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The Peace and Security Council of the African Union: Rise or Decline of Collective Security in Africa?

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The Peace and Security Council of the African Union: Rise or Decline of Collective Security in Africa?

Balingene Kahombo[1]

Abstract:

This paper assesses, both quantitatively and qualitatively, the work of the Peace and Security Council (PSC) of the African Union (AU) with respect to peace support operations. It seeks to know whether the establishment of the PSC in 2002 is leading or has led to a rise or a decline of collective security in Africa. It is demonstrated that in regard to its relative legal and institutional robustness, the PSC can be perceived as a rise of collective security compared with its predecessor, the Central Organ of the Organisation of African Unity (OAU). However, it stagnates in terms of quantity and quality of actions on the ground. The main problem lies in the lack of sufficient operational autonomy from member states and international partners, such as the United Nations. Therefore, the PSC's contribution to the maintenance of peace and security, and so the rise of the international rule of law in Africa is limited. The continent is still a war-torn region, affected by political crises and the expansion of terrorism in many countries. To solve this problem, AU member states should strengthen the PSC's capacity, starting with the quick operationalisation of the African Standby Force. The implementation of the 2016 decision on alternative sources of financing AU's institutions and activities is also a priority. In this regard, the political will of African states that may show that they want to take their organisation more seriously is required. This can further the AU self-reliance policy in collective security though the promotion of African solutions to African problems, and reduce the burden of the United Nations and other non-African actors' interventions in the continent.

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[1] PhD, Research Fellow at the Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline".

Contents:

1. Introduction

This study aims to know whether the establishment of the Peace and Security Council (PSC) of the African Union (AU) is leading or has led to a rise or a decline of collective security in Africa. The question is worthy of a response for three main reasons. First, by creating the PSC in 2002, African states believed it was 'a historic watershed in Africa's progress towards resolving its conflicts and the building of a durable peace and security order'.[2] Second, time has come to review the PSC's performance since it had become operational in 2004. Third, this is a case for analysing African regionalism on matters of collective security and its role to prevent the decline of the international rule of law in maintaining peace, which is the requirement for achieving integration and development, respect for human rights and justice.[3]

The concept of 'collective security' has a number of definitions.[4] First and foremost, it refers to a system whereby states commit not to use force unilaterally in their mutual relations – by preferring the peaceful settlement of disputes – and to support a collective decision aiming at stopping any act of aggression or common threat to peace.[5] According to Pierre-Marie Dupuy, such a system amounts to an 'international social contract'.[6] It is an arrangement which can be regarded as a vaccine or a drug against unlawful wars or breaches of peace.[7] Before the advent of the United Nations (UN), collective security used to deal with interstate security threats only.[8] However, the 1945 UN Charter includes non-state and intra-state threats provided that the Security Council concludes that they affect international peace.[9] The PSC also deals with any threat to peace and security in Africa. This is reflected in its founding Protocol of 2002 which defines the PSC as 'a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crises in Africa'.[10] There will be no such threat that could be out of its legal reach in mitigation of state sovereignty.[11] Secondly, the term collective security can be defined as a goal to achieve through the undertaking of collective action. It refers to the idea of shared or common value which stems from the indivisible nature and solidarity of security between the states

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[2] Peace and Security Council of the African Union, 'Statement of Commitment to Peace and Security in Africa, Issued by the Heads of State and Government of the Member States of the Peace and Security Council of the African Union' (25 May 2004) PSC/AHG/ST.(X), para. 1.

[3] Ibid., para. 4.

[4] Joseph C. Ebegbulem, 'The Failure of Collective Security in the Post World Wars I and II International System' 2 (2) *Transcience* (2011) 23-29, at 23-24; Stefan Aleksovski, Oliver Bakreski, Biljana Avramovska, 'Collective Security – The Role of International Organizations – Implications in International Security Order' 5 (27) *Mediterranean Journal of Social Sciences* (2014) 274-282, at 274-275.

[5] Evert Jordaan, 'Collective Security in Africa: the Tension between Theory and Practice' 39 (1) *Strategic Review for Southern Africa* (2017) 160-184, at 163-164; Françoise Bouchet-Saulnier, *Dictionnaire Pratique du Droit Humanitaire* (Paris: La découverte et Syros, 2000), at 419.

[6] Pierre-Marie Dupuy, *Droit international public (*7th edn., Paris: Dalloz, 2004), at 587.

[7] Oswald Ndeshyo, 'Le Système Africain de Sécurité Collective' *Annales de la Faculté de Droit de l'Université de Kinshasa* (2007) 161-190, at 167.

[8] See Covenant of the League of Nations (28 April 1919), article 16.

[9] UN Charter (26 June 1945), article 2 (7).

[10] Protocol Relating to the Establishment of the Peace and Security Council of the African Union (9 July 2002), article 2 (1).

[11] Peace and Security Council of the African Union, note 2, para. 7.

concerned.[12] The PSC is precisely 'a standing decision-making organ' designed for achieving that purpose through 'the prevention, management and resolution of conflicts'.[13]

Much has been written on the PSC.[14] The activities undertaken in the areas of its competences include preventive diplomacy, mediation, interventions, collective sanctions, peacekeeping, humanitarian assistance, human rights, criminal justice, and post-conflict reconstruction. However, this study appraises the work of the PSC, both quantitatively and qualitatively, in respect of peace support operations. Section 2 identifies the reasons for the evolution from the Organisation of African Unity (OAU) to the PSC. Section 3 analyses the robustness of the PSC compared with its predecessor, the OAU Central Organ.[15] It is argued that there has been a shift of security paradigm with the AU entailing the reinforcement of collective security institutions and the expansion of their legal powers. The strength of the PSC is reflected in an imperfect imitation of the UN Security Council. Section 4 reviews the performance of the PSC in peace support operations. Apart from the conceptual distinction from UN peacekeeping operations, it appears that the PSC has not yet an important practice corresponding to its relative robustness. The main problem lies in the lack of sufficient autonomy of action. Section 5 examines the PSC's ability to work in partnership with other security actors in the continent, such as the Regional Economic Communities (RECs) and the UN. Its relationship with RECs is something specific to the African continent, even though much is still to be done in practice. Further, in order to capture new forms of cooperation between the PSC and the UN that seem not to have been foreseen by the drafters of the UN Charter, a progressive application of chapter VIII is emerging. Still, the AU dependence on its partners is likely at odds with the expectations placed in the PSC, namely the reduction of foreign interventions in the continent and the promotion of 'African solutions to African problems'.[16] Therefore, it appears that the PSC is theoretically a rise of collective security in Africa but stagnates in terms of quantity and quality of action on the ground. Its contribution to the rise of the international rule of law remains thus limited. The conclusion provides some recommendations.

2. The evolution from the OAU to the creation of the PSC

The creation of the PSC is the result of the reform of the OAU security system which proved to be weak and inefficient.[17] Prior to the creation of the AU, 186 coups d'état occurred in Africa, half of which committed between 1980 and 1990.[18] Further, the OAU was confronted with 26 armed

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[12] Valérie-Edwige Soma-Kabore, 'Le droit d'intervention de l'Union africaine' 1 Revue du Conseil africain et malgache pour l'enseignement supérieur/Sciences juridiques et politiques (2017) 131-154, at 136.

[13] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 2 (1).

[14] See Jeremy I. Levitt, 'The Peace and Security Council of the African Union: the Known Unkwons' 13 Transnational Law and Contemporary Problems (2003) 109-137; Paul D. Williams, 'The Peace and Security Council of the African Union: Evaluating an Embryonic International Institution' 47 (4) Journal of Modern African Studies (2009) 603-626; Delphine Lecoutre, 'Le Conseil de Paix et de Sécurité de l'Union Africaine, Clef d'une Nouvelle Architecture de Stabilité en Afrique ?' Afrique Contemporaine (2004) 131-162.

[15] AHG/Decl.3 (XXIX), Declaration of the Assembly of Heads of State and Government on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management and Resolution, 29th Ordinary Session of the OAU Assembly, Cairo (Egypt), 28-30 June 1993.

[16] Charles Riziki Majinge, 'The Future of Peacekeeping in Africa and the Normative Role of the African Union' 2 Goettingen Journal of International Law (2010) 463-500, at 469.

[17] Lecoutre, note 13, at 133-138; Guy Mvelle, L'Union Africaine: Fondements, Organes, Programmes et Actions (Paris: L'Harmattan, 2007), at 61-63.

[18] African Union Commission, Strategic Plan of the African Union Commission -Volume 1: Vision and Mission of the African Union (Addis-Ababa, May 2004), at 14.

conflicts between 1963 and 2000, causing seven million dead people, three million refugees and 20 million internally displaced persons.[19] Many of these conflicts were non-international and affected 61% of the population of Africa.[20] The AU Commission adds:

> (…) wars did not spare any geographic region of the Continent: the Horn of Africa (Ethiopia, the Sudan, Eritrea and Somalia), Southern Africa (12 conflicts) and West Africa, (some 10 wars) have been the theatre of conflicts. Only North Africa with the exception of Algeria remained relatively conflict-free. Some of these wars lasted for quite long periods. For instance, the war in Chad persisted for 40 years; in South Sudan, the war lasted 37 years; in Eritrea, 30 years; and in Angola, 27 years, etc.[21]

The most devastating situations are the civil wars in Liberia (1990), Somalia (1992) and Sierra Leone (1995), the ethnic cleansing in Burundi (1993), the genocide in Rwanda (1994), the 1997 massacres of Rwandan refugees in Democratic Republic of Congo (DRC) and the Congo's armed conflicts (since 1993). The latter reached their peak between 1998 and 2003 with at least eight countries directly involved in hostilities.[22]

The OAU's failure to manage some of these situations was compensated in three ways. Firstly, through the intervention of other organisations such as the Economic Community of West African States (ECOWAS).[23] Secondly, through UN peacekeeping missions, mainly after the end of the Cold War.[24] Thirdly, through foreign state interventions, in particular former colonial powers such as the United Kingdom and France.[25] Where the OAU intervened, its efforts yielded little success. For instance, in Chad, rebels overturned the Transitional National Union Government in 1982, despite the deployment of the Pan-African Peace Force (PPF). This was the first ever created OAU's peace mission, with the approval of the host state. It was aimed to support Chad to 'ensure the defence and security of the country whilst awaiting the integration of government forces'.[26]

The OAU lacked the means of its action. The OAU Charter prevented the organisation from interfering in the internal affairs of member states. However, in 1993, the Cairo Declaration on the OAU Mechanism for Conflict Prevention, Management and Resolution established a permanent body to deal with African conflicts, known as the Central Organ, composed of the state members of the Bureau of the OAU Assembly, as well as the states of the incoming and the outgoing

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[19] Ibid., at 14 and 15.

