the requisite attention to make its peace and security architecture effectively work in Africa. It is perhaps in the interest of the rest of the world as Africa has also recently seen an upswing in the economic fortunes, especially with the discoveries of valuable natural resources.

The current situation, therefore, demands that the United Nations should draw lessons from its experience, and takes appropriate measures to revisit its policy and existing mechanisms to effectively overcome the contemporary security challenges of the African continent. Generally speaking, much remains to be done on the part of the UN.

In this situation, the United Nations faces a number of fundamental questions. What policies should the UN pursue to fill the lacunae exhibited in the discharge of its principal responsibility to ensure the maintenance of international peace and security in Africa? What formulas should UN prescribe to strengthen its capabilities and to boost its effectiveness in this regard? What further steps by the UN will help assure regional security in Africa? What should be the role of the African regional and sub-regional organizations in these processes? How should the UN further streamline the coordination with AU and African sub-regional organizations in the implementation of Chapter VIII of the UN Charter?

The foregoing chapters illustrated the challenges inherent in peace initiatives in Africa at the United Nations, regional, and sub-regional levels. In many cases, the UN watches conflicts and crises in the African continent develop; in the worst cases, as in the 1994 Rwandan genocide, UN did nothing to intervene. This is not to completely undermine the role of the UN in the maintenance of regional peace and security in Africa. For example, UN peacekeeping missions in West Africa were critical to bringing countries like Liberia and Sierra Leone out of civil war.<sup>388</sup>

There is a consensus that the primary responsibility to maintain international peace and security squarely falls on the shoulders of the UN Security Council. But in reality the Security Council has not come out with objective criteria whether a situation involving international peace and security merits the

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<sup>388</sup>Pan, Esther, African Peacekeeping Operations, Council on Foreign Relations, available at <http://www.cfr.org/world/african-peacekeeping-operations/p9333> (Last date visited 10 October 2014)

UN intervention. The decision of the Council is rather dictated by political considerations than actual human suffering and the potential ramification of the situation on international peace and security.<sup>389</sup>

The major global powers that primarily dictate the operation of the UN peace and security architecture have now a heightened interest in Africa. For example the United States policy towards Africa is dictated by its commercial interest, security interest and the promotion of democracy.<sup>390</sup> The Chinese interest on Africa is dictated by its economic and political interest.<sup>391</sup> The list goes on. The competing interests and the different expectations of the major players in the UN Security Council obviously shadow on the operations of the organization. The political will on the part of the major players, especially the Permanent Members of the Security Council, is, therefore, crucial. It is against this background that the following recommendations are put forward.

The case studies under Chapter 5 illustrate that these competing interests have been one of the reasons for the belated actions of the UN Security Council on African conflicts and crisis. Hence, the UN Security Council should formally adopt general objective criterion on what constitutes threats to international peace

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<sup>389</sup>H. Kusano, '*Humanitarian Intervention: An Interplay of Norms and Politics*', in M C. Davis et al., *INTERNATIONAL INTERVENTION IN THE POST COLD WAR WORLD: MORAL RESPONSIBILITY AND POWER POLITICS*, 2004, 128-130; see also, S. Chesterman, *JUST WAR OF JUST PEACE? HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW* (2002), 126-132

<sup>390</sup>Mwangi S Kimenyi, *Priority Issues during Secretary Clinton's Trip to Africa*, Opinion, Brookings, August 1, 2012

<sup>391</sup>Jane Boulden, (ed.), *RESPONDING TO CONFLICT IN AFRICA; THE UNITED NATIONS AND REGIONAL ORGANIZATIONS*, May 2013, 54

and security. It should indeed set in place a clear set of guideline for intervention by the SC.

Such definition and guideline should take into account the contemporary security challenges that evolve over the course of the past decades. The adoption of an objective standard and a clear set of guideline would not only halt the use of double standard but also would help ensure that Africans who exhibited misgivings on the past actions of the UN Security Council will have trust on the system. Failing to get the support and trust of Africans would prove unproductive and damaging for the UN endeavors in the area of peace and security.

The UN, AU and sub-regional organizations in Africa should also address the gaps between them with respect to the conceptualization of what constitutes a threat to international peace and security. The rejection by the UN Security Council of AU's demand for the deferral of Kenya's ICC trial on the ground that the threat does not rise to the level of threat to international peace and security is one recent example where such gap between UN and AU had recently manifested. AU's request was based on Article 16 of the Rome Statute, which allows the UN Security Council to postpone the prosecution at ICC if pursuing the case will constitute threat to international peace and security. Though AU took a firm position that pursuing the case at the ICC will constitute a threat to international peace and security given the volatility of the region, UN rejected AU's demand. This resulted in a row between the UN Security Council and AU member states. This is a significant gap that should be part of the broader policy discussions between UN, AU and sub-regional organizations because it has

practical implications on the effectiveness of the UN in the maintenance of international peace and security on the African soil.

