

The Power of African Unions' council of peace and security to intervene in member countries under certain types of conflict

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Abstract

The Constitutive Act of the African Union (AU) provides the right to intervene as one of the basic principles of the new Organization. This constitutes a fundamental departure from the conservative stance of the OAU whose Charter enshrines Non –interference in the internal affair of another as a guiding principles.

*This article tries to address the shares of responsibilities and mandates of AU's council of peace and Security to intervene in any of member countries under certain types of conflicts. In doing so, section **II** analyzes the genesis of AU's peace and Security Council both under OAU's time and constitutive act of African Union. In **part III**, the paper explores the AU's peace and Security Council concerning its structure, membership and the pivotal shares of responsibility to intervene in member countries in the event of certain types of conflicts. Section **IV** discusses the practical involvement of the council of peace and security in member countries. Hence, the African Mission in Burundi (AMIB), African Mission in Sudan (AMIS) and African Mission in Somalia (AMISOM) are the case in point. Section **V** discusses the scope and limits council's intervention in any of member countries. Finally, sections **VI** ends with concluding remarks.*

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1. GENESIS OF AU'S PEACE AND SECURITY COUNCIL

1.1. Pre AU practices

Due to the east-west relation change, the late 1980's and the beginning of 1990's marked a dramatic change in the international arena. In Africa too, the security landscape deteriorated, internal conflicts intensified and western interest diminished dramatically. These realities compelled the OAU summit in 1990 to re-examine its peace and security agenda which resulted in the adoption of a landmark declaration known as —Declaration of the Assembly of Heads of State and Government of the Organization of African Unity on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World at the 26th Ordinary Session that took place in Addis Ababa, in July 1990 did play a significant role in the establishment of African peace and security council.²

Then, after a protracted negotiation within OAU, at the Twenty-ninth Ordinary Session of the OAU Assembly of Heads of State and Government, held in Cairo, in June 1993, the assembly adopted Declaration on the Establishing within the OAU of a **Mechanism for Conflict prevention, Management and Resolution.**³

The establishment of the mechanism signaled one basic motive that Africa should play a central role in resolving conflicts and fostering peace, security and stability on the continent.⁴ As per the Cairo Declaration, the primary purpose of the mechanism was anticipation and prevention of conflicts. It was thought that the focus on the prevention of conflicts instead of addressing full blown conflicts would obviate the need for OAU to resort to the complex and resource-demanding peacekeeping operations, which it will find difficult to finance.⁵ In such case, which demands peacekeeping and enforcement actions, the organization shall resort to the multilateral institution, i.e. the UN while its role be limited in examining ways and means in which member countries will contribute to this multilateral institution.⁶ As a consequence, Africa was

² Zekarias Beshah, African union peace and security council: to compete or complement the un security council, 2010, Addis Ababa University, unpublished)

³ Ibid

⁴ ----About the Peace and Security Department of the AU, history and background available at www.africa-union.org/root/au/AUC/Departmt accessed on February 7, 2013

⁵ See —Cairo declaration of 1993, para. 15

⁶ Ibid

particularly affected in this decade with the conflicts in Angola, Liberia, the Democratic Republic of the Congo (DRC), Sierra Leone, and South Sudan, and the genocide in Rwanda.⁷

The subsequent years after the establishment of the mechanism demonstrated that the consensus that the organization should not play a more active role in the management of conflicts in particular in peacekeeping activities proved them wrong and necessitated another more effective organization.

Besides, elites of African continent including first African UN Secretary- General, Boutros Boutros-Ghali, argued in favor of a more active peacemaking and humanitarian intervention.⁸ In this regard, General Dallaire, a Canadian citizen made his comments at a Memorial Meeting on the Rwanda Genocide, held in March 2004 at an Headquarters in New York. The main point that he was trying to make was that the West maintains double standards when it comes to responding to African crisis situations. This means that there is a selective global commitment to upholding the responsibility to protect. On the basis of Dallaire's observations the African continent needs to re-think its intervention strategies and readiness and not rely on the international community to come to the rescue in times of crisis.⁹

All the above facts combined together served as a conceptual starting point for the drafting of the AU's council of peace and security Protocol (200). The PSC Protocol came into force on 26 December 2003 (after ratification by twenty seven of the fifty-three AU members), and the Council officially began its work on 16 March 2004.