[20] Ibid., at 15.

[21] Ibid. See also Jakkie Cilliers, 'Future (im) Perfect? Mapping Conflict, Violence and Extremism in Africa', Institute of Security Studies Paper No.287 (October 2015), at 3-4 and 9-10.

[22] See Filip Reyntjens, *The Great African War: Congo and Regional Geopolitics, 1996–2006*, (Cambridge University Press: Cambridge, 2009), at 194.

[23] Dominique Bangoura, 'Les Modalités d'Intervention: Deux cas de Maintien de la Paix (Liberia et Centrafrique)' in Paul Ango Ela (ed), *La Prévention des Conflits en Afrique Centrale: Prospective pour une Culture de la Paix* (Paris: Karthala, 2001) 99-112.

[24] Balingene Kahombo, 'La Démocratisation dans l'Ombre de Crises et Violences Politiques en Afrique: Rétrospective et Prospective sur le Rôle des Opérations de Maintien de la Paix' in Oswald Ndeshyo (ed), *Mélanges Célestin Nguya-Ndila – La République Démocratique du Congo: les défis récurrents de décolonisation et de développement économique et social* (Kinshasa: Cedesurk, 2012) 575-624, at 579-580.

[25] Anatole Ayissi, 'Le Maintien de la Paix en Afrique: Responsabilité et Responsabilisation du Continent' in Paul Ango Ela (ed), *La Prévention des Conflits en Afrique Centrale: Prospective pour une Culture de la Paix* (Paris: Karthala, 2001) 177-188, at 183.

[26] AHR/Res. 102 (XVIII) Rev. 1, Resolution on Chad, 18th Ordinary Session of the OAU Assembly, Nairobi (Kenya), 24-27 June 1981, para. 3.

chairperson of the OAU.[27] It also vested the Secretary General with broad powers in preventive diplomacy. The OAU Central Organ succeeded to the Commission on Mediation, Conciliation and Arbitration (CMCA), created by the Cairo Protocol of 21 July 1964.[28] The CMCA was the OAU's principal organ for the peaceful settlement of African disputes.[29] But, it fell into disuse because of African states' reluctance to resort to a quasi-jurisdictional organ that was beyond their control.[30] The OAU Assembly proceeded to its abolition in 1977.[31] This came as no surprise. Previously, the OAU Commission of defence, mandated to conceive a consistent policy of security and defence for the continent, also failed.[32] There were state disinterest and financial constraints after the beginning of another world economic crisis in 1973. The OAU member states preferred to focus on the African integration and economic development rather than spending their small budgets for military purposes. Disputes could be submitted to *ad hoc* committees, made up of heads of state and government, which privileged mediation and dialogue between parties in conflict.

The Central Organ deployed eight peace missions between 1993 and 2003: Neutral Military Observer Group 2 in Rwanda (NMOG 2), Observer Mission in Burundi (OMIB), OAU Observer Mission in Comoros (OMIC), OAU Observer Mission in DRC, OAU Liaison Mission in Ethiopia–Eritrea (OLMEE), OAU Military Observer Mission 2 in Comoros (OMIC 2), OAU Mission 3 in Comoros (OMIC 3), and African Mission in Burundi (AMIB).[33] Pursuant to the Cairo Declaration, these were only observer missions, devoid of mandate to use force, except in case of self-defence.[34] The consent of parties to the conflict was required prior to any deployment.[35]

From a political angle, the OAU suffered from a lack of cooperation before and after the creation of the Central Organ. Its peace missions neither received sufficient personnel nor the necessary financial and logistical means to carry out their powerless mandates.[36] This is the case with OMIB whose personnel was made up of five thousand troops but only forty-seven policemen and five civilians were deployed.[37] The relative exception was the PPF which consisted of three thousand troops furnished by Nigeria, Senegal and the DRC.[38]

Given its inability to meet contemporary African security needs, the OAU had to be replaced by the AU. The process started in 1999 with the Sirte Declaration which announced the will of African states to create the AU pursuant to fundamental objectives of the OAU Charter and the Treaty

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[27] AHG/Decl.3 (XXIX), note 14, para.18.

[28] Boutros Boutros-Ghali, *L'Organisation de l'Unité Africaine* (Paris: Armand Colin, 1969), at 161.

[29] OAU Charter (25 May 1963), article XIX.

[30] Léon Dié Kassabo, 'Le Système Africain de Sécurité Collective Régionale à l'Ere de l'Union Africaine' (PhD Thesis, Università degli studi di Padova 2010), at 140 <http://paduaresearch.cab.unipd.it/2269/1/Th%C3%A8se_PDF.pdf> accessed 7 June 2018.

[31] Ibid.

[32] Balingene Kahombo, 'Le Projet de Création de l'Armée Africaine Unique de Défense et de Sécurité: Etat des Lieux et Perspectives' *Annales de la Faculté de Droit de l'Université de Kinshasa* (2013) 61-83, at 66-67.

[33] Paul D. Williams, 'Peacekeeping in Africa after the Cold War: Trends and Challenges' in James J. Hentz (ed), *Routledge Handbook of African Security* (London/New York: Routledge, 2014) 66-82, at 68.

[34] AHG/Decl.3 (XXIX), note 14, paras.14-15.

[35] Ibid. See also Michel-Cyr. Djiena Wembou, 'A Propos du Nouveau Mécanisme de l'OUA sur les Conflits' XCVIII *Revue Générale de Droit International Public* (1994) 377-386.

[36] Jean-Delors Biyogue-Bi-Ntougou, *Les Politiques Africaines de Paix et de Sécurité* (Paris: L'Harmattan, 2010), at 21.

[37] Ibid., at 22.

[38] Ibid., at 21.

instituting the African Economic Community (AEC).[39] In Lusaka, in July 2001, it was decided to incorporate the OAU Central Organ into the AU and to review its structures, procedures and working methods, including the change of its name.[40] The Protocol on the PSC was thus adopted in 2002. It created the PSC a subsidiary organ of the AU Assembly pursuant to article 5 (2) of the AU Constitutive Act. The Protocol on the PSC entered in force on 26 December 2003.

3. The relative robustness of the PSC

The PSC is more robust than the OAU Central Organ. In general, it performs its functions pursuant to a new security paradigm and looks like an imperfect imitation of the UN Security Council.

a) The shift of security paradigm

The African collective security system has been reinforced in two ways. First with the advent of the Common African Security and Defense Policy (CASDP). The origin of such a policy may be traced back to analogous efforts made by the Union of African States (Ghana, Mali and Guinea) in 1961.[41] The AU Constitutive Act which recaptures the idea refers to it as 'a common defence policy for the African continent'.[42] It gives the power to the AU Assembly to 'determine the common policies of the Union'.[43] The PSC is also permitted to 'develop a common defence policy for the Union, in accordance with article 4(d) of the Constitutive Act'.[44] Furthermore, it has the power to 'implement the common defence policy of the Union'[45] and is to be assisted by 'any organ of the Union, pending the setting up of mechanisms and institutions for common defence and security'.[46] Therefore, the AU Chairperson and South African president, Thabo Mbeki, were mandated to establish a group of experts to examine all aspects related to the adoption of the CASDP and to submit recommendations to the AU Assembly.[47] The 'Draft Framework for a Common African Defence and Security Policy' was presented in 2003.[48] It served as the principal document of reference for the adoption of the Solemn Declaration on a Common African Defense and Security Policy' in 2004.[49]

One may suggest that a common policy implies the identification of clear objectives to achieve in any domain in which the AU is competent to perform its functions and the appropriate means for realising them. The CASDP focuses on security issues. It pursues three objectives which are

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[39] EAHG/Decl. (IV) Rev.1, Sirte Declaration, 4th Extraordinary Session of the OAU Assembly, Sirte (Libya), 8-9 September 1999, para. 8(i).

[40] AHG/Dec.1 (XXXVII), Decision on the Implementation of the Sirte Summit Decision on the African Union, 36th Ordinary Session of the OAU Assembly/ Fifth Ordinary Session of the AEC, Lusaka (Zambia), 9-11 July 2001, para. 8.

[41] Charter of the Union of African States (29 April 1961), article 4 and title IV.

[42] Constitutive Act of the African Union, article 4(d).

[43] Ibid., article 9 (a).

[44] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 3(e).

[45] Ibid., article 7 (h).

[46] African Union Non-aggression and Common Defence Pact (31 May 2005), article 9.

[47] ASS/AU/Dec. 8 (I), Decision on a Common African Defence and Security, 1st Ordinary Session of the AU Assembly, Durban (South Africa), 9-10 July 2002, para.2.

[48] Assembly/AU/Dec.13 (II), Decision on the African Defence and Security Policy (Doc. Assembly/AU/6 (II)), 2nd Ordinary Session of the AU Assembly, Maputo (Mozambique), 10-12 July 2003, paras. 1 and 4.

