

The evolution of the UN-AU peace and security partnership

*Hennie Strydom**

Introduction

Since the deployment in 1956 of the United Nations (UN) Emergency Force to address the Suez Crisis, UN peacekeeping missions have undergone significant changes. Over time these changes, brought about by the escalation in the number of internal armed conflicts since the 1990's and the need for multidimensional peacekeeping missions with enforcement capabilities, caused the UN to not only reconsider its traditional concept of peacekeeping but to develop a framework for cooperation between the UN and regional agencies to ensure greater efficiency in peacekeeping operations.

Two landmark policy developments illustrate the depth and scope of the new orientation towards peacekeeping. The first was the 1992 Agenda for Peace Report,¹ and its 1995 supplement,² which specified the four global objectives for future UN peace missions, namely conflict prevention, peace-making, peacekeeping, and post conflict reconstruction. The second was the 2015 Comprehensive Review of UN Peacekeeping Operations in All its Aspects,³ which endorsed the concept of 'partnership peacekeeping' which would require a 'bold new agenda ... to build a strong global-regional framework to meet those challenges through responsible and principled strategic partnerships'.⁴

* Professor in International Law and since 2013 the holder of the South African Research Chair in International Law, University of Johannesburg.

1 United Nations Security Council (UNSC) 'An agenda for peace, preventive diplomacy, peace-making and peace-keeping, report of the secretary-general pursuant to the statement adopted by the summit meeting of the Security Council on 21 January 1992' Forty-seventh session 17 June 1992, UN Doc A/47/277 – S/24111.

2 UNSC 'Supplement to an agenda for peace: position paper of the secretary-general on the occasion of the fiftieth anniversary of the United Nations' Fiftieth session 25 January 1995, UN Doc A/50/60 – S/1995/1.

3 UNSC 'Identical letters dated 17 2015 from the Secretary-General addressed to the President of the General Assembly and the President of the security council' Seventieth session 17 June 2015, UN Doc A/70/95/ - S/2015/446.

4 UNSC (n 3) at 53.

However, in the case of Africa the partnership or cooperation idea predates these developments. Already at the time of the Organization of African Unity (OAU) UN cooperation with the OAU reached a level of formalisation, albeit in a limited way and mostly in respect of economic and social development. When the African Union (AU) replaced the OAU in 2000 the partnership arrangement expanded with peace and security issues assuming a far greater importance, which, in no small measure was necessitated by the AU's newly developed peace and security architecture and the urgency of responding more effectively to the armed conflicts on the continent.

Under the UN's revised policies to provide for multidimensional peace-keeping operations human rights and international humanitarian law objectives have become integral to and an important part of a UN-led peace mission's mandate. Even though these aspects are not the main focus of this chapter I hope that the broader peace objective of the subject-matter will in some way pay tribute to the extraordinary work and vision of Christof Heyns, a friend and colleague, whose contributions to the African human rights project are unsurpassed. His untimely death has terminated his involvement in still to be completed projects but those he inspired, supervised and taught are many and they will carry his work forward.

This essay starts with an historical overview of the evolution of the UN-AU partnership for peace and security since the days of the OAU. It then deals with the subsidiarity issue which still lacks clarity and which is responsible for much of the uncertainty and confusion when it comes to the relationship between the AU and the Regional Economic Communities (RECs) in matters of peace and security. To an extent this part foreshadows the next section which covers the Joint UN-AU Framework for Enhanced Partnership in Peace and Security and the main obstacles the partnership is faced with. To further illustrate this, the substantive part of the chapter ends with three case studies, namely the conflicts in Mali, the Democratic Republic of the Congo (DRC) and the Central African Republic (CAR).

Historical background

This part firstly describes the nature and scope of the initial cooperation attempts between the UN and the OAU, how they evolved over time, and the OAU's first multinational peacekeeping endeavours in the 1980's in Chad and why they failed. It then covers the changes effected by the AU's Constitutive Act and related instruments as well as the weaknesses the AU system, like its predecessor, is still to overcome, and which are elaborated on in the subsequent parts of the chapter.

The OAU era

The formalisation of cooperation relationships between the UN and the OAU first occurred in 1965, two years after the inauguration of the continental body. To this effect an agreement was signed on 15 November 1965.⁵ Although the scope of cooperation was broadly framed as ‘all matters of common interest’ the prevailing sentiment of the agreement at the time was the economic and social development of Africa.⁶ This emphasis is further evident from the prominent role assigned to the United Nations Economic Commission for Africa (ECA) in giving effect to the agreement. The ECA was established in 1958 by ECOSOC as a regional agency for the promotion of economic integration and development in Africa.

Conspicuously absent from the agreement is any specific mention of peace and security issues which makes sense if viewed from the urgent need at the time to get the newly independent and fragile African states economically and institutionally on their feet. Even a cursory reading of the ECA’s early economic reports on Africa,⁷ containing the organisation’s programmes of work and priorities, illustrates the glaring absence of even the most basic modalities of statehood that would be required to build modern, prospering economies and to enable African states’ effective participation in international trade and commerce.

Even so, at the time there were several incidents that forewarned of a looming peace and security dilemma on the continent. They include the Algerian war against France (1954-1962); the Algerian-Moroccan border war (1963); the first Sudanese civil war between North and South Sudan (1955-1972); the Angolan war of independence (1961-1974); the Mozambican war of independence (1964-1974); the first Tuareg rebellion in Mali (1962-1964); the Congo crisis (1960-1965); the civil war in Chad (1960’s-1980’s) and the Eritrean war of independence (1961-1991).

In time these and future incidents would expose the continental body’s incapacity to even modestly restore peace and stability in conflict areas. Many of the obstacles peace missions were confronted with during this historical period still exist which the AU, the successor to the OAU, is still to overcome and which frustrate effective peacekeeping even under UN-AU cooperation agreements in this area.

5 United Nations Treaty Series ‘Treaties and international agreements registered or filed and recorded with the secretariat of the United Nations’ 548 (614) (Part II) New York, 1967 (1965 UN-OAU agreement).

6 1965 UN-OAU agreement (n 5) Preamble, arts 1, 3 & 6.

7 United Nations Economic Commission for Africa, https://repository.uneca.org/handle/10855/41975/discover?rpp=10&etal=0&query=economic+reports&group_by=none&page=2&search_bitstreams=all (accessed 10 August 2021).

Illustrative in this regard is the OAU's first multinational peacekeeping attempt in Chad in the 1980's where, under its Charter-based 'self-fix' policy, the OAU aimed at bringing an end to a twenty year-old civil war at a time when the OAU 'lacked the military experience for such operations and displayed a history of not being able to carry out resolutions due to the lack of financial resources and political will of its members'.⁸ Following the failure of Nigeria's unilateral attempt at a peaceful solution in Chad and the inability of the rival political factions to agree on the formation of a transitional national union government, the OAU, in July 1980, decided, in its resolution on Chad, to 'make one further attempt to find an African solution to the crisis'.⁹ For this purpose the OAU requested African states to 'provide peacekeeping forces at their own expense'¹⁰ for the establishment of a neutral OAU peacekeeping force already agreed upon in the 1979 Lagos Accord. The Accord determined that the neutral force must be composed of military contingents from countries not sharing a border with Chad which eventually led to the acceptance of contingents from Benin, the Congo and Guinea.¹¹ In its resolution on Chad, the OAU, apparently realising that there was little prospect in obtaining funding for the peacekeeping mission, kept a backdoor open and determined that in case of it not being successful in this regard, the UN Security Council will be requested to provide assistance.¹²

It did not take long for the mission to fall apart. Transport and other logistical problems prevented Guinea and Benin to deliver troops as arranged while the only remaining force from the Congo left within a few months when they came under attack in their own barracks and suffered one casualty.¹³ Furthermore, and not surprisingly, the OAU members failed to commit financial contributions to the mission and requests for financial assistance from external funders were either inadequately complied with or not at all.¹⁴ While the OAU had to content with these adverse conditions pertaining to the fielding of the mission, the internal political situation in Chad deteriorated even further to the

8 TM Mays *Africa's first peacekeeping operation: the OAU in Chad 1981-1982* (Praeger 2002) 4.

9 'Resolution on adopted by the Assembly of Heads of States and Government of the Organisation of Africa Unity' Meeting in its Seventeenth Ordinary Session in Freetown, Sierra Leone 14 July 1980. AHG/Res. 101 (XVII), at 5.

10 AHG/Res. 101 (XVII) (n 9) at 9.

11 Mays (n 8) 46. All attempts to find a copy of the Lagos Accord came to nothing. Hence, my use of the source in this footnote.