Due to the change in the international landscape over the past seven decades, regional and sub-regional organizations such as AU, ECOWAS, SADC and IGAD have emerged to address security challenges in Africa because the UN was either unwilling or unable to address those challenges. The increasing involvement of these regional and sub-regional organizations is perhaps in tandem with Chapter VIII of the UN Charter, at the heart of which is the need to complement the international legitimacy and legality of the UN with the advantages embedded in regionalism.

Given the intimate knowledge regional and sub-regional organizations most often have, and also the greater interest they have in solving and managing conflicts in their respective areas of responsibility, they have a comparative advantage in addressing conflicts in their respective regions or sub-regions. AU and African sub-regional organizations have come a long way creating ambitious legal and institutional frameworks aimed at addressing the security challenges of the continent. Today they play a vital role in many cases in the maintenance of regional peace and security, including in conflict prevention, peacekeeping and peace building in Africa.

Recognizing this important role of AU and African sub-regional organizations in the maintenance of regional peace and security, UN has been coordinating its endeavors with these African institutions in the area of peace and security in line with the spirit of Chapter VIII of the UN Charter. While the

coordination between UN, AU and African sub-regional organizations has not been without its challenges, their coordinated efforts have already demonstrated the tremendous potential to help the maintenance of regional peace and security.

Despite a growing cooperation between the UN and these African institutions in the areas of peace and security, their cooperation mostly tend to be ad hoc, more complicated and often more costly. The efforts to ensure cooperation between them have indeed often faltered because such efforts were mostly ad hoc and lacked coherence. A truly strategic and predictable partnership between UN, AU and African sub-regional organization is, therefore, in order if the UN is to effectively discharge its security mandate in Africa. This requires refocusing attention on the strategic partnership beyond the support and assistance currently provided by the UN to broader issues of mutual strategic interest in the areas of peace and security.

In the present era where regional organizations have become indispensable pillars of multilateralism, UN Security Council should surpass the rhetoric of advocating strategic partnership and institutionalize a strategic and predictable partnership through a formal agreement with AU, which is recognized as the regional organization with primary responsibility to maintain and promote peace, security and stability in Africa.<sup>392</sup> This partnership agreement provides the general framework for the strategic partnership, which would eventually serve as the basis

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<sup>392</sup>Note that the 2008 Memorandum of Understanding (MOU) on Cooperation in the area of peace and security between the African Union, Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa entrusted AU the leadership role to coordinate cooperation with the UN.

for the specific collaborations in the field that are determined on a case by case basis.

The partnership agreement should be framed along the spirit and intent of Chapter VIII of the UN Charter in the context of collective security. It should however be noted that a pragmatic and more flexible application of Chapter VIII would contribute to developing a more realistic global order. Though the UN Charter explicitly prohibits regional organizations from taking enforcement action without the authorization of the Security Council, the post-Cold War Era has witnessed a trend where regional organizations claim legal competence for enforcement actions on the basis of their founding treaties, without deference to the Security Council. It is even more so with the AU as its founding instrument provides for AU's enforcement action on grounds that are not anticipated when the Charter of the UN was crafted, i.e. war crimes, genocide and crime against humanity as well as a serious threat to legitimate order. This development should be taken into account in framing the partnership between the UN, AU and African sub-regional organizations.

The starting point for the partnership agreement should be the agreed upon guidelines to govern the cooperation between the UN and regional organizations. These include "the supremacy of the Charter in governing the partnership, the primary responsibility of the Council in international peace and security, the need for consistency and impartiality by both the United Nations and all partner organizations, the need for flexibility and pragmatism, and the need for the partnership to reflect comparative advantage of all, developing an effective

division of labor in...operational collaboration”.<sup>393</sup>In defining the principles of the partnership, lessons drawn from UN-AU-African Sub-regional organizations cooperation in the area of peace and security and the changing dynamics of international security should be taken into account.

Furthermore, the UN Security Council should seriously consider the principles which the AU Assembly of Head of States and Governments recently outlined as the underpinning principles of AU-UN cooperation. These principles include support to African ownership and priority setting; consultative decision making; division of labor and sharing of responsibilities; and effective use of the respective comparative advantages of the two organizations. It is interesting to note that the current UN Secretary General also suggested comparative advantages, complementarity of mandates, and the optimal use of resources and capacities as important basis of cooperation.<sup>394</sup> This shows that there is a common ground to lay out the cooperative arrangement.