[49] Ext/Assembly/AU/1-2/(II), Solemn Declaration on an African Common Policy of Security and Defense, 2nd Extraordinary Session of the AU Assembly, Sirte (Libya), 27-28 February 2004.

interconnected and mutually dependent. First, the preservation of national security, i.e. the security of the state. Second, the protection of human security which turns around the individual. Human security must be understood in terms of satisfaction of basic needs of the individual, such as personal and physical security.[50] But, the notion 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'.[51] A conflict may arise between these two objectives. In fact, human security can be protected against the state or the state against the individual. Third, the CASDP aims to establish peace and security in the African continent. In this regard, the AU Constitutive Act provides that the scourge of conflicts constitutes 'a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of development and integration agenda'.[52] Likewise, the AU Non-aggression and Common Defence Pact aims 'to deal with threats to peace, security and stability in the continent and to ensure the well-being of the African peoples'.[53] This third goal is transversal because it can be attained only if human security and state security are guaranteed. Put it differently, there will not be peace, security and stability in Africa if individuals, peoples and states are not secured.

Against this backdrop, the notion of threats to regional peace and security has shifted from a narrow to a broad conception. It consists of both military and non-military threats. Their origin may be of political, economic, social, cultural, environmental and humanitarian. But, in Africa, some scholars suggest that security threats are beforehand due to economic and social problems,[54] while others argue in favour of the primacy of political violence over other factors.[55] The CASDP embraces both approaches and deal with any threat regardless of its origin: aggression, civil wars, terrorism, political assassination, illicit exploitation of natural resources, subversion, unconstitutional changes of government, corruption, etc.

Second, the expansion of the notion of threats to regional peace and security justifies the reinforcement of the AU's operational abilities. The AU may now use force even without the consent of the state concerned.[56] The AU can also resort to other means such as mediation and good offices by the panel of the wise, coercive sanctions and even criminal prosecutions in order to address contemporary security and peace issues.[57] Further, there are three stages of actions in

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[50] African Union Non-aggression and Common Defence Pact, article 1 (k).

[51] Ibid.

[52] Constitutive Act of the African Union, Preamble, para. 9.

[53] African Union Non-aggression and Common Defence Pact, Preamble, para. 9.

[54] Lars Buur, Steffen Jensen and Finn Stepputat, 'The Security-Development Nexus' in Lars Buur, Steffen Jensen and Finn Stepputat, (eds), *The Security-Development Nexus: Expressions of Sovereignty and Securization in Southern Africa* (Cap Town: HSRC Press, 2007) 9-33.

[55] Mwayila Tshiyembe, 'Nature et Dynamique de la Conflictualité Africaine' in Dominique Bangoura and Emile. Fidieck A Bidias (eds), *L'Union Africaine et les Acteurs Sociaux dans la Gestion des Crises et des Conflits Armés* (Paris : L'Harmattan, 2006) 33-42 ; Pierre-Flambeau Ngayap, 'Le Monopole et le Partage du Pouvoir à l'Origine des Conflits en Afrique' in Paul Ango Ela (ed.), *La Prévention des Conflits en Afrique Centrale : Prospective pour une Culture de la Paix* (Paris: Karthala, 2001)59-66.

[56] Yves-Alexandre Chouala, 'Puissance, Résolution des Conflits et Sécurité Collective à l'Ere de l'Union Africaine : Théorie et Pratique' VI *Annuaire Français de Relations Internationales* (2005) 287-306.

[57] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 6 (c), (g); Assembly/AU/ Dec.127 (VII), Decision on the Hissène Habré Case and the African Union (DOC. ASSEMBLY/AU/3 (VII)), 7th Ordinary Session of the AU Assembly, Banjul (The Gambia), 1-2 July 2006.

the operation of the PSC – prevention, management and resolutions of African conflict – that include the implementation of the AU's policy on post-conflict reconstruction in order to prevent new conflicts or the resurgence of violence.[58] Institutionally, the PSC is an integral part of the AU's security architecture or the so-called African Peace and Security Architecture (APSA). In this regard, article 2(2) of the Protocol on the PSC provides that the PSC is supported by other five institutions: AU Commission, Panel of the Wise, Continental Early Warning System, African Standby Force, and Special Fund. In addition, article 11 (b) of the AU Non-aggression and Common Defence Pact of 2005 provides for bodies that produce knowledge necessary for the PSC's action. These are the African Peace Academy, the African Centre for Study and Research on Terrorism, and the AU Commission on International Law. In nutshell, the PSC is a robust institution both in terms of power and institutional framework of action.

b) The imperfect imitation of the UN Security Council

In creating the PSC, the AU has tried to imitate the UN Security Council despite the fact that the latter is subject to severe criticisms regarding its composition, the division among its permanent member states in situations where swift action is needed, and its failure to give to its peacekeeping operations a clear mandate and material means to protect civilians. However, inasmuch as the establishment of the PSC is in line with the regionalisation of the law of collective security, the Security Council offers a consistent model of institutional building.

One point of convergence between the PSC and the UN Security Council is the state commitment to the decisions they are allowed to take. Article 24 (1) of the UN Charter provides that member states agree that in carrying out its duties the Security Council acts on their behalf. Further, article 25 indicates that member states agree to accept and carry out its decisions. The language of these articles is respectively replicated in article 7 (2) and (3) of the Protocol on the PSC which provides that member states agree that in carrying out its duties under this Protocol, the PSC acts on their behalf and they agree to accept and implement the decisions of the PSC in accordance with the AU Constitutive Act. One may argue that in the meaning of the Protocol on the PSC, member states are not only those who have ratified it but also all African states for the interest of which the institution has been created. This position is understandable because unlike collective defence, collective security is not directed against a particular state but covers threats that occur within the entire space of its deployment, regardless of which state is party or not.

Another similarity is about the role that the UN Security Council and the PSC are expected to play in the maintenance of international peace. Article 24 (1) of the UN Charter confers on the Security Council the primary responsibility for the maintenance of international peace and security. The AU acknowledges this responsibility.[59] The Protocol on the PSC also states that the AU's security architecture 'has the primary responsibility for promoting peace, security and stability in Africa'. This looks like a conflicting language, in particular if one takes into account the monopoly to take coercive measures that is conferred on the Security Council by the UN Charter and the fact that neither the AU Constitute Act nor the Protocol on the PSC have made an explicit reference to the authorisation of regional enforcement actions. Such a conflict may arise in respect of the AU's right

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[58] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 3 (c); ex.cl/274 (IX), Decision on the AU Policy framework on Post-conflict reconstruction and development (DOC. ex.cl/274 (IX)), 9th Ordinary Session of the AU Executive Council, Banjul (The Gambia), 25 June 2006.

[59] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 17 (1).

to intervene in a member state. Some authors have attributed these conflicting provisions to the fact that the draft Protocol on the PSC has not been reviewed by legal experts.[60] However, one may argue that the conflict in question is simply apparent. In reality, the responsibility that the AU's security architecture – and so the PSC – has a different meaning which does not challenge the authority of the Security Council. The provision expresses the will to confer on the AU 'a central role in bringing about peace, security and stability on the continent'.[61] In other words, the role of the UN should become in practice complementary to the AU which benefits from comparative advantages such as proximity to the scene of conflicts and better understanding of the contextual circumstances.

The two systems are also similar with regard to membership. Like the Security Council, the PSC consists of fifteen member states, who sit at the level of ambassadors, foreign ministers or heads of state and government. These members are elected by the AU Assembly with due regard to equitable regional representation and rotation of countries.[62] There are two seats for Northern Africa, four for Western Africa, while Southern, Eastern and Central Africa are contributed three seats each. Ten members are elected for a term of two years and five for three years. However, unlike the Security Council, there is neither permanent seat nor veto power. This is because the majority of African states wanted all AU members to be equally treated.[63] This is also why the PSC's decisions, delivered in the form of communiqués, are adopted in principle by consensus. If consensus cannot be reached, decisions on procedural matters are adopted by simple majority, while those concerning other matters require a two-thirds majority.

The terms of membership are renewable in order to promote the continuity of seats for some influential powers. On this basis, Nigeria has had a seat in the PSC continuously since 2004, whilst South Africa has missed only one year, in 2013.[64] The AU Assembly may also terminate any membership before the expiration of its term if it concludes that the state concerned does no longer meet the criterions of being a member of the PSC, such as the capacity to contribute to the maintenance of peace and security and the compliance with the principles provided for in article 4 of the AU Constitutive Act, including the 'rejection of impunity' and the 'respect for democratic principles, human rights, the rule of law and good governance'. In practice, this has never happened. Burundi, for example, remained in the PSC despite allegations that it was violating human rights after some of its people had decided to oppose in the streets Pierre Nkurunziza's third presidential term in 2015. The AU was probably conscious of the fact that excluding Burundi would have jeopardised its peace mission in Somalia since Burundi contributes significantly troops to it. Likewise, states such as Rwanda, the Gambia, Zimbabwe, Egypt, Equatorial Guinea and Uganda have been regularly elected to the PSC whilst they do not manifestly comply with the democratic

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[60] Levitt, note 13, at 136; Williams, note 13, at 610.

[61] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Preamble, para. 16.

[62] African Union Commission and New Zealand, *A Guide for those Working with and within the African Union: African Union Handbook 2018* (African Union Commission: Addis Ababa, 2018), at 65.

[63] Williams, note 13, at 606.