12 XXX at 6.

13 Mays (n 8) 49.

14 For an extensive account of the financial woes of the OAU generally and more specifically for purposes of the Chad mission see Mays (n 8) ch 7.

extent that cooperation between the government and the OAU mission became impossible.¹⁵

Even with its first mission in tatters, the OAU in June 1981 adopted another resolution on Chad establishing a second multinational peacekeeping force with the aim of assisting the transitional national union government to maintain peace and security in Chad and the establishment of a Chadian integrated armed force following the end of hostilities in December 1980.¹⁶ In this instance the 'Neutral OAU Force' was to be replaced by a 'Pan-African Peace Force' whose composition would be subject to approval by the transitional government.¹⁷ This resulted in combat battalions accepted from Nigeria, Senegal and Zaïre for the peacekeeping operation, joined by military observers from Algeria, Guinea-Bissau, Kenya and Zambia, and assistance provided by the US, Great Britain and France on a bilateral basis.¹⁸ As with the 1980 resolution the OAU in the 1981 resolution sought financial assistance from the United Nations, member states of the OAU and all international organizations in aid of the establishment of the force and the rebuilding of Chad's national economy.¹⁹ OAU members refused to contribute and a few foreign powers were only prepared to commit to small amounts. When hostilities resumed and attempts to force a ceasefire on the government and the rebel movements failed, the writing was again on the wall for the ill-equipped OAU peace mission in Chad. In June 1982, the forces of Hissène Habré, backed by the US and France, took control of the capital and ousted President Goukouni, a staunch ally of Libya's Muḥammad Gaddafi and whose influence in the affairs of Chad and the region was at variance with American and French foreign policy in the region. This marked the beginning of Habré's oppressive and violent rule as president of Chad until he was deposed in 1990. In 2016, he was found guilty of gross human rights violations by the Extraordinary African Chambers of the Senegalese Courts and sentenced to life imprisonment. Commenting on the OAU's second peacekeeping attempt in Chad, Mays observed that 'the OAU departed Chad with a negative feeling toward the concept of peacekeeping and did not attempt another such operation until 1993, with the fielding of the Neutral Military Observer Group I in Rwanda'.²⁰

15 Mays (n 8) ch 5.

16 Organization of African Unity Assembly of Heads of State and Government, Eighteenth Ordinary Session 'Resolutions adopted by the eighteenth assembly of heads of state and government' 24-27 June 1981 OAU Doc AHR/Res. 102 (XVIII) (OAU Res 102).

17 OAU Res 102 (n 16) at 3.

18 TM Mays *Historical dictionary of multinational peacekeeping* (Rowman & Littlefield 2010) 209.

19 United Nations Treaty Series (n 12) at 5, 7.

20 Mays (n 18) 207.

In 1990, the 1965 cooperation agreement between the UN and the OAU was replaced by a new agreement.²¹ Small changes separate the two agreements. In the title of the 1990 agreement there is no reference to the ECA and the text itself does not assign any function to the ECA. Clearly, the new text envisaged cooperation to take place by means of direct consultations between the two main parties. Areas of cooperation are slightly more specific than the 'all matters of common interest' in the 1965 agreement in that the fields of cooperation are labeled as political, economic and social, and scientific and cultural.²² Again, there is no specific reference to peace and security matters.

However, if this agreement, through an extensive interpretation of its terms and conditions, had any relevance for cooperation on peace and security matters, it was rendered redundant by subsequent developments. In 1991, the UN General Assembly was apprised of a report, submitted by a Special Committee, which led to the prioritisation of peace and security issues, including the enhancement of cooperation between the UN and regional arrangements in the maintenance of international peace and security, which were to form an integral part of the proposals for strengthening the role of the UN in all its aspects.²³

In 1995 the General Assembly approved a declaration on the enhancement of cooperation between the UN and regional organizations in the maintenance of international peace and security in recognition of the peace and security role assigned to such organizations under Chapter VIII of the UN Charter.²⁴ Some form of basic framework for cooperation emerged from the Declaration. First, the functions and responsibilities to be performed by the UN and a regional agency, respectively will depend on their respective mandates, scope and composition and should take place in ways suited to each specific situation;²⁵ second, individual states participating in regional arrangements must increase their efforts in maintaining at the regional level international peace and security in accordance with the UN Charter;²⁶ third, preventive efforts of the UN must be strengthened at the regional level by the establishment or improvement of early warning systems;²⁷ fourth, closer cooperation between the UN and regional agencies must be aimed at in the areas of preventive diplomacy, peacemaking, post-conflict peacebuilding,

21 United Nation Treaty Series 'Treaties and international agreement registered or filed and recorded with the Secretariat of the United Nations' 1580 (1044) Part II, New York 1990 (1990 UN-OAU agreement).

22 1965 UN-OAU agreement (n 2) art I.

23 GA Res 46/58 (1991) para 4(a). See also GA Res 47/38 (1992) para 3(a) and 48/36 (1993) para 3(a).

24 United Nations General Assembly Forty ninth session, resolution adopted by the General Assembly 17 February 1995 UN Doc A/Res/49/57.

25 UN Doc A/Res/49/57 (n 24) at 4.

26 UN Doc A/Res/49/57 (n 24) at 6.

27 UN Doc A/Res/49/57 (n 24) at 8.

and peacekeeping; and fifth, the UN Security Council must, where appropriate utilize regional arrangements for enforcement action pursuant to the Council's authorization.²⁸

Against this background, a UN Secretary-General report in 1999 focused specifically on cooperation between the UN and the OAU.²⁹ However, apart from mentioning the establishment of a UN trust fund for conflict prevention and peacekeeping and an OAU peace fund for building Africa peacekeeping capacities,³⁰ general statements on cooperation, consultation and exchange of information fill the rest of the report at the expense of concrete facts and outcomes. Between 2000 and 2002 a few General Assembly resolutions followed, calling for closer cooperation between the UN and the OAU in the area of peace and security and singling out the development of an early warning system, conflict prevention, peacekeeping, peacemaking, post-conflict reconstruction, and peace-building.³¹ By this time these resolutions had lost their significance for the OAU who was about to be replaced by the AU, but they still served as thematic instruments for the UN's future cooperation with the AU as successor institution.

The AU era

Unlike the OAU Charter, the 2000 Constitutive Act of the AU paid far more attention to peace and security issues which in no small measure emerged from the epic failures of both the OAU and the UN to prevent or stop the genocide in Rwanda in 1994, which a report on an inquiry into the actions of the UN described as 'one of the most abhorrent events of the twentieth century'.³² While the inaction of the UN and some individual members, in particular the United States, France and Belgium, was scrupulously exposed in the report, the OAU's own investigation pleaded poverty, institutional weakness, lack of expertise and resources, and the organization's Charter rules on member state sovereignty and non-interference in internal affairs, which incapacitated the OAU's own Mechanism for Conflict Prevention, Management and Resolution, established in 1993, to effectively respond to the emergence of internal armed conflicts in Africa.³³ A telling assessment of peace-making at the time in the OAU report is that

28 UN Doc A/Res/49/57 (n 24) at 1 (d).

29 UN Doc A/54/484 (21 October 1999).

30 UN Doc A/54/484 (n 29) at 19.

31 GA Res 54/94 (28 January 2000); 55/218 (6 March 2001), especially para 6(a); 56/48 (23 January 2002) especially paras 5 and 8(a).

32 Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda, UNSC 'Letter dated 15 December 1999 from the Secretary-General addressed to the President of the security council' UN Doc S/1999/1257 at 3.

33 'Rwanda: The Preventable Genocide, International panel of eminent personalities' (Rwanda panel report), <https://www.refworld.org/pdfid/4d1da8752.pdf> (accessed

much of the history of the 1990's is the story of well-meant initiatives, endless consultations, incessant meetings, commitments made and commitments broken. These frenetic activities reflected the real world of the OAU Secretariat, which has no capacity to make decisions independent of its members, to force any parties to do its bidding, or to punish anyone for ignoring its wishes. What the OAU can do is call meetings, hope the invited attend, facilitate agreements, and hope that the participants abide by their word.³⁴

What the AU Constitutive Act achieved was at least the removal of the self-imposed limitations of the OAU Charter and the setting up of a peace and security architecture which signified a forward leap in thinking regarding the continental body's responsibilities when peace and stability are threatened in a member state. Clearly permissible now, as of right, are forceful interventions by the AU in a member state in the case of war crimes, crimes against humanity and genocide,³⁵ or when requested by a member to restore peace and security.³⁶

Pursuant to article 5(2) of the Constitutive Act, the AU brought into being the AU Peace and Security Council whose powers and functions derive from the 2003 Protocol Relating to the Establishment of the Peace and Security Council (PSC Protocol). Mindful in the Preamble of the need to forge closer cooperation and partnership between the UN, other international organisations and the AU in the maintenance of peace and stability in Africa, the Council is envisaged as a standing decision-making organ for the prevention, management and resolution of conflicts. As such it is intended to function as a collective security and early warning arrangement,³⁷ and hence, responsible for the prevention of conflicts, peace-making, peace-building and post-conflict reconstruction.³⁸ Subject to authorisation by the Assembly of the AU, the Council will be entitled to resort to forceful intervention in a member state in the circumstances provided for in the Constitutive Act and pursuant to its own Protocol.³⁹

The success of preventative action, sorely needed on the African continent, depends on the proper functioning of a continental early warning system. Such a mechanism is provided for in the Protocol,⁴⁰ which will be responsible for data collection and analysis in respect of developments on the continent and for recommending the best