The division of labor is crucial for the success of the strategic partnership. It should, therefore, be one of the key pillars of the strategic partnership to help avoid duplication of efforts and resources in managing conflicts and crisis in Africa. The partnership agreement should define the role of AU and the African sub-regional organizations to ensure that a structured system of cooperation is put

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<sup>393</sup>A/47/277, An Agenda for Peace, Preventive Diplomacy, peacemaking and peacekeeping, Report of the Secretary-General Pursuant to the Statement adopted by the Summit Meeting of the Security Council on 31 January 1992

<sup>394</sup>S/2011/805, Report of the Secretary-General on United Nations-African Union cooperation in peace security 29 December 2011, p.2

in place, and perhaps to bring about coherence of international and regional responses to conflicts and crisis in Africa.

On the UN level, the international community appears to be unprepared to get physically involved in the African conflicts. The UN is rather increasingly inclined to leave for Africans to deal with their continent's conflicts and to find African solutions. Given also the current trend whereby the de facto division of labor in peacekeeping operations is such that regional organizations pursue rapid deployment while UN deploys the blue helmet forces,<sup>395</sup> such division of labor should be reflected in the proposed partnership agreement. Generally speaking, the partnership agreement should set out procedures for enhancing cooperation and coordination among UN, AU and African sub-regional institutions and appropriate burden-sharing in peacekeeping operations, suitable to the specific political circumstances.

In this respect, it is contended that African owned continental and sub-regional peace and security initiatives should be supported rather than duplicated by the UN. This is not to say that UN should defer all African conflicts and crisis situation to African institutions. Rather UN should support and utilize the solid regional initiatives, such as the African Standby Force, the Continental Early Warning System, the AU Border Program, and the African sub-regional security mechanisms discussed under Chapter 3. UN should further ensure that its actions are complimentary to regional initiatives.

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<sup>395</sup>S.C.S/PV5649 (March 28, 2007)

Another important component of the partnership agreement should be defining the cooperation in conflict prevention. Though UN, AU as well as African sub-regional institutions generally recognize the importance of conflict prevention for the maintenance of the regional peace and security and perhaps instituted some level of cooperation on conflict prevention, they remain to be ad-hoc. Hence more needs to be done to structure the cooperation in conflict prevention. There is a need for greater political strategic coherence in conflict prevention, and permanent mechanisms have to be in place to avoid duplication and to reconcile and align conflict prevention approaches of the UN, AU and African sub-regional organizations.

While this research paper is being finalized, the UN Security adopted a resolution reaffirming its commitment to addressing the prevention of armed conflicts in all regions of the world and instructed the UN Secretary General to submit a report “on actions taken by him to promote and strengthen conflict prevention tools within the United Nations system, including through co-operation with regional and sub-regional organizations, by August 31, 2015.”<sup>396</sup> This provides a basis for structured cooperation between UN, AU and African sub-regional organizations on conflict prevention.

Since AU and the African sub-regional organizations are well positioned to understand the root causes of conflict in the African continent, and perhaps more likely to act as first responders, the partnership agreement should recognize this important role of AU and the sub-regional organizations in conflict

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<sup>396</sup>S/RES/2171 (2014), 21 August 2014

prevention. The partnership agreement should set out procedures for consultation, methodologies of conflict prevention, division of labor and coordination of conflict prevention endeavors. Equally important is the need to leaving a room for flexibility and adaptation to the often fluid circumstances on the ground.

Strengthening the linkage between early warning and early response is very instrumental in ensuring successful conflict prevention efforts of the United Nations. Such linkages enables the UN, especially the UN Security Council and the UN Secretary General, operate with the required flexibility and act effectively on the information provided regarding potential conflicts and crises. It is therefore crucial that a mechanism should be in place to make sure that the information gathered by the conflict early warning mechanisms of AU and African sub-regional organizations gets to the UN on a regular basis. The UN Office to the African Union could serve as an important gateway to gather the information from AU and the sub-regional conflict early warning mechanisms. Strengthening the African conflict early warning mechanisms is also very important to prevent conflicts and to take informed and timely decisions to manage crisis. The partnership agreement should, therefore, provide a set of procedures on strengthening the conflict early warning mechanism and enhancing the cooperation in the conflict early warning system.

The UN Security Council should also establish an effective system whereby peacekeeping forces are deployed to conflict areas in a timely fashion. The deployment of UN peacekeeping missions normally takes a minimum of six months which in quite a number of cases renders it meaningless because several

lives have already been lost before UN peacekeepers are on the ground. Some conflicts are better handled and managed if peacekeepers were on the ground before the conflict deepens.