[64] African Union Commission and New Zealand, *A Guide for those Working with and within the African Union: African Union Handbook 2017* (African Union Commission: Addis Ababa, 2017), at 58-59.

requirements. This diminishes the prestige of the PSC and the moral weight of its decisions and authority.[65]

However, there is also a number of differences. As mentioned above, the PSC is a subsidiary organ of the AU Assembly whilst the Security Council is a UN principal organ. This nature of the PSC implies two legal consequences. On the one hand, the AU Assembly is superior to the PSC. Article 6 (2) of the AU Constitutive Act provides that the AU Assembly is 'the supreme organ of the Union'. In terms of allocation of powers, the PSC does not have any monopoly of coercive action within the AU, unlike the Security Council in relation to the General Assembly. Furthermore, there is nothing comparable to article 12 (1) of the UN Charter to regulate the sharing of collective security powers between the AU Assembly and the PSC.[66] Rather, the AU Assembly keeps a sort of reserved domain to decide on three important matters: humanitarian intervention, intervention on a state request and application of sanctions against member states. But, it remains free to delegate any of its powers to the PSC.[67] The latter acts 'under the authority of the Assembly',[68] which can approve, reject or annul its decisions. This feature which gives an institutional supremacy to the AU Assembly, gathering African heads of state and government, is inherited from the OAU Charter.[69] Hence, the so-called presidentialisation of the AU which is largely a replication of the political regimes of its member states.

In this context, the powers conferred on the PSC are wide but limited. Part of these powers relates to the authorisation of 'the mounting and deployment of peace support missions'[70] or the imposition of sanctions in case of unconstitutional change of government.[71] It has to be noted that such sanctions are not directed against member states, who fall within the exclusive competence of the AU Assembly, but to unconstitutional governments, individuals and other non-state actors. Some other powers of the PSC are not very clearly spelt out. This is the case with its competence to 'decide on any other issue having implications for the maintenance of peace, security and stability on the continent'[72] and to 'examine and take such appropriate action within its mandate in situations where the national independence and sovereignty of a Member State is threatened by acts of aggression, including by mercenaries'.[73] Therefore, the PSC seems to enjoy a broad margin of action. But, if one agrees that it belongs to the AU Assembly to impose sanction against a member state or to decide an intervention in its territory, the question arises as to which action the PSC may further decide without falling into a case of conflict of powers. It is likely that it can only adopt sanctions against individuals and non-state actors or other measures that it deems necessary. In

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[65] Isiaka A. Badmus, *The African Union's Role in Peacekeeping Building on Lessons Learned from Security Operations* (London: Palgrave Macmillan, 2015), at 91.

[66] This article provides: 'While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests'.

[67] AU Constitutive Act, article 9 (2).

[68] African Union Non-aggression and Common Defence Pact, article 9.

[69] OAU Charter (25 May 1963), article 8.

[70] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 7 (1) (c).

[71] Ibid., article 7 (1) (g); AHG/Decl.5 (XXXVI), Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, 36th Ordinary Session of the OAU Assembly, Lomé (Togo), 10-12 July 2000; African Charter on Democracy, Elections and Governance, article 25. See also Joseph Kazadi Mpiana, 'L'Union Africaine Face à la Gestion des Changements Anticonstitutionnels de Gouvernement' 25 (2) Revue Québécoise de Droit International (212) 101-141.

[72] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 7 (1) (r).

[73] Ibid., article 7 (1) (o).

this regard, article 8 (5) of the Protocol on the PSC states that it can establish subsidiary bodies, including *ad hoc* committees for mediation, conciliation or enquiry, or seek military, legal and other forms of expertise as the performance of its functions requires.

On the other hand, the PSC has the obligation to submit reports to the AU Assembly on its activities and the state of peace and security in Africa. It is submitted that this obligation aims to help the AU Assembly ensure the coherence and the efficacy of the PSC's action. In practice, the approval of such reports is often accompanied by recommendations or new functions delegated to the PSC. For example, in its decision of July 2006, the AU Assembly requested the PSC 'to continue efforts with particular emphasis on conflict prevention, by examining potential crisis situation before they degenerate into conflict, and the implementation of peace building programs in countries emerging from conflict on the basis of the Framework Document on Post-Conflict Reconstruction and Development'.[74] This has led to the deployment of a multidisciplinary mission for evaluation of post-conflict reconstruction and development needs in DRC and Burundi in 2010, and a call for the mobilisation of support from other AU member states.[75]

The problem with this distribution of powers is the potential difficulty to activate the system of collective security and get a timely decision. This is because the AU Assembly is not a permanent organ, whereas it enjoys the power to decide on issues that require swift action. Yet, its extraordinary sessions are subject to strict procedural conditions. For example, any demand by a member state for such a session must be approved by a two-thirds majority of all AU members in order to be successful.[76] Meanwhile, the matter on the ground could be exacerbating. This is why it is better to transfer at least the power of the AU Assembly to authorise an intervention to the PSC which is a permanent body. The proposal will reinforce the robustness of the PSC.

4. The performance of the PSC in peace support operations

Peace support operations (PSO) are closely related to UN peacekeeping operations (PKO). But, their conceptual bases are not completely analogous. Like the PKO for the UN, PSO constitute the main AU's instruments of action to maintain peace in Africa.

a) The conceptual distinction

PKO are not explicitly provided for by the UN Charter. The coming into being is the consequence of the blockage of the Security Council, owing to the ideological division of its permanent members during the Cold War, to carry out its powers under chapter VII. In 1950, the so-called 'Uniting for Peace Resolution' was adopted and gave power to the General Assembly to act whenever the

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[74] Assembly/AU/Dec.120 (VII), Decision on the Activities of the Peace and Security Council of the African Union on the Peace and Security situation in Africa (DOC.ASSEMBLY/AU/4 (VII)), 7th Ordinary Session of the AU Assembly, Banjul (The Gambia), 1-2 July 2006, para. 4.

[75] Peace and Security Council of the African Union, 'Multidisciplinary Mission for Evaluation of Post-Conflict Reconstruction and Development Needs in DRC (21 January – 13 February 2010) and Burundi (13-22 February 2010): Major Conclusions and Recommendations' (PSC/PR/2 (CCXXX)), Addis-Ababa (Ethiopia), 27 May 2010. See Balingene Kahombo, 'L'Union Africaine et la République Démocratique du Congo : l'Etat de Relations en 2011 et leur Prolongation en 2012' in Oswald Ndeshyo (ed), *Mélanges Célestin Nguya-Ndila. La République Démocratique du Congo : les Défis Récurrents de Décolonisation et de Développement Economique et Social* (Kinshasa: Cedesurk, 2012) 1147-1177, at 1157-1159.

[76] African Union (Assembly of the African Union), 'Rules of Procedure of the Assembly of the Union' (Addis Ababa 9 July 2002) ASS/AU/2(I), Rule 11 (1).

Security Council failed to assume its responsibility.[77] One of the most important examples whereby the General Assembly has used this power is the authorisation of the mounting of the United Nations Emergency Force in Middle East (UNEF I) during the armed conflict opposing France, Great Britain to Egypt after the nationalisation of the Suez Canal.[78] After the end of the cold war, the Security Council was able to reach consensus and became more active in sending PKO in many African states after more than 25 years of inertia since the UN Operation in the Congo (ONUC) between 1960 and 1964.

However, the AU has preferred the concept PSO as provided for in articles 6 (d) and 7 (1) (c) of the Protocol on the PSC. Their definition is similar to that of PKO. In his Agenda for Peace, Boutros-Ghali, while defining the concept 'peacekeeping' in short, seems to have rather defined PKO as implying 'the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well'.[79] But, today, peacekeeping is not limited to the UN. Another feature of these operations is that they do not have in principle the mandate to use force, except in case of self-defense. For these reasons – consent of the parties concerned and non-use of force – PKO are non-unilateral, non-coercive and impartial means of conflict resolution.[80] In principle, one may argue that they fall within the scope of chapter VI of the UN Charter on peaceful settlement of disputes. It is the necessity to enforce peace, to disarm armed groups or to protect civilians and political leaders involved in transitional governments which has led the Security Council to place PKO under chapter VII, depending on situations and circumstances. PSO perform their mandates under the same principles of action, pursuant to AU's legal instruments.

In addition to this difference of denominations, uniforms have also changed: blue helmets for the UN and green helmets of the AU. Strategically, PKO presuppose a state of peace to be maintained, while PSO are considered to be instruments that can help create a conducive environment to the launching of a peace process.[81] Consequently, the deployment of contemporary PKO is generally made dependent on the conclusion of a cease-fire or a humanitarian agreement, whereas PSO can be deployed in the host states in the context of persistent political uncertainty and high military risks, when hostilities are ongoing.[82] This is the case with AMIB between 2003 and 2004, a PSO inherited from the OAU Central Organ. AMIB was deployed despite the fact that the Arusha Cease-Fire Agreement was boycotted by the two main rebel groups, namely the *Forces pour la Défense de la Démocratie (FDD),* chaired by Pierre Nkurunziza, and the *Forces Nationales de Libération (FNL)* led

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[77] UNGA Res. 377 (V) A, 3 November 1950, para. 1.

[78] UNGA Res.998 (S-I), 4 November 1956, para.2; UNGA Res.1000 (ES-I), 5 November 1956, paras.1-3. See also Roger Pinto, 'L'Affaire de Suez : Problèmes Juridiques' II *Annuaire Français de Droit International* (1956) 1-16.

[79] General Assembly and Security Council, 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping. Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council, on 31 January 1992' (A/47/277 –S/24111), Forty-Seven Session/ Forty-Seven Year, 17 June 1992, para. 20.

[80] Patrick Daillier, Mathieu Forteau and Alain Pellet, *Droit international public* (8th edn., Paris : LGDJ, 2009), at 1118.

[81] See 'Intervention de l'Ambassadeur Ramtane Lamamra, Commissaire à la Paix et à la Sécurité de l'Union Africaine, sur «les Opérations de Paix sur le Continent Africain: Etat des Lieux, Enjeux et Perspectives' (Organisation Internationale de la Francophonie, Groupe des Ambassadeurs Francophones d'Addis-Abeba and Réseau Francophone de Recherche sur les Opérations de Paix : 7 June 2010), at 3 <http://www.operationspaix.net/DATA/DOCUMENTTEXTE/5643.pdf> accessed 14 June 2018.