16 August 2021) ch 11.

34 Rwanda panel report (n 11) at 19.

35 AU Constitutive Act art 4(h).

36 AU Constitutive Act art 4(j).

37 PSC Protocol art 2(1).

38 PSC Protocol arts 3(a) & (b) & 6, 7.

39 PSC Protocol art 4(j) & (k).

40 PSC Protocol art 12.

course of action in response. In resolutions adopted following the establishment of the AU, the UN General Assembly, in requesting the UN to intensify its assistance for strengthening the institutional capacity of the AU, mentioned, in particular, assistance for the development of the AU's early warning system and for cooperation between the two organisations' early warning systems.⁴¹ In 2006, the AU, in an attempt to speed up the operationalization of its early warning system, adopted a framework to that effect⁴² to ensure that the system will be fully operational by 2009.⁴³ However, when in 2012, the system failed to provide early warning in the case of the military coups in Guinea-Bissau and Mali – both countries known for political instability and weak state institutions – questions were raised about the capacity of the AU and the international community to reliably prevent conflicts on the African continent. At the time, a roundtable discussion hosted by the International Peace Institute found that despite the framework proposals and recommendations for ensuring full operationalization of the system, the effectiveness of the system was still hindered by a limited capacity in terms of staff, expertise, material and technical equipment.⁴⁴ Seemingly, this is only part of the problem. In 2017, the Institute for Security Studies reported that denialism plagued Africa's early warning system in that the Peace and Security Council turns a blind eye to certain conflicts in Africa. This lack of political will is linked to negative reaction by countries which are the subject of early warning investigation and who do not shy away from lobbying their allies within the PSC to avoid being placed on the agenda, despite early warning alerts issued by the system.⁴⁵

In concluding this section, the African Standby Force warrants mention as an integral part of the AU's peace and security architecture. Provided for in article 13 of the Protocol, the Standby Force is mandated to *inter alia* perform peace support and peace-building missions, intervene pursuant to articles 4(h) and (j) of the AU's Constitutive Act, and prevent conflicts from escalating. AU member states are obligated to establish standby contingents ready for deployment on

41 GA Res 57/48 (20 January 2003) para 7; 59/213 (3 March 2005) para 8.

42 'Framework for the operationalization of the continental early warning system as adopted by governmental experts meeting on early warning and conflict prevention held in Kempton Park (South Africa)' 17-19 December 2006 (Kempton Park framework), <https://www.peaceau.org/uploads/early-warning-system-1.pdf> (accessed 18 August 2021).

43 Kempton Park framework (n 42) at 30.

44 International Peace Institute 'Preventing conflicts in Africa: early warning and response', https://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_preventing_conflicts.pdf (accessed 18 August 2021).

45 'South Africa Last month again placed the tricky issues around early warning on the agenda of the PSC', <https://issafrica.org/pscreport/psc-insights/denialism-plagues-africas-early-warning-system> (accessed 18 August 2021).

request by the Peace and Security Council. The force was declared fully operational in 2016 although the subregions were still at different levels of readiness.⁴⁶ However, the Force's deployment for purposes of peace enforcement and in the context of asymmetrical situations is still the subject of debate.

The subsidiarity issue

Even under the OAU, the political and socio-economic integration of the African continent was an important objective.⁴⁷ Under the AU this has assumed greater urgency and it is common cause that the achievement of the integration objective in terms of the AU Constitutive Act⁴⁸ is first and foremost dependent on the successful promotion of closer cooperation among the regional economic communities (REC's) and on defining the relationship between the AU and the REC's.

An important step in this direction was taken in 2008 with the adoption of the Protocol on Relations Between the AU and the REC's.⁴⁹ Concerning peace and security, which falls within the scope of the Protocol,⁵⁰ the parties undertake to harmonize and coordinate their activities to ensure that these activities are consistent with the objectives and principles of the Union and those of the REC's, to ensure an effective partnership between them, and to determine the modalities of the relationship through a Memorandum of Understanding between the Union and the REC's.⁵¹ A peculiar aspect of the Protocol is that the preamble identifies the need for defining the role of the Union and that of the REC's according to the principle of subsidiarity without clarifying what it means or referring to it again in the operative part of the Protocol.

46 Institute for Security Studies 'Is the African standby force any closer to being deployed?', <https://issafrica.org/iss-today/is-the-african-standby-force-any-closer-to-being-deployed> (accessed 18 August 2021).

47 African Union Treaty Establishing the African Economic Community 3 June 1991 (Abuja Treaty).

48 Constitutive Act arts 3(c) & 3(l).

49 'Protocol on relations between the African Union (AU) and the regional economic communities (RECS)' [https://archives.au.int/bitstream/handle/123456789/1621/Protocol Relations AU RECs E.pdf?sequence=1&isAllowed=y](https://archives.au.int/bitstream/handle/123456789/1621/Protocol%20Relations%20AU%20RECs%20E.pdf?sequence=1&isAllowed=y) (accessed 19 August 2021). The following REC's are signatories to the Protocol: Economic Community of West African States (ECOWAS); Common Market of Eastern and Southern Africa (COMESA); Economic Community of Central African States (ECCAS); Southern African Development Community (SADC); Intergovernmental Authority for Development (IGAD); Community of Sahel-Saharan States (CEN-SED); and Eastern African Community (EAC). Although recognized by the AU, the Arab Maghreb Union is not a signatory to the Protocol. In 2019, a Draft Protocol to amend the 2008 Protocol emerged from the AU's 1st Mid-Year Coordination Meeting. The proposed changes are non-substantial and as far as could be established the 2019 version has not come into force and effect yet.

50 PSC Protocol art 2.

51 PSC Protocol art 30(1).

According to article 16 of the Protocol establishing the AU Peace and Security Council, the AU has primary responsibility for peace and security in Africa. This position was confirmed, and its scrupulous observance accepted, in a 2008 Memorandum of Understanding between the AU and REC's on cooperation in the area of peace and security.⁵² At the same time the parties undertook to adhere to the principles of subsidiarity, complementarity, and comparative advantage.⁵³ Without further clarity on the relationship between the AU's primary responsibility and the subsidiarity principle for instance, the division of labour between the AU and the REC's in the case of actual threats to peace and security is bound to end in confusion and dissent among the different actors on who should take responsibility for what.

It was only a decade later that the AU Assembly, at its 2018 extraordinary summit on institutional reforms, mandated the AU Commission to develop a proposal on an effective division of labour among the AU, REC's and member states 'in line with the principle of subsidiarity'.⁵⁴ In 2020, at the 2nd Mid-Year Coordination Meeting of the AU, it was decided to postpone the finalization of the proposal to the 35th Ordinary session of the AU Assembly in 2022.

Pending this outcome there is also no guidance provided by the key instruments of those REC's with a clear peace and security mandate, such as ECOWAS and SADC; their silence on the primary function of the AU, and on the relationship between the AU and the REC's, may indicate that they view a crisis in one of their member states as falling exclusively within their jurisdiction. This would amount to a rigid application of the subsidiarity rule which usually denotes a differentiated division of labour, or decision-making power, between central and local authorities.

The peace and security dilemmas that could confront the AU and the REC's in the absence of a clear division of labour and clarity on the application of the subsidiarity principle, are illustrated by the Palma insurgency in northern Mozambique on 24 March 2021, which led to grave atrocities against civilians⁵⁵ committed by Islamic State-linked insurgents in Cabo Delgado. Responding to the incident the Chairperson of the AU Commission announced that the 'African Union Commission,

52 'Memorandum of understanding on cooperation in the area of peace and security between the African Union, the regional economic communities and the coordinating mechanisms of the regional standby brigades of Eastern Africa and Northern Africa' (MOU) art IV (i) & (ii), <https://www.peaceau.org/uploads/mou-au-rec-eng.pdf> (accessed 19 August 2021).

53 MOU (n 52) art IV(iv).

54 Assembly of the African Union, Eleventh Extraordinary Session 17-18 November 2018 Addis Ababa, Ethiopia Ext/Assembly/AU/Dec.1 (XI) at 54.

55 Amnesty International 'What I saw is death: war crimes in Mozambique's forgotten Cape', <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4135452021ENGLISH.pdf> (accessed 23 August 2021).

through its relevant organs, stands ready to support the Region and its mechanisms to jointly address this urgent threat to regional and continental peace and security'.⁵⁶ What followed this announcement was the usual AU paralysis, presumably caused by a misdirected belief that SADC would rush to the scene on the wings of Mozambican approval. But SADC was in no hurry, it only decided to respond with sending a technical team to Mozambique on 8 April,⁵⁷ and postponed an Extraordinary Meeting of the Ministerial Committee of the Organ on Politics, Defence and Security, scheduled for 28 April 2021, when the Committee were to deliberate a report of the technical team on the situation in Mozambique. Mozambique on the other hand, who failed to demonstrate the requisite political will to effectively deal with a four-year-old crisis in the area, rejected, at least initially, military assistance from SADC on the basis of sovereignty, and chose, on what it termed the country's 'own terms and conditions' to make use of private military companies and other forms of bilateral assistance.⁵⁸

Only some months after the insurgency, on 23 June 2021 at an Extraordinary Summit did SADC approve a mandate for the SADC Standby Force mission to be deployed in support of Mozambique to confront terrorism and acts of violent extremism.⁵⁹

Seemingly, SADC's Regional Early Warning System also malfunctioned. Provided for in the 2001 SADC Protocol on Politics, Defence and Security Cooperation,⁶⁰ it was initiated in 2003 and officially launched in 2010. It could hardly claim that the March insurgency in Mozambique was unsuspecting or unpredictable. Since 2017, insurgent activities were gathering force in northern Mozambique and in May 2020, SADC was officially briefed by Mozambique on the security situation in the area, leading to the Extraordinary Organ Troika Summit calling on SADC member states to support Mozambique in its fight against terrorists and armed groups in some districts of

56 'Statement of Mr Moussa Faki Mahamat, Chairperson of the African Union commission, on the terrorist attacks in Mozambique', <https://au.int/en/pressreleases/20210331/statement-chairperson-terrorist-attacks-mozambique> (accessed 20 August 2021).