AU and African sub-regional organizations clearly have an important role to play in ensuring rapid deployment. UN's partnership with AU and African sub-regional organizations in the peacekeeping operations will only be productive when AU and the sub-regional organizations are equipped with the necessary resources to finance their peacekeeping operations. Given these resource limitations of the AU and African sub-regional institutions, the importance of finding a lasting solution to the funding of AU/Sub-regional organizations-led peace support operations cannot be over-emphasized. Experience has demonstrated that support using UN assessed contributions is the most viable response to the challenge at hand, especially when the operations concerned, as is the case for AMISOM, are undertaken with the explicit endorsement of the Security Council. It is suggested that UN should set up a special fund to finance such regional peace keeping operations. This fund will be financed by UN assessed contribution. The UN Security Council should set out procedures and conditions for accessing this special fund for use by regional/sub-regional peacekeeping operations.

Drawing lessons from the DRC crisis where the Addis Ababa Peace, Security and Cooperation Agreement provided for an oversight mechanism in which the UN, regional organizations and stakeholders are regularly involved, it is suggested that UN and AU should set up a Joint Oversight Mechanism in

situations where UN is involved with AU and the sub-regional organizations in the maintenance of international peace and security. This mechanism would serve as a useful tool to bring together all the international actors to coordinate and streamline their efforts, to tackle challenges, and to establish consensus on the way forward.

As part of pursuing a strategic partnership between UN, AU and the African sub-regional institutions, the need for achieving the goals of the UN Security Council reform should be seen as a key component. The UN Charter was drafted in an era when most African nations were still under colonial rule, and as such their views and aspirations were not properly incorporated in the global security architecture that was crafted in 1945. Though Africa represents more than one billion people and though most of the matters dealt by the Security Council directly concern Africa, no single African state is a permanent member of the UN Security Council. Africa's non representation as a permanent member in the UN Security Council violates the founding principles of the UN Charter. Though increasing the SC membership may further frustrate the speed of crisis responses by the Council, equitable representation with a strong voice is key to enhance the effectiveness of the Security Council.

Africa is part of the broader global community, and Africans should be given a place to contribute to African security. Africa's representation as a permanent member of the UN Security Council not only makes the council representative but also helps for its legitimacy. There is also a need to properly reflect the changing world order in the global security architecture. Only genuine

Security Council reform in which diversity is embedded would make the UN Security Council legitimate, credible and more effective. Africa should perhaps assume its rightful place within the UN Security Council. Given the leverage Nigeria and South Africa have had in conflict management in Africa (as illustrated in the case studies under Chapter 4), it is suggested that these two countries could be ideal candidates for the Permanent Membership.

The launching of a joint annual consultative meeting between the UN Security Council and the African Union Peace and Security Council has been an important step forward to forge cooperation between the two organizations in the maintenance of international peace and security. The case studies illustrate the importance of even closer, more frequent and streamlined cooperation between the two organs in the maintenance of international peace and security. Given the high volume of African conflict and crisis situation annually dealt by the UN Security Council, robust and regular consultation mechanisms between the UN Security Council and the AU Peace and Security Council should be in place. Putting in place such frequent and regular consultation mechanism between the two bodies would help ensure consistency, uniformity, timely response and certainty in pursuing the objectives of maintenance of peace and security in Africa.

This can be achieved in either of the following two ways. The first potential avenue could be using the African non-permanent members of the UN Security Council as spokesperson of the AU Peace and Security Council in the deliberations and works of the UN Security Council. This will require a closer

coordination between AU Peace and Security Council and the African non-permanent members of the Security Council. Since Article 7(1)(K) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union entrusted the Council with an authority to promote and develop a strong “partnership for peace and security” between the AU and UN, it simply takes a decision of the AU Peace and Security Council to implement this mechanism.

The regular consultation mechanism could also be achieved by setting up a Committee of Ambassadors composed of Permanent Representatives of African countries to the United Nations that are also members of the AU Peace and Security Council. This Committee of Ambassadors should be established by the decision of the AU Peace and Security Council pursuant to its mandate under Article 7(1)(K) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union. And the Committee of Ambassadors that is based in New York will be a subsidiary body of the AU Peace and Security Council. This arrangement is not only economical but also facilitates a regular consultation mechanism between the two important organs in the area of peace and security. It also helps to overcome the barrier to hold emergency ad-hoc joint consultative meetings if and when the need arises.

The African nations are also to blame. State security in most of Africa, is not threatened by conventional threats of armed attack from other countries but by more insidious measures many of which flow from the very weakness of the state, governance related problems and its absence of control over its own territory. The starting point is that each African Government bears primary responsibility for

ensuring peace, stability and the protection of civilians in their respective countries. This is perhaps a view endorsed by the UN Security Council in a series of its Resolutions. However the UN has also a role to play in strengthening and building African institution of governance. In this regard, the UN development and capacity building works are very critical and should be seen part and parcel of the UN peace and security mandate.

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