[82] Ibid.

by Agathon Rwasa. The so-called Dar-es-Salam Global Cease-Fire Agreement was concluded in November 2003 while AMIB had been working to support peace in Burundi since February 2003.

Overall, PSO provide assistance to political transitions towards democratic governance, humanitarian assistance and protection of civilians, police services, disarmament of armed groups, and post-conflict reconstruction for the consolidation of peace. They must be distinguished from other types of operations that may be decided by the AU Assembly. First, the AU's right to intervention in a member state in respect of genocide, crimes against humanity and war crimes, which amounts to a humanitarian intervention. Second, the right of a member state to request the AU's intervention under article 4(j) of its Constitutive Act. This intervention, which aims to restore peace in the territory of the requesting state, is simply a form of collective self-defence in case of aggression and a form of regional assistance in case of destabilisation. According to article 1(i) of the AU Non-aggression and Common Defence Pact, the concept 'destabilisation' means 'any act that disrupts the peace and tranquility of any member state or which may lead to mass social and political disorder'. This happened in 2008 after Colonel Mohamed Bacar had declared the secession of the Comoros' island of Anjouan in 2007.[83] The operation *Democracy in Comoros*, made up of troops mainly from Tanzania and Sudan, was launched on the request of the central government and stopped the civil strife, while Mohamed Bacar fled abroad. Another example is the decision of the AU Assembly authorising the PSC to create, on the request of affected countries (Central African Republic, DRC, Uganda, Sudan and South Sudan), the Regional Cooperation Initiative for the Elimination of the Lord Resistance Army (RCI-LRA), comprising a Regional Intervention Force made up of five thousand troops.[84] The practice of PSO is by far more significant.

b) The practice between dependency and relative inefficacy

The PSC, whose offices in Addis-Ababa (Ethiopia) were built and given as a gift to the AU by Germany, is relatively active on the ground. Between 2003 and 2017, PSO were conducted in six different countries: AMIB in Burundi, African Union Observer Mission in Comoros (MIOC), African Union Mission in Sudan (AMIS), African Union Mission for the Support to the Elections in Comoros (AMISEC), African Union Mission in Somalia (AMISOM), African Union Electoral and Security Assistance Mission to Comoros (MAES), African-led International Support Mission in Mali (AFISMA), and African-led International Support Mission in Central African Republic (MISCA). Quantitatively, this is less important than the performance of the OAU Central Organ in ten years. However, it is better with respect to the format of personnel of PSO. For example, AMIS was about ten thousand troops, while AMISOM is over twelve thousand.[85] Nevertheless, these numbers are still insufficient compared to the African needs. In several situations, the UN remains the principal bidder of peace missions, including the United Nations Operation in Burundi (ONUB), the United Nations Organisation Stabilisation Mission in the DRC (MONUSCO), the United Nation Mission in South Sudan (UNMIS), the United Nations Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA), and the United Nations Multidimensional Integrated Stabilisation Mission in the

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[83] Assembly/AU/Dec.186 (X), Decision on the Situation in the Comoros, 10th Ordinary Session of the AU Assembly, Addis-Ababa (Ethiopia), 31 January -2 February 2008, para. 3.

[84] Assembly/AU/Dec.369(XVII), 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), 17th Ordinary Session of the AU Assembly, Malabo (Equatorial Guinea), 30 June –1 July 2011, para.21; PSC/PR/COMM.(CCXCIX), 22 November 2011, para. 9.

[85] Paul D. Williams, 'Joining AMISOM: Why Six African States Contributed Troops to the African Union Mission in Somalia' 12 (1) Journal of Eastern African Studies (2017) 172-192, at 172.

Central African Republic (MINUSCA). Some of these missions have replaced PSO: ONUB for AMIB, MINUSMA for AFISMA, and MINUSCA for MISCA. The UN got even involved in a joint mission with the AU, namely the African Union-United Nations Hybrid Operation in Darfur/Sudan (UNAMID), which succeeded to AMIS. In other situations, foreign powers continue to intervene. Thus, the United States of America created the Africa Command (AFRICOM) to coordinate their military activities in the continent, and France successively launched military operations in Mali (*Serval Operation* and *Barkhane Operation*) since 2013, and in Central African Republic between 2013 and 2016 (*Sangaris Operation*) to counter terrorism and anarchy in two collapsed states. These interventions must be added to numerous military bases established in every part of the African continent, including those held by China, Japan and Russia, for the official purpose of promoting peace and stability or in support of the armies of the host states.

What does all of this tell us about the performance of the PSC? First, it seems that the realisation of the expectation placed in the PSC to play a central role in ensuring peace and security in Africa is very limited. Much of the 'African solutions to African problems' remains a dead slogan. Second, the efficacy of PSO appears to be problematic.[86] The AU has shown its inability to hold sustainable missions in complex situations. This is evidenced by the substitution of some by robust PKO and the necessity of joint action. Where such replacement occurred, PSO were terminated without peace being established (Burundi, Darfur, Mali and Central African Republic). As of June 2018, the only active PSO is AMISOM. Successful missions were only those of small scale sent to Comoros where peace and stability has been largely established.

PSO have overall suffered from two major and interconnected problems. First, insufficient logistic supplies and personnel. For instance, the ten thousand authorised troops for AMIS were not reached.[87] This problem is due to the reluctance of many states to contribute and expose their troops to grave security risks abroad. With respect to AMISOM, hundreds of Ugandan, Burundian and other troops have lost their lives in the fight against the terrorist group al-Shabaab, whilst 36 soldiers died in Mali before the replacement of AFISMA by MINUSMA in 2013.[88] Most African armies also lack sufficient peacekeeping capacity. In general, they are weak or in crisis like the states, less trained and in need of transformation.[89] The most important contributors out of 55 AU member states are Burundi, Ethiopia, Nigeria, Rwanda, Uganda, and South Africa. This AU's dependence on troops contributing states is the consequence of the ineffectiveness of the African Standby Force, still at the stage of operational building, while it is the institution designed to carry out all AU's military actions, pending the establishment of 'an African Army at the final stage of the political and economic integration of the continent'.[90] Second, insufficient funding, despite the creation of a Peace Fund. The available resources have been estimated at 45,5 USD millions out of 400 USD

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[86] See Adegboyega A. Ola, 'Missions with Hindrance: African Union (AU) and Peacekeeping Operations' 5 (1) Journal of African Union Studies (2016) 113-135.

[87] PSC/PR/Comm (XLVI), 10 March 2006, para.4 (b) (ii); PSC/MIN/Comm(LVIII), 27 June 2006, para.11 ; Peace and Security Council, ' Report of the Chairperson of the Commission on the Situation in Darfur' (PSC/MIN/2(LVIII)), Banjul (The Gambia), 27 June 2006, para. 31; Peace and Security Council, ' Report of the Chairperson of the Commission on the Situation in Darfur (The Sudan)' (PSC/AHG/3(LXVI)), Abuja (Nigeria), 29 November 2006, para. 20.

[88] Institute for Security Studies, 'Peace and Security Council Report' (October 2015), at 4.

[89] Axel Auge, 'Les Armées Africaines et le Développement : une Transformation Nécessaire' 102 *Bulletin du Maintien de la Paix (August* 2011) 1-4.

[90] African Union Non-aggression and Common Defence Pact, article 4 (d).

millions needed to cover 25% of the AU budget related to PSO in July 2018.[91] The anticipation of this problem justifies the inclusion of article 21 (6) and (7) in the Protocol on the PSC requiring that contributing states bear the costs of their participation in PSO at least for the first three months of deployment, with the guarantee that the AU will refund their expenses within six months and proceed to finance the operations. Yet, the experience of AMIB shows that contributing states – namely South Africa, Ethiopia and Mozambique – lost their money because the AU was unable to mobilise the necessary funds and reimburse them in time.[92] Either its member states did not provide their financial contributions or its international partners, such as the UN and the European Union (EU), were unable to assist with the amount of money that it expected to receive. This entails the same adverse effect of discouraging states to participate in PSO.

The AU is now motivated to ensure predictable self-funding for its activities as voluntary contributions to the Peace Fund has proved to be inadequate. In July 2016, it decided 'to institute and implement a 0.2 percent Levy on all eligible imported goods into the Continent to finance the African Union Operational, Program and Peace Support Operations Budgets (…)'.[93] Yet, the High Level Panel on Alternative Sources of Financing the AU discarded a similar import levy in 2012,[94] probably because it could cause the increase of prices of goods which might be necessary for feeding the African peoples. The reservation made to this decision by Mauritius can thus be understood. In the end, the AU aims to support 100% of its operational budget, 75% of its program budget and 25% of its peace support operations budget.[95] Almost two years later, it remains to be seen if the 2016 decision will be implemented. The AU is likely to continue to rely on donors to support its peace missions.

5. The PSC and the international partnership for peace and security in Africa

Another feature of the PSC, compared to the OAU Central Organ, is its ability to perform its functions in a wider framework of cooperation. Article 7 (1) (k) of the 2002 Protocol specifically provides that the PSC shall promote and develop a strong partnership for peace and security between the AU and other international organisations. The developments below focus on the relationship with Regional Economic Communities and the UN.

a) The revival of the relationship with Regional Economic Communities

Regional Economic Communities (RECs) consist of eight intergovernmental organisations created within five African regions (North, South, East, Center and West) and recognised as such by the AU

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[91] Assembly of the Union, 'Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa' (Assembly/AU/7(XXXI)), Nouakchott (Mauritania), 1 – 2 July 2018, para. 91.

[92] Peace and Security Council of the African Union, 'Report of the Chairperson of the Commission on the Establishment of a Continental Peace and Security Architecture and the Status of Peace Processes in Africa' (PSC/AHG/3(IX)), Addis-Ababa (Ethiopia), 25 May 2004, para. 25.