57 'Communique of the extraordinary double troika summit of heads of state and government of the Southern African development community Maputo, Republic of Mozambique' 8 April 2021 at 8 https://www.sadc.int/files/5216/1789/4471/Communique_of_the_Extraordinary_SADC_Double_Troika_Summit_8_April_English.pdf, (accessed 23 August 2021).

58 Institute for Security Studies 'Limited legal options for SADC military action in Cabo Delgado', <https://issafrica.org/iss-today/limited-legal-options-for-sadc-military-action-in-cabo-delgado> (accessed 23 August 2021).

59 'Communique of the extraordinary summit of SADC head of state and government' Maputo, Mozambique 23 June 2021, https://www.sadc.int/files/3916/2446/8466/Communique_of_the_Extraordinary_SADC_Summit_of_Heads_of_State_and_Government_23_June_2021_-ENGLISH.pdf (accessed 23 August 2021).

60 SADC Protocol art 11(3)(b).

Cabo Delgado.⁶¹ Moreover, an analytical report of the UN Sanctions Committee on developments in 2020,⁶² forewarned of the acquisition by ISIL affiliates of enhanced capabilities, training and financial support in East Africa and their growing presence in the southern parts of Tanzania. This development, the report noted, coincided with attacks and the takeover of towns and villages in Cabo Delgado by means of sophisticated operational capabilities with the intent to expand operations into other areas using coordinated, simultaneous attacks in different localities. But it is not only SADC who has a case to answer. On the face of it, individual member states in the region, including Mozambique on whose territory it was taking place, were incapable of signalling an early warning and to marshal a credible response to the threat. There could be many reasons for this inaction, including Mozambique's inapt reliance on state sovereignty. Whatever the case, it brings into sharp focus the international law debate on the responsibility to protect and the commitments states have undertaken to comply with this responsibility at the adoption of the 2005 World Summit Outcome document.⁶³

The Joint UN-AU Framework for Enhanced Partnership in Peace and Security

Since the establishment of the AU, growing support emerged within the UN and the AU for closer cooperation and coordination in matters of peace and security. What necessitated this move were the complex security challenges posed by contemporary conflicts in Africa within equally complex political contexts which required a multifaceted response by international, regional and national stakeholders. As clearly stipulated in the Framework, the imperative for close coordination and cooperation in such circumstances must be based on the parties' 'respective comparative advantage and complementarity in peace and security, and burden-sharing on the basis of collective responsibility

61 'Communique of the extraordinary organ Troika plus Republic of Mozambique summit of heads of State and government Harare-Zimbabwe' 19 May 2020 at 6, 9, https://www.sadc.int/files/9315/8991/2199/Communique_of_the_Extraordinary_SADC_Organ_Troika_Summit_held_on_19_May_2020.pdf (accessed 23 August 2021).

62 UNSC 'Letter dated 21 January 2021 from the chair of the security council committee pursuant to resolutions 1267(1999), 1989(2011) and 2253 (2015) concerning Islamic state in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the security council' 3 February 2021. UN Doc S/2021/68 at 38-41; 42-47.

63 United Nations General Assembly (UNGA) 'Resolution adopted by the General Assembly on 16 September 2005' Sixtieth session 24 October 2005 GA Res 60/1 at 138, 139.

to respond early, coherently and decisively to prevent, manage, and resolve violent conflict'.⁶⁴

The focus areas jointly identified by the parties for collaboration in terms of the partnership are early warning and conflict prevention, engagement across the range of possible responses, i.e. mediation, peacekeeping, peace support operations, and peacebuilding, addressing the root causes of the conflict, and continuous review of the partnership.⁶⁵ Much of this is not new. Since the days of the OAU, these issues were repeatedly mentioned in UN documents and resolutions and they have assumed greater importance since the establishment of the AU in view of the organization's expanded peace and security mandate and the emergence of complex security threats and asymmetrical situations such as terrorism and organised crime on the continent.

Hailed as 'one of the most important relationships, particularly in the domain of peace and security', a UN Security Council requested⁶⁶ assessment report in 2020⁶⁷ on the implementation of the joint Framework exposes the areas of tension and obstacles in collaboration which may cause the realization of the partnership's objectives a 'hard row to hoe', as the old saying goes. What follows are some of the main findings by the assessment team which are dealt with under the following categories as per the report.

Evolution of the partnership

While there was consensus that the partnership functioned as an important instrument for deepening cooperation between the UN Secretariat and the AU Commission on peace and security challenges in Africa, the assessment indicated that the need has arisen for focusing the implementation of joint efforts and initiatives at the country and regional levels.⁶⁸ There was also evidence of instances of exemplary collaboration at the sub-regional level (REC's) where UN regional offices in west and central Africa have demonstrated a comparative advantage in the timely harmonisation of positions between the UN, the AU and

64 United Nations-African Union Annual Conference 'Joint United Nations-African Union framework for enhanced partnership in peace and security' New York, 19 April 2017 (2017 UN-AU framework) https://unoau.unmissions.org/sites/default/files/signed_joint_framework.pdf, 1 (accessed 24 August 2021).

65 2017 UN-AU framework (n 64) at 3 and further.

66 UNSC 'Security council unanimously adopts resolution 2320(2016), welcoming cost-sharing proposal, stronger cooperation between United Nations, African Union' 7816th Meeting (AM) 18 November 2016 SC Res 2320 at 11.

67 UNSC 'Letter dated 15 October 2020 from the Secretary-General addressed to the President of the Security Council' 16 October 2020 (Letter to SC President). UN Doc S/2020/1020 at 1.

68 Letter to SC President (n 67) at 1.

the REC's⁶⁹, which suggest that a decentralised approach has a better chance of making the UN-AU collaboration more effective.

While efforts at preventing conflict have failed, as is widely known, the assessment showed that the UN-AU collaboration in respect of peace support operations was effective in the deployment of such missions in countries such as Burundi, Darfur, Somalia, Mali and the Central African Republic.⁷⁰ At the same time the report mentioned 'unprecedented challenges' the partnership faced in this regard and intimated that the challenges had to do with the lack of a general framework for joint planning, mandating compliance and oversight of AU peace support operations, as well as an increase in ad hoc security arrangements. These arrangements comprise coalitions of states making available military forces to stabilize conflict zones in sub-regions such as the G-5 Force in the Sahel, which will be dealt with later on, and the Multinational Joint Task Force to combat Boko Haram. Collective self-defence coalitions of this kind operate outside regional frameworks and the assessment team voiced the following concerns:⁷¹

The assessment team affirmed that these coalitions posed particular challenges for the United Nations and the African Union as they operate largely in their own territories and have the potential to conduct cross-border operations in hot pursuit; were established outside of the geographical boundaries of the African Union regional standby force; were based on voluntary contributions, which challenged command and control by the United Nations or the African Union; and had no reporting or accountability to either the United Nations Security Council or the Peace and Security Council of the African Union, despite having been authorised by both.

In response to these concerns, it must be pointed out that the coalitions in question were established to counter security threats which neither individual states, nor the UN, AU or a REC could effectively get under control. And since they received the blessing of both the UN and the AU, command and control issues should have been resolved at the time of their establishment. More so, since the UN is familiar with command and control issues associated with multidimensional missions of which the UN Multidimensional Integrated Stabilization Mission in Mali⁷² is but one example; and in 2015, the AU Peace and Security Council put in place a number of structures to respect command and control and coordination of the activities of the Multinational Joint Task Force

69 Letter to SC President (n 67) at 2.

70 Letter to SC President (n 67) at 2.

71 As above.

72 Established pursuant to UNSC 'Resolution 2100 (2013)' adopted by the Security Council at its 6952nd meeting, 25 April 2013. SC Res 2100.

(MNJTF),⁷³ established for conducting military operations against Boko Haram.

Key factors affecting the partnership

This is arguably the more important and revealing part of the assessment report, especially if some reading between the lines and behind the diplomatic language is applied.

The report starts off by affirming that the UN-AU partnership 'was affected by several structural factors and organizational culture' and noted that 'despite a decade of discussions and annual meetings' the engagement between the two organizations 'still had room for improvement', and that the challenges 'centred on the working methods governing the engagements' of the UN Security Council and the AU Peace and Security Council.⁷⁴ The resultant differences, the report noted, were 'rooted in mutual misperceptions regarding the roles and responsibilities' of the two Councils, and a 'perceived disregard for the views of the Peace and Security Council'.⁷⁵

We also learn that achieving strategic convergence between the two Councils is not only difficult but may even 'continue to affect the cooperation between the two organizations' and that joint operations to prevent and respond to conflict 'is complicated by ambiguity over the application of the principle of subsidiarity' between the two organizations and the AU's REC's.⁷⁶ Peacebuilding is another affected area. In this instance the report mentioned a lack of joint integrated analysis and planning which is undermining the coherence of multilateral peacebuilding efforts and frustrated the expectations of the AU in respect of playing a more prominent role in peacebuilding.⁷⁷ Whether the AU has the capacity for a more prominent role in peacebuilding is of course an entirely different issue.

The remedial action recommended by the assessment team provides further evidence of what weighs down on achieving the objectives of the partnership. Only some will be alluded to. In the case of conflict prevention, cooperation and collaboration between regional desks at UN Headquarters and UN regional offices, REC's mechanisms and the AU Commission were still failing expectations, which the assessment team addressed by recommending the establishment of more fully fledged UN regional offices to facilitate prevention and mediation efforts.⁷⁸

73 African Union Peace and Security Council 'Communique' 489th Meeting, Addis Ababa, Ethiopia, 3 March 2015 AU Doc PSC/PR/2.(CDLXXXIX) at 15.

74 UNSC (n 67) at 3.

75 As above.

76 As above.

77 As above.

78 UNSC (n 67) at 5.

In making peace support missions more effective a support model was recommended which would enable the UN to be a partner as well as a service provider for AU peace support operations. Additional requirements were the development of consultative decision-making, financial management, AU adherence to compliance frameworks in respect of international humanitarian law, human rights, and troop discipline, and assistance to the AU in the development of policies and strategic guidance on the conduct of peacekeeping operations and pre-deployment planning and training requirements to ensure adequate operational readiness and command and control.⁷⁹

On the evergreen subsidiarity issue the assessment team recommended a clear and predictable application of the subsidiarity principle to be facilitated by including the heads of REC's in UN-AU high level meetings and engagement by the UN with both the REC's and the AU to ensure cohesion and adequate coordination.⁸⁰

The above factors and other circumstances affecting the implementation of the partnership are on the one hand the result of unresolved issues concerning the mandate of the AU in the context of its relationship with the REC's and individual AU members as far as peace and security are concerned. On the other they are a function of the dynamics of the relationship between the UN and the AU. In this instance commentators have pointed out that the relationship is defined by an 'overriding tension' as a result of the 'fundamentally unequal' situation between the two organizations as regards their 'powers, authority, resources and political status'.⁸¹ While under the UN Charter the UN Security Council is also entitled to claim a primary responsibility for peace and security in the world, which may add to the tension, the argument that the AU feels up to the task as a result of its 'growing political legitimacy and agency position ... as a driver of the continent's peace and security agenda',⁸² is not unproblematic.

In reality, there is simply no credible evidence that the AU has arrived at this point. Whether by design or default, the initiative, it seems, has shifted to the REC's, individual AU members and in some instances even to coalition forces on the continent. Take for instance AU Assembly decision 677 of January 2018 adopted at the 30th AU Summit. On the agenda for discussion at the time were conflicts or crises in Somalia, Sudan/South Sudan, the DRC, CAR, Burundi, Guinea-Bissau, Mali, the Lake Chad Basin (Boko Haram), Côte d'Ivoire, and Libya. Except for the

79 As above.

80 As above.

81 D Forti & P Singh 'Toward a more effective UN-AU partnership on conflict prevention and crisis management' International Peace Institute. 1 October 2019 at 3, <https://www.ipinst.org/2019/10/effective-un-au-partnership-on-conflict-prevention> (accessed 30 August 2021).

82 As above.

first two, the AU played no clear leading role in any of the others. So, while on paper its agency position as a driver of the continent's peace and security agenda may be unambiguous, in real conflicts and crises a disparate picture emerges. What is becoming increasingly evident is that the AUPSC is experiencing a gradual loss of influence and credibility on the continent partly because its peace and security prerogative has become contested by the interventions of individual states, bilateral arrangements and parallel multilateral operations and partly because the subsidiarity issue remains unresolved.⁸³ As long as this situation prevails the peace and security mandate of the AU will depend on unpredictable and opportunistic ad hoc arrangements or interventions at the expense of what the UN-AU partnership is all about, namely a systematic, effective and results-oriented collaborative effort in conflict management, from early warning to post-conflict reconstruction.

Lessons from three case studies

The case studies in this section were selected for various reasons. Firstly, the countries involved and/or the regions in which they are located have histories of political tension and instability and experienced a fragile or deteriorating security situation; secondly they are characterised by weak state institutions and deficient law enforcement capabilities; thirdly, service delivery is poor as a result of a lack of economic resources, endemic corruption and inadequate infrastructure; fourthly, government legitimacy is contested as a result of the marginalisation of certain groups, human rights abuses, and/or election fraud; fifthly, they all require a reconfigured political dispensation; and sixthly they all invited a multidimensional conflict solution strategy involving the UN and an assortment of regional arrangements.

Mali and the Sahel

In January 2012, Tuareg rebels⁸⁴ took control by force of northern Mali and in March of the same year the democratically elected Malian government was ousted by a military coup.⁸⁵ The instability that ensued, worsened an already problematic situation, creating what commentators refer to as a 'regional conflict system' or an 'archetypal conflict ecosystem'.⁸⁶ This was hardly surprising; the Sahel suffered

83 Forti & Singh (n 81) at 5.

84 This was the fourth Tuareg rebellion. Following independence from France in 1960, the first three Tuareg and Arab rebellions by the north against the south occurred in 1963, 1991, and 2006, respectively. On this history see G Chauzal and others 'The roots of Mali's conflict' 2015, https://www.clingendael.org/sites/default/files/pdfs/The_roots_of_Malis_conflict.pdf, (accessed 22 September 2021) at 8-11.

85 Chauzal and others (n 84) at 10 and further.

86 SA Zyck & R Muggah 'Conflicts colliding in Mali and the Sahel', <http://doi>.

longstanding political, economic and humanitarian vulnerabilities as a result of corrupt, underperforming and weak state institutions, environmental degradation, and a deteriorating security and law enforcement situation exploited by criminal networks, marauding armed bands, and terrorist groups, a situation that was significantly aggravated by the aftereffects of the 2011 Libyan crisis.⁸⁷

Presumably concerned about the domestic consequences of a deteriorating security situation following the Tuareg insurgency and subsequent developments, the transitional authorities of Mali, on 18 September 2012, requested a UN authorized deployment under Chapter VII of the UN Charter of an international military force to assist the armed forces of Mali to recover the occupied regions in the north.⁸⁸ A month later, ECOWAS endorsed its Strategic Concept for the Resolution of the Crisis in Mali which was adopted by the AU PSC on 24 October 2012. This was followed by an ECOWAS authored, and an AU PSC endorsed Joint Strategic Concept of Operations for the International Military Force and the Malian Defence and Security Forces in November 2012.⁸⁹

This formed the basis for considering a regional request for, and authorising the deployment, by the UN Security Council acting under Chapter VII of the UN Charter, of an African-led International Support Mission in Mali (AFISMA) in December 2012.⁹⁰ AFISMA was given a broad mandate, namely to assist in rebuilding the Malian defence and security forces, in recovering areas in the north under the control of terrorists and extremist armed groups, in protecting the civilian population, and in the delivery of humanitarian assistance.⁹¹

Before long this mandate became a poisoned chalice for ECOWAS and the AU and was, not surprisingly, passed back to the UN. Originally, AFISMA was scheduled to begin executing its mandate in September 2013, more than a year and a half after the insurrection in Mali. But unexpected southward advances by rebels in January 2013 and a

org/10.5334/sta.bf (accessed 22 September 2021). UNSC 'Resolution 2056 (2012)' Adopted by the Security Council at its 6798th meeting, on 5 July 2021. S/RES/2056.

87 For a more comprehensive account of the root causes of the crisis in Mali and the Sahel see World Peace Foundation, African Politics, African Peace, <https://sites.tufts.edu/wpf/files/2017/07/Mali-brief.pdf> (accessed 9 September 2021). See also UNSC 'Resolution 2085 (2012)' Adopted by the Security Council at its 6898th meeting, on 20 December 2021. SC Res 2085 (2012) preamble: '*Remaining seriously concerned* over the insecurity and the significant ongoing humanitarian crisis in the Sahel region, which is further complicated by the presence of armed groups, including separatist movements, terrorist and criminal networks, and their increased activities, as well as the continued proliferation of weapons from within and outside the region that threaten peace, security, and stability of States in this region'.

88 SC Res 2085 (n 87) Preamble.

89 As above.

90 SC Res 2085 (n 87) at 9 and further.

91 As above.

subsequent Malian government request for military assistance from France, the former colonial power, caused ECOWAS to hastily assemble a military contingent from the sub-region for immediate deployment. On 11 January French troops arrived and succeeded, with the assistance of AFISMA, to repel the southward move of the rebels and to regain control of occupied territories.