[93] Assembly/AU/Dec.605(XXVII), Decision on the Outcome of the Retreat of the Heads of States and Government, Ministers of Foreign Affairs and Ministers of Finance on the Financing of the African Union, 27th Ordinary Session of the AU Assembly, Kigali (Rwanda),17– 18 July 2016, para. 5(a) (i).

[94] Assembly of the African Union, 'Progress Report of the High Level Panel on Alternative Sources of Financing the African Union Chaired by H.E. Olusegun Obasanjo, Former President of Nigeria –Consultations with Member States', Assembly/AU/18(XIX), Addis-Ababa (Ethiopia), 15-16 July 2012, para. 22 (4).

[95] Assembly/AU/Dec.578 (XXV), Decision on the Scale of Assessment and Alternative Sources of Financing the African Union (Doc. Assembly/AU/5(XXV)), 25th Ordinary Session of the AU Assembly, Johannesburg (South Africa), 14-15 June 2015, para. 2 (ii).

so as to serve as the pillars for the African integration. The following are the RECs: the Arab Maghreb Union (AMU), the Community of Sahel-Saharan States (CEN-SAD), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority for Development (IGAD) and the Southern African Development Community (SADC).[96] They have their own mechanisms for conflict prevention, management and resolution, the so-called 'Regional Mechanisms'.

The relationship between Regional Mechanisms and the PSC is governed by the principle of hierarchy of African collective security mechanisms. In particular, article 16 (1) of the PSC specifies that Regional Mechanisms are part of the overall security architecture of the Union'. This does not obliterate the fact that they remain distinct from the PSC and can take decisions for their respective regions. To keep everything in order, the activities of Regional Mechanisms must be 'consistent with the objectives and principles of the Union'.[97] This results from article 4 (l) of the AU Constitutive Act which provides that one of the objectives it pursues is to 'coordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union'. The 2002 Protocol assigns the same objective to the PSC with respect to Regional Mechanisms.[98] One may argue that the power to coordinate consists of organising several parts of a whole in order to make a system which is coherent and achieves better results. Harmonisation may be understood as a high degree of coordination which aims to eliminate inconsistencies and conflicts between different parts of the whole. Besides the AU Constitutive Act and the 2002 Protocol, this issue is governed by other legal instruments such as the 2008 Memorandum of Understanding on Cooperation in the Area of Peace and Security between the AU, the RECs and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa.

The AU has to supervise Regional Mechanisms because peace cannot be achieved with incoherent or competing legal frameworks and actions between RECs or with the PSC. Some flexibility is also expected in practice since the PSC and Regional Mechanisms must be guided by 'the comparative advantage of each and the prevailing circumstances'[99] subject to joint action. This entails a presumption that Regional Mechanisms should complement the primary or central role of the AU in assuring peace and security in Africa.[100] But, this formal development seems to be a little bit exclusive of other fruitful African collective security agencies. Yet, some AU member states have demonstrated their will to resort to them in their respective sub-regions. This is the case with the Lake Chad Basin Commission which created the Multinational Joint Task Force in April 2012 in order to combat Boko Haram, a terrorist group which affects Chad, Cameroon, Niger and Nigeria.[101]

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[96] Assembly/ AU/DEC.112 (VII), Decision on the Moratorium on the Recognition of the Regional Economic Communities (REC), 7th Ordinary Session of the AU Assembly, Banjul (The Gambia), 1-2 July 2006.

[97] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 16 (1) (a).

[98] Ibid., article 16 (1) (a).

[99] Ibid., article 16 (1) (b).

[100] See Memorandum of Understanding on Cooperation in the Area of Peace and Security between the AU, the REC and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa (2008), article XX (1).

[101] Isaac Olawale Albert, 'Rethinking the Functionality of the Multinational Joint Task Force in Managing the Boko Haram Crisis in the Lake Chad Basin' XLII (3) *Africa Development* (2017) 119-135.

Another case is the International Conference on the Great Lakes Region,[102] which envisaged to deploy an International Neutral Force to disarm armed groups in eastern DRC in July 2012.[103] These agencies need to be more connected to the AU in spite of the flexibility of the PSC to cooperate with them as just 'other relevant international organisations'.[104] The difference with Regional Mechanisms is particularly important in view of the modalities of the latter's cooperation with the AU.

First, there is an obligation to reciprocal exchange of information. In this regard, Regional Mechanisms must keep the PSC 'fully and continuously informed of their activities and ensure that these activities are closely harmonised and coordinated with the activities of Peace and Security Council'.[105] Likewise, the PSC must *simply* 'keep the Regional Mechanisms fully and continuously informed of its activities'.[106] This is made possible through liaison offices of the AU to the Regional Mechanisms, those of RECs to the AU, and the participation in collective meetings.[107] An example of such an exchange of information concerns the treatment of the political crisis in the Gambia in 2017 when Yaya Jammeh attempted to cling to power despite the fact that he lost the presidential elections held in December 2016.[108] The PSC saw in this situation a case of unconstitutional change of government.[109] In accordance with the ultimatum given by ECOWAS to outgoing President Yaya Jammeh, it decided that as of 19 January 2017, he would cease to be recognised by the AU as legitimate President of the Gambia.[110] The PSC also commended the ECOWAS for its principled stand with regard to this situation, including the consideration to use all necessary means to ensure the respect of the will of the Gambian people.[111] The threat to use force in order to protect democracy, restore the constitutional order and put in power President-elect Adam Barrow persuaded Yaya Jammeh to give up his ambition before seeking refuge in Equatorial Guinea.

It has to be noted that the principle of hierarchy between African collective security mechanisms is less stringent than the hierarchy between regional agencies and the UN system of collective security under the Charter. On the one hand, Regional Mechanisms do not need a prior authorisation of the PSC to resort to the use of force. As explained above, in the Gambian case, the PSC only *commended* the ECOWAS for its decision. This was just a form of political support. Therefore, the inclusion in the 2005 Roadmap for the operationalisation of the African Standby

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[102] See Adolphe Kilomba Sumaili, 'La CIRGL et le Règlement des Différends dans la Région des Grands Lacs : Cas de la Rébellion du M23' 28 (1) Revue Québécoise de Droit International (2015) 203-218.

[103] Declaration of the Heads of State and Government of the Member States of the International Conference on the Great Lakes Region (ICGLR) on the Security Situation in the Eastern Democratic Republic of Congo, Extraordinary Summit of the Heads of State and Government, Addis-Ababa (Ethiopia), 15 July 2012, para.4 <http://www.icglr.org/index.php/en/component/k2/item/222-nouvellesenglish> accessed 18 June 2018; See also Balingene Kahombo, *L'Afrique des Grands Lacs: la Paix Recherchée dans l'Incohérence de l'Action de la Communauté Internationale* (Saarbrücken : Editions Universitaires Européennes, 2015), at 29-30.

[104] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 7 (1) (k) and 17 (5).

[105] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 16 (3).

[106] Ibid.

[107] Ibid., article 16 (7) and (8).

[108] See Joint Declaration by the Economic Community of West African States, the African Union and the United Nations on the Political Situation of the Islamic Republic of The Gambia (21 January 2017) <https://au.int/sites/default/files/pressreleases/31910-pr-ecowas-au-un-joint-communique.pdf> accessed 16 June 2018.

[109] PSC/PR/COMM. (DCLIV), 20 January 2017, para. 8.

[110] PSC/PR/COMM. (DCXLVII), 13 January 2017, para. 5 (ii).

[111] Ibid., para. 3.

Force of the obligation for RECs to seek the AU authorisation prior to their intervention had no legal basis.[112] It is not provided for by any AU legal instrument nor by those governing Regional Mechanisms. But, a legal ambiguity still exists because there is no precision about what the PSC could do, upon information provided to it, if it finds that a decision or an action which has been taken by a Regional Mechanism is inconsistent with the objectives and principles of the Union. The only thing we know is that such a conclusion would make the said decision or action illegal, but may not terminate its effect. This hold further true since aggression by a REC which may justify a collective self-defence response is not conceivable under the 2005 AU Non-aggression and Common Defence Pact. On the other hand, the Security Council does not have the obligation to inform regional agencies about its activities even though this may be necessary in practice.

Second, Regional Mechanisms are allowed to participate in 'the establishment and effective functioning of the Continental Early Warning System and the African Standby Force. The former is a sort of intelligence service which is designed to gather information to be made available to the Chairperson of the AU Commission who shall use them to advise the PSC on existing or potential conflicts or threats to peace and security in Africa and request the best course of action. The Continental Early Warning System comprises two institutional scales. First, an observation and monitoring centre located at the AU, which is called the Situation Room. Second, there are observation and monitoring units of Regional Mechanisms to be linked directly to the Situation Room to which they transmit data collected at their level. While the Continental Early Warning System is already operational, the African Standby Force is expected to include five regional brigades. Three standby brigades for Southern, Western and Central Africa will be made dependent on SADC, ECOWAS and ECCAS respectively, whereas there will be coordinating mechanisms of corresponding regional standby brigades for Eastern Africa and Northern Africa which will allow to include all other RECs. The AU shall also dispose of the African Capacity for Immediate Response to Crises (ACIRC) which is an additional force distinct from those five regional standby brigades.[113] This will enable the AU to act in case of emergency pending the cumbersome mobilisation of regional brigades. Each REC will be permitted to use the respective regional brigade for its missions, while the AU will be able to resort to one or more regional brigades to carry out its operations. In terms of legal hierarchy, this implies that the AU could order RECs to deploy their part of the African Standby Force, including potentially outside their respective region, with the obligation for RECs to comply with such an order.[114] This is in line with the aforementioned 2008 Memorandum of Understanding which provides:

> The RECs managing regional brigades within the framework of the African Standby Force and the Coordinating Mechanisms shall, upon decision by Council, make available their assets and capabilities, including planning, to other RECs and Coordinating Mechanisms or the Union in order to facilitate deployment of peace support operations outside their areas of

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[112] African Union, 'Roadmap for the Operationalization of the African Standby Force' (EXP/AU-RECs/ASF/4(I)), Experts' Meeting on the Relationship between the AU and the Regional Mechanisms for Conflict Prevention, Management and Resolution Addis Ababa (Ethiopia), 22 – 23 March 2005, para. 10.