It is not inconceivable that the AFISMA initiative was a windfall for the Security Council in the form of an opportunity to avoid the establishment of a UN mission in response to the request by the Malian transitional authorities referred to earlier. However, if there were any feelings of relief among the members of the Security Council, they were short lived. Barely four months after AFISMA's establishment, the ECOWAS Commission, supported by the AU, on 7 March 2013, requested the transformation of AFISMA into a United Nations Stabilization Mission. On 25 April 2013, the Security Council acceded to this request and established the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).⁹²

The request for AFISMA's transformation into an UN-led multi-dimensional mission is hardly surprising. The complexity of the situation in Mali and the larger Sahel region and the obstacles to be overcome simply exceeded the capacity of both ECOWAS and the AU. In particular is this the case with the post-conflict rebuilding part of the mandate assigned to AFISMA. The AU, and for that matter the sub-regional communities such as ECOWAS, has never succeeded in developing an effective post-conflict peace-building capacity beyond mere policy frameworks and recommendations. This is despite the fact that already in 2006, recognizing that responses to post-conflict situations in the past remained fragmented and ineffectual, the AU developed a comprehensive policy on post-conflict reconstruction and development (PCRD) with the objective to consolidate peace and prevent a relapse of violence; address the root causes of the conflict; fast track planning and implementation of reconstruction activities; and enhance complementarities and coordination between and among diverse actors.⁹³ In 2014, the then chairperson of the AU Peace and Security Council (PSC), in addressing an open session of the PSC on enhancing AU efforts in implementing its post-conflict reconstruction and development policy, stated that the policy is still underpinned by capacity deficits and limited resources, that the policy needs to be translated into concrete programmes, and that the African Solidarity Initiative, which is responsible for the mobilization of resources within

92 UNSC (n 72) 7. See also UNSC (n 3) 53-57.

93 Peace, dignity and equality on a health planet, www.un.org/en/africa/osaa/pdf/au/policy_postconflict_dev_reconstruction_2006.pdf at 3 (accessed 2 October 2018).

Africa in support of post-conflict reconstruction, remains weak.⁹⁴ In 2017, during the AU Peace and Security Council's 670th meeting on 22 March 2017, the Council acknowledged that its PCRCD dimension remains the weakest link within the implementation processes of both the African Peace and Security Architecture (APSA) and the African Governance Architecture (AGA).⁹⁵

Not much has changed since the 2017 meeting. A communique adopted by the AU PSC on 23 October 2020 merely reiterated the need to redouble efforts for the implementation of the AU's post-conflict reconstruction and development (AU-PCRCD) policy and for the immediate and full operationalization and capacitation of the long-awaited AU-PCRCD Centre⁹⁶ in Cairo.⁹⁷ In August 2021, the AU Commission deployed an assessment mission to Cairo to prepare for the official launch of the Centre, which, according to the Egyptian Foreign Ministry, would become a reality before the end of 2021.⁹⁸

What the Mali situation has also illustrated is that the continental and REC early warning systems were unreliable to anticipate let alone prevent conflicts. This is despite the fact that their operationalization came under review already in 2006 by AU member states and representatives of REC's which included the Community of Sahel and Sahara States and the agreement reached at the time that the AU Commission must take all necessary steps to ensure that the continental early warning system is fully operational by 2009.⁹⁹

94 Statement by Mull S Katende, Ambassador/Permanent Representative of Uganda and Chairperson of the PSC for the month of June 2014 'Open session of the peace and security council of the African Union (PSC) on emphasising African Union efforts in implementing post-conflict reconstruction and development in Africa' <http://www.peaceau.org/uploads/open-session-of-the-peace-and-security-council-of-the-african-union.pdf> (accessed 2 October 2018). See also <https://issafrika.org/pscreport/addis-insights/spotlight-on-post-conflict-reconstruction-and-development-in-africa> (accessed 3 September 2021).

95 'The 670th meeting of the peace and security council, an open session dedicated to the theme: post-conflict reconstruction and development(PCRCD) in Africa', <https://reliefweb.int/report/world/670th-meeting-peace-and-security-council-open-session-dedicated-theme-post-conflict> (accessed 3 September 2021). See also S Ncube 'Collective security since an agenda for peace: implications for regional security in Africa' unpublished LLD thesis, University of Johannesburg, 2017 at ch 8.

96 The decision to establish the Centre was already taken in 2011. See Assembly/AU/Dec.35 (XVI), January 2011.

97 African Union Peace and Security Council 957TH 'Communique' Meeting Addis Ababa, Ethiopia 20 October 2020. AU Doc PSC/PR/Comm. (CMLVIII).

98 African Union commission undertakes an assessment mission to Cairo, Egypt, to prepare for the official launch of the African Union centre for post-conflict reconstruction and development' 30 August 2021 available at <https://reliefweb.int/report/world/african-union-commission-undertakes-assessment-mission-cairo-egypt-prepare-official> (accessed 4 September 2021).

99 'Framework for the operationalization of the continental early warning system as adopted by governmental experts meeting on early warning and conflict prevention held in Kempton Park (South Africa) 17-19 December 2006 available at <https://www.peaceau.org/uploads/early-warning-system-1.pdf> (accessed 4 September 2021).

Following the establishment of MINUSMA, the role of the AU, and for that matter also ECOWAS, became obscure. Some clarity on the AU's own perceived role emerged from a letter dated 7 March 2013 circulated by the AU Commissioner for Peace and Security to the UN Secretary-General with an adopted revised concept of operations for AFISMA.¹⁰⁰ There it was stated that the AU PSC was of the view that the soon to be established UN operation (MINUSMA) should be given a 'peace enforcement mandate' with the objective to restore the authority of the Malian government over its entire territory, which would also mean the dismantling of the terrorist and criminal networks in the north. Equally important, according to the letter, was for the UN mission to support the 'critical political role' of ECOWAS and the AU, which, apparently, has demonstrated 'exemplary dynamism in the management of the crisis in Mali'.¹⁰¹ What this means is anybody's guess.

In any event, from the revised strategic objectives carved out for AFISMA it is evident that once MINUSMA becomes operational AFISMA would step into a supporting role for the Malian Defence and Security Forces and the Malian authorities to restore state authority, preserve Mali's national unity and territorial integrity, protect the civilian population, reduce threats by terrorists and criminal networks, and assist with the implementation of the political roadmap.¹⁰² Since all these objectives would eventually fall under the mandate of MUNISMA, the part AFISMA would play, and actually played, remains a mystery. Noteworthy is that the achievement of objectives of the revised concept of operations was made subject to certain assumptions, such as the continued provision of funding, training and equipment by AU member states and international partners.¹⁰³

The ambiguity about the AU's role in Mali as the continent's primary peace and security agency deepened when in 2017 the G5 Sahel Joint Force, involving Burkina Faso, Mali, Mauritania, Niger and Chad, was formed to conduct cross border joint military operations to bring a deteriorating security situation under control. The G5 Force was mandated by a resolution¹⁰⁴ of the constituent countries' Heads of State who also expected a clear mandate from the AU as well as from the UN which never materialized.

100 UNSC 'Letter dated 15 March 2013 from the Secretary-General addressed to the President of the Security Council' 15 March 2013 S/2013/163.

101 UNSC (n 100) at 2.

102 UNSC (n 100) at 7.

103 UNSC (n 100) at 8 para 12.

104 Resolution No 00-01/2017 Relative a la Creation d'une Force Conjointe du G5 Sahel (6 February 2017) available at https://www.g5sahel.org/wp-content/uploads/2017/04/images_Docs_Resolutions_force_conjointe__05_02_20171.pdf (accessed 4 September 2021).

On 13 April 2017 the African Union Peace and Security Council *endorsed* the formation of the G5 Sahel Joint Force¹⁰⁵ and in June 2017, the UN Security Council *welcomed* this initiative and urged the G5, the French forces and MINUSMA to ensure adequate coordination of their operations within their respective mandates.¹⁰⁶ It also soon became clear that the French forces and the G5 were relied upon to assist MINUSMA to fulfill its mandate especially in regard to the security aspects thereof.¹⁰⁷ Presumably, these developments signaled the voluntary departure of the AU and ECOWAS from a state of affairs which the UN Security Council continues to classify as a threat to international peace and security as a result of the continued deterioration of the political, security and humanitarian situation in Mali.¹⁰⁸ A clear indication of this are the post-2017 applicable Security Council resolutions which contain no references to the AU or ECOWAS anymore while relying heavily on the assistance of the G5 Sahel Force, the French forces and the European missions in Mali.¹⁰⁹

The DRC

Since 2010, UN peacekeeping in the DRC, especially in the eastern parts of the country faced a daunting task. Continuing cycles of violence fuelled by a multitude of rebel forces with shifting alliances and assisted by powerful neighbours such as Rwanda and Uganda in a security vacuum left by ineffective and weak state institutions exposed civilians to gross human rights and international humanitarian law violations with impunity, causing civilian mortality rates to reach staggering proportions. To respond to these challenges and others, such as the illicit exploitation and trade of natural resources and trafficking of arms, the UN Security Council realised that a new phase of the conflict-ridden DRC's transition towards peace consolidation would require a strong partnership between the UN and DRC government. This resulted in the establishment, under Chapter VII of the UN Charter, of the United Nations Organization Stabilization Mission in the DRC (MONUSCO).¹¹⁰

105 African Union Peace and Security Council 'Communique' 679th Meeting, Addis Ababa, Ethiopia 13 April 2017. AU Doc PSC/PR/Comm.DCLXXIX (13 April 2017). This development originated from the Nouakchott process launched in March 2013 by the countries in the region and consolidated in an implementation plan to address the political and security situation in the region during a first summit of the participating countries that took place in December 2014.

106 UNSC 'Resolutions 2359 (2017)' Adopted by the Security Council at its 7979th meeting, on 21 June 2017 SC resolution 2359 at 1, 5.