[113] African Union, 'Declaration: African Capacity for Immediate Response to Crises (ACIRC)', 2nd Extraordinary Summit, Addis-Ababa (Ethiopia), 09 November 2016, para. 5.

[114] Adriana Lins de Albuquerque, 'The African Peace and Security Architecture (APSA) – Discussing the Remaining Challenges', Report No. FOI-R--4301—SE, Swedish Ministry of Defense: October 2016, at 25 <https://www.foi.se/report-search/pdf?fileName=D%3A%5CReportSearch%5CFiles%5C842efa51-f170-43df-a2e3-34e3d99f7fc6.pdf> accessed 17 June 2018.

> jurisdiction (…). The RECs and the Coordinating Mechanisms shall, upon decision by the Council, make their regional brigades available for deployment as part of a peace support operations undertaken outside their areas of jurisdiction.[115]

Again, it remains to be seen if these institutions will become effective and efficient in practice. Everything seem to depend upon a number of factors, namely the will of African states to achieve the reforms undertaken with the AU, the capacity of the regional standby brigades and the ACIRC in terms of troops and other available human resources, training in PSO, logistic and financial supplies. The UN could be of some help.

b) From classical to new forms of cooperation with the United Nations

The cooperation between the PSC and the UN is mainly governed by chapter VIII of the UN Charter and AU treaties such as the Protocol on the PSC. Resolutions of the Security Council and General Assembly as well as the decisions of the AU Assembly and the PSC may also constitute, case by case, a basis for their relationship. This is the case with the Security Council Resolution 2320 (2016) which emphasises the need to adopt measures aiming to improve the necessary close relationship between the UN and the AU in collective security activities.[116] This is also the case of the PSC Communiqué of May 2017 which states that 'support by the UN to regional organisations in matters relating to the maintenance of international peace and security is an integral part of collective security as provided for in the UN Charter'.[117] According to the UN and the African Common Position on the Review of UN Peace Operations, 'the strategic partnership being forged with the AU is identified as a template for the UN's relations with regional organisations generally'.[118] In terms of substance, this is important because the framework of chapter VIII of the UN Charter is late behind the progress surrounding the development of regional collective security arrangements, unless it is subject to an innovative or progressive interpretation and application in order to address the gaps in the international legal order.[119] Efforts must be made to capture new forms of cooperation that the drafters of the UN Charter did not explicitly foresee. This justifies the move towards the clarification of the rules that shall govern such a cooperation in a number of reports,[120] including

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[115] Memorandum of Understanding on Cooperation in the Area of Peace and Security between the AU, the REC and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa (2008), article XX (3) and (4).

[116] UNSC Res.2320 (2016), 18 November 2016, para. 1.

[117] PSC/PR/COMM. (DCLXXXIX), 30 May 2017, para. 4 (iii). See also PSC/AHG/COMM/2(DXLVII), 26 September 2015, para. 12 (iii).

[118] Peace and Security Council, ' Report of the Chairperson of the Commission on Follow-up Steps on the Common African Position on the Review of United Nations Peace Operations' (PSC/AHG/3.(DXLVII)), New York (United States of America), 26 September 2015, para. 2 (iv).

[119] Peace and Security Council, 'Common African Position on the UN Review of Peace Operations' (PSC/PR/2(DII)), Addis-Ababa (Ethiopia), 29 April 2015, para. 3.

[120] Security Council, 'Report of the Secretary-General on strengthening the partnership between the United Nations and the African Union on issues of peace and security in Africa, including on the work of the United Nations Office to the African Union' (S/2017/744), 30 August 2017; General Assembly and Security Council, 'Support to African Union Peacekeeping Operations Authorized by the United Nations' (A/64/359–S/2009/470), Sixty-fourth Session/ Sixty-fourth Session, 18 September 2009; Peace and Security Council, 'Note on the Report of the African Union-United Nations Panel on Modalities for Support to African Union Peacekeeping Operations' (PSC/PR/2(CLXXVIII)), Addis-Ababa (Ethiopia), 13 March 2009; Peace and Security Council, 'Report of the Chairperson of the Commission on the Partnership between the African Union and the United Nations on Peace and Security: Towards Greater Strategic and Political Coherence' (PSC/PR/2.(CCCVII)), Addis-Ababa (Ethiopia), 9 January 2012.

the Brahimi Report of 2000,[121] the Prodi Report of 2008[122] and the Ramos-Horta Report of 2015.[123]

As a reminder, the relationship between the UN and regional collective security agencies is hierarchical. In addition to the fact that the Security Council may use these agencies to enforce actions taken under its authority, there are two other important classical forms of cooperation, i.e. those which are explicitly provided for by the Charter, worthy of being mentioned. First, regional agencies must keep the Security Council at all times fully informed of their activities undertaken or in contemplation for the maintenance of international peace and security.[124] Second, regional agencies must seek the Security Council authorisation in case of *enforcement action*. [125] Enforcement action means coercive action which implies 'the notion of force to exert preponderant pressure on its recipient'.[126] The latter's consent is not required. As such enforcement action includes not only military coercion but also the imposition of collective political, diplomatic or economic sanctions.[127] In regard to the AU, it is submitted that there are four hypotheses in which such authorisation is necessary, namely in case of the AU intervention in a member state in respect of genocide, crimes against humanity or war crimes; when a PSO is to be mandated to use force so as to enforce peace in the area of its deployment; the imposition of sanctions pursuant to article 23 (2) of the AU Constrictive Act; and the application of other forms of targeted sanctions against individuals. The Security Council authorisation has been referred to in the 'Common African Position on the Proposed Reform of the United Nations', famously known as '*The Ezulwini Consensus*'.[128] But, the Ezulwini Consensus indicates that it can be granted after the fact.[129] This is in line with the practice of the AU. Among other examples, one may quote the case of *Democracy in Comoros* [130] and the use of military force by AMISOM to re-establish the collapsed state of Somalia.[131] Another good example is the recommendation made by the PSC to the AU Assembly for the creation of the African Prevention and Protection Mission in Burundi (MAPROBU), for the deployment of which a request for a Security Council authorisation seems to have been implicitly made.[132] This mission was expected to have an initial strength of up to five thousand military personnel and police. It however failed because of the opposition of the host state and the refusal

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[121] General Assembly and Security Council, 'Report of the Panel on United Nations Peace Operations' (A/55/305–S/2000/809), Fifty-fifth Session/ Fifty-fifth Year, 21 August 2000.

[122] General Assembly and Security Council, 'Report of the African Union-United Nations Panel on Modalities for Support to African Union Peacekeeping Operations' (A/63/666–S/2008/813), Sixty-third Session/ Sixty-third Year, 31 December 2008.

[123] General Assembly and Security Council, 'Report of the High-level Independent Panel on Peace Operations on Uniting our Strengths for Peace: Politics, Partnership and People' (A/70/95-S/2015/446), Seventieth Session/Seventieth Year, 17 July 2015.

[124] UN Charter, article 54.

[125] Ibid., article 53 (1).

[126] Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Oxford and Portland, Oregon: Hart Publishing, 2004), at 43.

[127] Ibid., at 46-52.

[128] Ext/EX.CL/2 (VII), The Common African Position on the Proposed Reform of the United Nations: *"The Ezulwini Consensus"*, 7th Extraordinary Session of the AU Executive Council, Addis-Ababa (Ethiopia), 7-8 March 2005, at 6.

[129] Ibid.

[130] Assembly/AU/Dec.186 (X), note 82, para.5. The AU Assembly urged 'the United Nations Security Council to adopt a resolution endorsing the sanctions imposed on the illegal authorities of Anjouan by the PSC of the AU since 10 October 2007'.

[131] PSC/PR/Comm (LXIX), 19 January 2007, paras. 8-9; UNSC Res.1744 (2007), 20 February 2007, para. 4.

[132] PSC/PR/COMM (DLXV), 17 December 2015, para. 13 (c) (iv).

of other AU members such as Equatorial Guinea, Tanzania, the Gambia and Zimbabwe that rather preferred diplomatic efforts to be pursued in order to solve the crisis.[133]

The main new forms of cooperation referred to above concern the substitution of PSO by PKO and joint or hybrid mission such as UNAMID. It has to be noted that UNAMID was created following the opposition by Sudan to replace AMIS with a complete UN peace operation. The Sudanese reluctance was arguably justified by the fact that such a substitution would have given some permanent members of the UN Security Council tremendous powers over its domestic policy. This was clearly the case of the United States of America with which Sudan entertained tedious relationships.[134] A hybrid mission is, so to say, a multidimensional operation established and directly placed under the authority of at least two international organisations, and jointly managed or administered according to an equitable distribution of roles and functions at the level of command and operational control of forces.[135] The UN and the AU agreed on a number of principles to govern UNAMID. These principles include to be a mission created and mandated by both the Security Council and the PSC, whose personnel remain *essentially* (not exclusively) African, administered by a joint special representative of the UN Secretary General and the Chairperson of the AU Commission, acting on the basis of the UN command and control structures and systems, and benefiting from the UN logistical and financial support.[136] In addition to this shift towards hybridity, the UN variously contributes to the reinforcement of the AU capacity in peacekeeping. This contribution includes support to its early warning system and the operationalisation of the African Standby Force, the strategic planning of PSO, the sharing of information on common problems through the UN liaison office at the AU headquarters in Addis-Ababa (Ethiopia).[137]

Last, the most challenging form of cooperation remains the funding of PSO. Five financing models have been suggested: trust fund established by the UN through voluntary contributions, UN subvention upon the AU request, joint financing of a jointly developed budget but managed by the AU, joint financing of a hybrid mission but managed by the UN, and creation of a UN support office financed through assessed contributions.[138] The latter financing model has been experienced since 2009 through the establishment of the UN Support Office for AMISOM (UNSOA) and the UN Support Office in Somalia (UNSOS).[139] It represents 'the most comprehensive arrangement involving multiple actors, namely the United Nations, the African Union, troop-and police-contributing countries, and

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[133] Solomon Dersso, 'To Intervene or Not to Intervene? An inside View of the AU's Decision-Making on Article 4(h) and Burundi' (World Peace Foundation: Occasional Paper, 26 February 2016), at 4-7 <https://sites.tufts.edu/wpf/files/2017/05/AU-Decision-Making-on-Burundi_Dersso.pdf> accessed 18 June 2018.