107 UNSC 'Resolutions 2364 (2017)' Adopted by the Security Council at its 7991st meeting, on 29 June 2017. SC resolution 2364 at 37, 42.

108 For the latest resolution on this see UNSC 'Resolution 2584 (2021)', adopted by the Security Council at its 8809th meeting, on 29 June 2021. SC res 2584.

109 UNSC 'Resolution 2423(2018)' Adopted by the Security Council at its 8298th meeting, on 28 June 2018. SC Res 2423 .

110 UNSC 'Resolution 1925 (2010)' adopted by the Security Council at its 6324th

The mandate given to MONUSCO was to give priority to the protection of civilians and for that purpose to ‘use all necessary means’.¹¹¹

MONUSCO’s and the DRC government’s failures to effectively execute this mandate, coupled with the M23 rebel group’s military successes in 2012 in the eastern DRC, brought about the involvement of the members of the International Conference on the Great Lakes Region (ICGLR) in the form of a proposal for the establishment of an Intervention Brigade, initially conceived as a neutral intervention force mostly made up of soldiers from the SADC countries, to conduct offensive operations to protect civilians and neutralize rebel forces. However, the deployment costs and a lack of experience with the deployment of such a force ruled out a regional-led operation. But since this was a regional initiative backed by regional consensus, the proposal found approval with the UN¹¹² and in 2013 the UN Secretary-General, after consultations with regional bodies including the AU, proposed the establishment of an intervention brigade within and under the command of MONUSCO for carrying out targeted offensive operations to bring a deteriorating security situation under control.¹¹³

A month later, the Security Council adopted a Chapter VII resolution providing, in an unprecedented move, for the establishment of the Brigade ‘on an exceptional basis and without creating a precedent, or any prejudice to the agreed principles of peacekeeping ... under direct command of the MONUSCO Force Commander’ with the objective of reducing the threat posed by armed groups to state authority and civilian security by means of targeted offensive operations.¹¹⁴ The Brigade was entirely composed of SADC troops from South Africa, Tanzania and Malawi and in 2013 they successfully accomplished their first mission by defeating the M23 rebels but failed to replicate this achievement in the case of the other smaller and more mobile rebel forces who, unlike the M23 rebels, operated over large areas without a

meeting, on 28 May 2010. SC Res 1925 at 1. MONUSCO replaced the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) which was to facilitate the implementation of the 1999 Lusaka Ceasefire Agreement between Angola, DRC, Namibia, Uganda, Rwanda and Zimbabwe.

111 SC Res 1925 (n 110) at 11, 12.

112 International Peace Institute, ‘Issue Brief: the UN Intervention brigade in the Democratic Republic of the Congo’ July 2013 at 5, https://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_un_intervention_brigade_rev.pdf (accessed 6 September 2021).

113 UNSC ‘Special report of the secretary-general on the Democratic Republic of the Congo and the Great Lakes Region’ 27 February 2013. UN Doc S/2013/119) at 60, 61.

114 UNSC ‘Resolution 2098 (2013) (on extension of the mandate of the UN organization stabilization mission in the Democratic Republic of the Congo (MONUSCO) until 31 March 2014)’ March 2013, SC Res 2098 (2013) at 9, 12.

unified command and control structure and conducting asymmetrical military operations.¹¹⁵

These failures, the high financial costs in sustaining the Brigade and the increasing unpopularity of the Brigade's joint operations with the DRC defence forces, who were accused of serious human rights violations, were among the reasons for a re-think of the Brigade's suitability for achieving MONUSCO's objectives in the DRC.¹¹⁶ In 2019, coinciding with plans for an exit strategy for MONUSCO on condition of a minimum transition period of three years, the UN Security Council raised the need for improving the effectiveness of the Intervention Force Brigade to 'ensure effective, timely, dynamic and integrated protection of civilians and the neutralisation of armed groups'.¹¹⁷

In the light of the above, a 2019 strategic review of MONUSCO's mission recommended that for the whole of the transition period MONUSCO should maintain an independent quick reaction capability to respond to major threats to civilians and to enhance more effective mobile capacity.¹¹⁸ In this context, the review considered two options for the Intervention Brigade both of which would create security concerns, the report noted. Briefly, the two options were: firstly, to withdraw the Brigade if a dedicated peace enforcement capability would emerge from discussions between Burundi, the DRC, Rwanda and Uganda on the establishment for a joint or bilateral enforcement mechanism, and secondly, to maintain the Brigade with capabilities to play a supporting role in DRC Defence Force-led offensive operations.¹¹⁹ Important to note is that the review report was disinclined to support the first option for the reason that the presence of non-UN forces in the same area of operation, but with different rules of engagement and under a different chain of command 'would create a confusing situation with possibly negative implications for the protection of civilians'.¹²⁰ Interesting that no such concerns emerged with the G-5 Sahel Force in the case of Mali.

The proposal for a re-alignment of the Force Brigade to provide for Quick Reaction Forces was accepted by a SADC Extraordinary Organ Troika Summit in November 2020.¹²¹ Shortly thereafter the UN Security

115 Institute for Security Studies, 'Reinventing the force intervention brigade' 4 December 2020, <https://issafrica.org/iss-today/reinventing-the-force-intervention-brigade> (accessed 7 September 2021).

116 United Nations University 'The best defence is no offence' <https://unu.edu/publications/articles/why-cuts-to-un-troops-in-congo-could-be-good-thing.html> (accessed 7 September 2021).

117 UNSC 'Resolution 2502 (2019)' adopted by the Security Council at its 8692nd meeting, on 19 December 2019. SC Res 2502 at 42, 46.

118 UNSC 'Letter dated 24 October 2019 from the Secretary-General addressed to the President of the Security Council' 25 October 2019. UN Doc S/2019/842 at 180, 181.

119 UNSC (n 118) at 185, 189.

120 UNSC (n 118) at 186.

121 'Communique of the extraordinary organ Troika summit plus force intervention

Council adopted a resolution under Chapter VII of the UN Charter mandating MONUSCO to carry out, in support of DRC authorities, 'targeted offensive operations' through a 'reconfigured and effective Force Intervention Brigade ... that includes additional combat units from additional TCCs,¹²² functioning as quick reaction forces ... able to cope with asymmetric warfare ... under the authority, command and control of MONUSCO Force Commander'.¹²³ Seemingly, this development also signalled an end to the initial SADC composed Intervention Brigade.

The CAR

Since its independence the Central African Republic (CAR) has experienced recurring cycles of violence and instability.¹²⁴ For current purposes the focus is on the December 2012 insurgency by a largely Muslim alliance of armed groups who commenced an offensive against the government which led to an unconstitutional seizure of power and the ousting of President Bozize. The ensuing general breakdown in government authority,¹²⁵ inter-religious tension, a deteriorating security situation, rampant violence and widespread human rights abuses evoked a range of regional and international responses.

In May 2013, the Council for Peace and Security in Central Africa, a creation of the Economic Community of Central African States (ECCAS), agreed to send 1,300 troops to the CAR and to deploy the ECCAS Mission for the Consolidation of Peace in the CAR (MICOPAX).¹²⁶ In June, the AU PSC decided to support, in principle, the establishment of an African-led International Support Mission in the CAR (MISCA) with its core comprising the contingents serving under MICOPAX, and in July the AU PSC authorized the deployment of MISCA for an initial period of six months. The mandate given to MISCA focused on assisting with the protection of civilians and the restoration of law and order; the restoration of government authority; reform of the defence and security sector; and the provision of humanitarian aid.¹²⁷ That this collaborative

brigade- troop contributing countries, the Democratic Republic of Congo and the Republic of Mozambique' 27 November 2020 SADC/EO-OTS Plus/2/2020/1C at 7.

122 Troop contributing countries.

123 UNSC 'Resolution 2556(2020)' adopted by the Security Council on 18 December 2020 SC Res 2556 (2020) para 29(e).

124 For an historical overview see Violence in the Central African Republic, <https://www.cfr.org/global-conflict-tracker/conflict/violence-central-african-republic> (accessed 8 September 2021).

125 This was caused by the incapacity of the security forces to confront the security threats and high levels of desertion during the crisis as well as the near-total absence of state administration and services across the country. See UNSC 'Report of the Secretary-General on the Central Republic submitted pursuant to paragraph 22 of Security Council resolution 212 (2013)' 15 November 2013 UN Doc S/2013/677 at 7, 8.

126 UNSC 'Report of the Secretary-General on the situation in the Central African Republic' 5 August 2013 UN Doc S/2013/470 at 13.

127 UNSC 'Report of the Secretary-General on the Central African Republic submitted

effort between ECCAS and the AU to transform MICOPAX into MISCA could only work with outside assistance, is clear from a request by the AU PSC at the time that the UN, the EU and other partners will have to provide the necessary financial, logistical and technical support.¹²⁸

On 5 December 2013, the UN Security Council, under a Chapter VII resolution, authorized the deployment of MISCA for a period of twelve months¹²⁹ and on 19 December the transfer of authority from MICOPAX to MISCA took effect.¹³⁰ However, like in the case of AFISMA, the MISCA initiative would face termination before long. Two assessment reviews of MISCA's capabilities in November 2013¹³¹ and March 2014,¹³² respectively, a deteriorating security situation,¹³³ and a UN Human Rights Council resolution on human rights atrocities in the CAR¹³⁴ sealed the fate of the regional initiative as a peacekeeping/enforcement operation.