[134] Michel Liegeois, '*Darfour : Mission Impossible pour la MINUAD ?*' (Group for Research and Information on Peace and Security Report: Brussels, 2009), at 9 <https://www.grip.org/sites/grip.org/files/RAPPORTS/2009/2009-6.pdf> accessed 19 June 2018.

[135] See also Festus Aboagye, 'The Hybrid Operation for Darfur: A Critical Review of the Concept of the Mechanism' (Institute for Security Studies: Paper 149, August 2007), at 2 <https://www.grip.org/sites/grip.org/files/RAPPORTS/2009/2009-6.pdf> accessed 19 June 2018.

[136] PSC/AHG/Comm(LXVI), 30 November 2006, para.2; PSC/PR/Comm (LXXIX), 22 June 2007, paras 6 and 8; UNSC Res.1769 (2007), 31 July 2007, paras 1-3, 8, 12 and 15; Peace and Security Council, 'Report of the Chairperson of the Commission and the Secretary-General of the United Nations on the Hybrid Operation in Darfur' (PSC/PR/2(LXXIX)), Addis-Ababa (Ethiopia), 22 June 2007, paras. 10-11.

[137] Institute for Security Studies (n 88) at 2.

[138] Security Council, 'Report of the Secretary-General on Options for Authorization and Support for African Union Peace Support Operations' (S/2017/454), 26 May 2017, paras. 30-37.

[139] Ibid., para. 36.

subregional and other partners including the European Union'.[140] In Mali and Central African Republic, the UN created a multi-partner trust fund to AFISMA and MISCA.[141] Consequently, funding is largely provided and managed by donors, which may cause friction and does not allow the AU to perform its activities independently.[142] This happened when the European Union attempted to freeze its assistance to AMISOM because of the sanctions it imposed against one of the major troops contributing state, Burundi. In order to ensure predictable funding for AU missions in the future, it has been proposed that for a PSO to be eligible for the UN financing, some conditions must be fulfilled such as the AU request, the approval by the Security Council, and the consultation with the UN for the definition of mandates and assessment of the resource requirements.[143] All this will entail the submission of regular reports to the Security Council and a clear oversight mechanism of PSO, especially in regard to financial audits and the respect for international human right and humanitarian law.[144] As it may be seen, these proposals do not leave a margin of initiative to the AU, at least in respect of the management of available funds. Thus, the aforementioned lack of autonomy of action re-appears. It seems that big financial contributors, notably the United States of America, do not want that the UN pays directly money into the AU account but have a control over its activities.[145] With all the conditionalities that the UN is likely to impose, the issue of predictable funding for PSO is far from being solved.

6. Conclusion

Contrary to the defunct OAU Central Organ, the PSC is a relatively robust AU organ which is integrated in the APSA. Its relationship with Regional Mechanisms attached to RECs is hierarchical. But, this hierarchy is less stringent than the one which exists between the Security Council and regional collective security agencies under the UN Charter. PSO constitute the most important instrument of its action and their conception is proximate to UN peacekeeping missions. In terms of legal powers, the PSC is subordinated to the AU Assembly, gathering African heads of state and government, which can modify, annul or reject its decisions. The primacy of the AU Assembly over the PSC, its subsidiary organ, is reflected in the incompetence of the latter to decide on matters falling within its reserved domain. This includes the authorisation of an intervention in a member state in respect of genocide, crimes against humanity and war crimes, or in the event of aggression or destabilisation, and the imposition of sanctions pursuant to article 23 of the Constitutive Act. There are only two exceptions. First, the PSC can decide on these matters if the AU Assembly delegates its powers to it. Second, the PSC can recommend to the AU Assembly an intervention in a member state and determine the modalities of its execution. This study has shown that such a distribution of powers within the AU is not appropriate because the PSC is prevented from taking decisions on issues that deserve swift action. This holds true since it is a permanent collective security body whilst the AU Assembly is not. Hence, the proposal to strengthen the robustness of the PSC by conferring on it the power to authorise interventions in member states as it performs its functions under the authority of the AU Assembly.

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[140] Ibid., para. 42.

[141] Ibid.

[142] Institute for Security Studies (n 88) at 3.

[143] Security Council (n 138) paras. 8-25.

[144] Ibid., paras 23 and 25.

[145] Institute for Security Studies (n 88) at 3.

In practice, the PSC suffers from three major problems. First, its autonomy of action is limited given the fact that all the entire APSA designed to support its mandate is not yet operational. This is the case with the African Standby Force which is a sort of provisional Pan-African army for the purpose of carrying out AU interventions and PSO. Concerning the African Peace Fund, its resources are also limited. As a result, the PSC must rely on AU member states to discharge its mandate. However, only a few states contribute to the execution of PSO. The reason lies in the weakness of most African armies to participate in peace missions abroad and the will to avoid losses in countries where security risks are very high like in Somalia. Another reason is the budget requirement under article 21 (6) and (7) of the Protocol on the PSC obliging states to finance their participation alone in the first three months of the deployment of their troops with the guarantee of being reimbursed by the AU within six months. But, as demonstrated in regard to AMIB, contributing states lost their money because the AU was unable to refund their expenses as expected. Second, the PSC's dependence on its external partners has increased over the years: support to the early warning system and planning of PSO, logistic and financial assistance. There is indeed a clear contradiction between the African policy of self-reliance in collective security and the practice of regional dependency.[146] This study has focused on the partnership with the UN. In this regard, new forms of cooperation that were not explicitly foreseen by the drafters of the UN Charter have been developed in order to compensate the AU's operational incapacity: replacement of PSO by UN peacekeeping operations, creation of joint or hybrid missions, and new UN financing models for PSO. Hence, the progressive application of chapter VIII of the UN Charter which can become a template for other regional organisations. Third, the PSC's practice remains very limited. Only eight PSO were launched with a relative efficacy between 2003 and 2017. This is inconsistent with the PSC's theoretical robustness and the security needs of the continent. Therefore, it is difficult to say in practice that the establishment of the PSC has led to a rise of collective security or to that of the international rule of law in Africa. Rather, the PSC stagnates whereas Africa is still a war-torn region, affected by political crises and the expansion of terrorism in many countries. Therefore, African regionalism on collective security is effective but has so far yielded limited positive results.

To solve the PSC's lack of sufficient autonomy and relative inefficacy, AU member states should strengthen their capacity, starting with the quick operationalisation of the African Standby Force. The execution of the 2016 decision on alternative sources of financing AU's activities is also a priority. Otherwise, the expectations that are placed in the PSC will remain a dead slogan. The UN and foreign powers may continue to intervene as the main bidders of peace and security to the continent, whilst the AU plays a secondary role contrary to its policy aiming to promote African solutions to African problems. Thus, the political will of African states that may show that they want to change sustainably the situation by taking their organisation more seriously is required.

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[146] Aarie Glas, "African Union Security Culture in Practice: African Problems and African Solutions" (94 (1) International Affairs (2018) 1121-1138, at 1135-1137.

The Author

Balingene Kahombo is a fellow with the Berlin Potsdam Research Group "The International Rule of Law - Rise or Decline?". He has written his doctoral thesis in public international law at Freie Universität Berlin (Germany) on the African Union and the regionalization of international criminal law. Graduate of high/advanced studies in public law, public international law and international relations at the University of Kinshasa, he is member of the Congolese Association for Public Policy (CAPP) and the 'Centre de recherches et d'études sur l'état de droit en Afrique' (CREEDA).

Previously he worked as a magistrate for the public prosecution in Kinshasa and as an assistant lecturer at the University of Goma in the Democratic Republic of Congo. Between 2009 and 2013, he was one of the young researchers of the Rule of Law Program for Sub-Saharan Africa, supported by the Konrad Adenauer Foundation (KAS), and a collaborate researcher at the Institute for Democracy, Governance, Peace and Development in Africa (IDGPA)-Kinshasa (DRC). His field of research covers the African Union, Pan-Africanism and African regional integration, issues of peace and security law, international criminal law, rule of law and constitutional justice in the African Great Lakes Region.

The Kolleg-Forschergruppe "The International Rule of Law – Rise or Decline?" examines the role of international law in a changing global order. Can we, under the current significantly changing conditions, still observe an increasing juridification of international relations based on a universal understanding of values, or are we, to the contrary, rather facing a tendency towards an informalization or a reformalization of international law, or even an erosion of international legal norms? Would it be appropriate to revisit classical elements of international law in order to react to structural changes, which may give rise to a more polycentric or non-polar world order? Or are we simply observing a slump in the development towards an international rule of law based on a universal understanding of values?

The Research Group brings together international lawyers and political scientists from five institutions in the Berlin-Brandenburg region: Freie Universität Berlin, Hertie School of Governance, Humboldt-Universität zu Berlin, Universität Potsdam and Social Science Research Center Berlin (Wissenschaftszentrum Berlin). An important pillar of the Research Group consists of the fellow programme for international researchers who visit the Research Group for periods up to two years. Individual research projects pursued benefit from dense interdisciplinary exchanges among senior scholars, practitioners, postdoctoral fellows and doctoral students from diverse academic backgrounds.