Already in the 2013 assessment report the transformation of MISCA into a UN peacekeeping operation was listed as one of five options for addressing a rapidly deteriorating situation in the CAR.¹³⁵ It is also clear from the report that the consideration of all five the options, apart from the deteriorating security situation, was also informed by a number of concerns relating to logistical deficiencies at the strategic and operational levels of MISCA.¹³⁶ This certainly raised questions about the capacity of the regional initiative to effectively deal with the developments on the ground. Noteworthy is that both the AU and ECCAS have indicated that they would support the transformation into a UN mission¹³⁷, which may have resulted from their own realisation of MISCA's lack of capacity.

pursuant to paragraph 22 of Security Council resolution 212 (2013) 15 November 2013. UN Doc S/2013/677 at 14, 15.

128 UNSC (n 127) at 15.

129 UNSC 'letter dated 19 December 2019 from the chair of the Security Council committee established pursuant to resolution 2127 (2013) concerning the Central African Republic addressed to the President of the Security Council' 20 December 2019 SC res 2127 (2013) para 28.

130 African Union Press Release 'Transfer of authority from Micopax to Misca' <https://www.peaceau.org/uploads/auc-misca-com-19-12-2013.pdf> (accessed 8 September 2021).

131 UNSC (n 127).

132 UNSC 'Report of the Secretary-General on the Central African Republic submitted pursuant to paragraph 48 of Security Council resolutions 2127 (2013) 3 March 2014 UN Doc S/2014/142 .

133 In January 2014 the Secretary-General of the United Nations, Ban Ki-moon, described the situation in the CAR as a 'crisis of epic proportions' and told the UN Human Rights Council that the 'CAR is in freefall'. Available at <https://news.un.org/en/story/2014/01/460042> (accessed 9 September 2021).

134 A/HRC/RES/S-20/1 (21 January 2014).

135 UNSC (above 127) at 40 & following.

136 UNSC (above 127) at 20, 22-24.

137 UNSC (above 127) at 46.

Several factors caused the March 2014 assessment report to recommend only one option, namely the transformation of MISCA into a UN Peacekeeping Mission.¹³⁸ First, since the November 2013 report the security, human rights and humanitarian situation deteriorated even further causing a serious protection crisis.¹³⁹ Second, notwithstanding a swift deployment by MISCA forces, significant operational capacity gaps remained which required the deployment of French, US and EU military contingents with the aim of restoring minimum security conditions.¹⁴⁰ Third, a January 2014, request by the CAR Minister of Foreign Affairs for the establishment of a UN peacekeeping operation, reiterated in February by the Head of the Transitional Government of the CAR.¹⁴¹

This paved the way for a Chapter VII Security Council resolution establishing the United Nations Integrated Stabilization Mission in the CAR (MINUSCA)¹⁴² and determining that transfer of authority from MISCA to MINUSCA will take place on 15 September 2014.¹⁴³ Some five years later a certain measure of progress concerning the re-establishment of state authority and administration could be reported while progress with the implementation of the peace agreement, human rights violations, security sector reform, and effectiveness of the UN mission in certain areas remained problematic.¹⁴⁴

Just how complex, unpredictable and fluid conflicts of this kind can be is illustrated by the 2021 Panel of Experts' Report on the CAR.¹⁴⁵ It appeared that the country has entered a new phase of violent conflict following the establishment in December 2020 of a new coalition of rival armed forces comprising the most powerful armed groups whose military objectives included the expectation of a military coup against the incumbent government and who showed a callous disregard for human rights and humanitarian law principles.¹⁴⁶ It also became evident that so-called Russian military instructors who assisted the

138 UNSC 'Report of the Secretary-General on the Central African Republic submitted pursuant to paragraph 48 of Security Council resolution 2127 (2013)' 3 March 2014. UN Doc 2014/142 at 52.

139 UNSC (n 138) at 3.

140 UNSC (n 138) at 43-47.

141 UNSC (n 138) at 53.

142 UNSC 'Resolution 2149 (2014)' adopted by the Security Council at its 7153rd meeting, on 10 April 2014. SC res 2149 (2014) at 18.

143 UNSC (n 142) at 21.

144 UNSC 'Unanimously adopting resolution 2552(2020), Security Council authorizes one-year mandate extension of United Nations stabilization mission in Central African Republic' 8776th Meeting, 12 November 2020. SC res 2552 (2020). See also, UNSC Central African Republic, Report of the Secretary-General 12 October 2020 UN Doc S/2020/994.

145 UNSC 'Letter dated 25 June 2021 from the panel of experts on the Central African Republic extended pursuant to resolution 2536 (2020) addressed to the President of the Security Council' 25 June 2021. UN Doc S/2021/569.

146 UNSC (n 145) at 7 & further.

CAR security forces in terms of a bilateral arrangement were not only actively participating in combat operations, but sometimes even taking leading positions. Moreover, evidence provided to the Panel of Experts linked some of their actions to humanitarian and human rights law violations and to the supply of arms in contravention of a 2013 arms embargo imposed by the UN Security Council in Resolution 2127.¹⁴⁷

Conclusion

What the three case studies illustrate is that enforcement action may be par for the course when multidimensional peacekeeping mandates in complex security situations are implemented. From the UN's perspective it may require a departure from its usual reluctance to explicitly resort to such a measure when circumstances require it. Even in the case of the DRC the UN was resolute in making it clear that the Force Brigade was an exceptional measure, and that the intention was not to create a precedent or to prejudice the agreed principles of peacekeeping. Seemingly, it is less problematic when regional arrangements decide to resort to enforcement action if a security situation is getting out of control as the UN's stance towards the G5 Sahel Force illustrates.

More generally, in respect of joint peace-keeping operations in terms of the UN-AU partnership or cooperation agreement, the performance of the AU and/or the REC's suffers from persistent weaknesses and lack of capacity. This is clearly the case in the areas of early warning and conflict prevention which were problematic even in the days of the OAU and which still suffer from a lack of effective monitoring and evaluation capabilities under the AU. Another is post-conflict reconstruction which is still in need of proper operationalization and implementation after more than a decade of policy statements and recommendations. In the case of both these issues the gap between rhetoric and reality have remained large with no credible evidence yet that significant changes are under way.

Finally, as far as the multidisciplinary peace operations are concerned there is much uncertainty about the actual role and contribution of the AU, and its REC's for that matter, following their short-lived self-help interventions and their subsequent integration into or transition to a UN-led multidisciplinary mission. This is not to question that they performed certain functions, but what these functions were and whether concrete results were achieved are matters that remain obscure in most instances.

The need for resolving the above issues has again become apparent following two recent developments. The first is Security Council

147 UNSC (n 145) at 64 & further, 72 & further.

resolution 2436 of 2018 which sends out a strong message for the development of a comprehensive and integrated performance policy framework that facilitates the effective and full implementation of peacekeeping mandates.¹⁴⁸ Effective implementation of peacekeeping mandates, the Council points out, is the responsibility of all stakeholders which is contingent upon factors such as well-defined, realistic, and achievable mandates, political will, leadership, performance and accountability at all levels, and adequate resources.¹⁴⁹

The second development is the endorsement in September 2018, by more than a hundred and fifty UN members, of a Declaration of Shared Commitments on UN Peacekeeping Operations.¹⁵⁰ Among the endorsing states are forty African countries.¹⁵¹ In the context of the issues identified in this chapter, and mindful of restrictions on available space, only the following commitments are singled out. The parties affirm the primacy of politics in the resolution of conflicts and commit themselves to stronger engage with political solutions at the national and regional levels within their respective mandates and responsibilities. Underscoring this commitment is the recognition that meaningful progress in strengthening security must be replicated in national reconciliation, the rule of law, human rights, and sustainable development.¹⁵² In respect of partnership peacekeeping the endorsing states committed themselves to the enhancement of collaboration and planning between the UN and regional and sub-regional organisations. The AU is specifically mentioned in this regard including for support in capacity building, financing and compliance with peacekeeping norms and standards.¹⁵³

An online survey, conducted a year later, on the implementation of the commitments attracted comments from 38 states with responses that varied in substance.¹⁵⁴ A matter worth following will be the steps taken by African states to implement the 45 commitments they endorsed in 2018.

148 UNSC 'Resolution 2436 (2018)' adopted by the Security Council at its 8360th meeting, on 21 September 2018. SC Res 2436 (2018) para 1.

149 UNSC (n 148) at 2.

150 'Action for peacekeeping: declaration of shared commitments on UN peacekeeping operation', <https://peacekeeping.un.org/sites/default/files/a4p-declaration-en.pdf> (accessed 14 October 2021).

151 United Nations Peacekeeping 'Action for peacekeeping (A4P)', <https://peacekeeping.un.org/en/action-for-peacekeeping-a4p> (accessed 14 October 2021).

152 'Action for peacekeeping: declaration of shared commitments on UN peacekeeping operation' (n 150) at 3, 4.

153 'Action for peacekeeping: declaration of shared commitments on UN peacekeeping operation' (n 150) at 18.

154 'Secretary-General's Initiative on action for Peacekeeping', <https://www.un.org/en/A4P/dashboard.shtml> (accessed 14 October 2021).