2. THE AU'S COUNCIL OF PEACE AND SECURITY

Cognizant of failure of OAU's Mechanism for Conflict prevention, Management and Resolution, in May 2004, the African Union (AU) officially launched its new Peace and Security Council (here in after called PSC). At the launch, Africa's leaders emphasized the PSC's potential significance, claiming that its establishment 'marks an historic watershed in Africa's progress towards resolving its conflicts and the building of a durable peace and security order.'¹⁰

Contentment wise, both the constitutive act of AU and PSC's protocol has adopted a much more interventionist stance through its legal frameworks and institutions. In this respect the African Union's constitutive act under article 4(h) legalizes intervention in the internal affair of member countries in respect of grave circumstances, namely: war crimes, genocide and crimes against

⁷ TIM MURITHI, The African Union's Transition from Non-Intervention to Non-Indifference: An Ad Hoc Approach to the Responsibility to Protect?, P,2 available at http://library.fes.de/pdf-files/ipg/ipg-2009-1/08_a_murithi_us.pdf

⁸ Boutros-Ghali, Boutros (1992): *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*. New York: United Nations

⁹ Supra note 7

¹⁰ PAUL D. WILLIAMS, The Peace and Security Council of the African Union: evaluating an embryonic international Institution, available at <http://users.polisci.wisc.edu/schatzberg/ps362/Williams2009>

humanity. Furthermore, Article 4(j) declares the right of Member States to request intervention from the Union in order to restore peace and security. The council's protocol again reaffirmed intervention the by the same tone under sub article 1(e) and (f) of article 7. This is a major qualitative difference between the Charter of the OAU, which placed a greater emphasis on non-intervention and the territorial integrity of its member states. And with the adoption of these legal provisions, for the first time in the history of Africa, AU has authorized to intervene in internal situations that might lead to atrocities being committed against minority groups or communities at risk.¹¹

2.1. Membership of Council of Peace and Security

The AU's council of peace and security has 15 members, elected by the AU Executive Council on Africa; three from East Africa; two from North Africa; three from Southern Africa; and four from West Africa. In addition to the fifteen members, some other states and entities may be invited to participate in certain PSC meetings, at least for the open session including the AU commissioner, interested head of division within the commission, secretariat, the AU legal counsel, delegations, and invited parties such as representatives of governments affected by conflicts and crisis situations or outside entities such as representatives of Africa's sub-regional organizations, the UN or NGOs.¹²

Members are elected for three-year (five members) and two-year (ten members) terms and can be re-elected immediately for another term. Hence, it is apparently clear that there are no permanent members and veto power within the AU's council of peace and security structure.

According to Article 5 of the PSC Protocol, the Council's membership is to be decided according to the principle of 'equitable regional representation and rotation. The article also lists criteria on which to judge prospective candidates. These include an assessment of whether the state in question is in good standing whether it has paid its dues, and respects constitutional governance and the rule of law etc.), and whether it is willing and able to shoulder the responsibilities that membership would place upon it. There are no permanent members and no veto.¹³

2.2. Shard of responsibilities and mandates of AU's peace and Security Council to intervene in member countries in the event of conflict

Generally speaking, the right of intervention may range from the use of economic and political sanctions to the use of military force.¹⁴ This is adduced by both article 4(h) of the constitutive act and article 6(e) of the protocol that allow the council of peace and security is to intervene in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes

¹¹ TIM MURITHI, P 33

¹² Article 5 of the protocol, 2002

¹³ William, page 6

¹⁴ Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter*, (Oxford: Hart Publishing, 2004), p.165)

against humanity, as defined by relevant international conventions and instruments notably the Rome statutes on international criminal law.

To reinforce the aforesaid interventionist approach pursuant to Article 5.2 of the AU's Constitutive Act, Article 2.1 of the Protocol establishes the council of peace and Security as 'a standing decision-making organ for the prevention, management and resolution of conflict and crisis in Africa. In terms of article 6 of the AU's PSC Protocol, the areas in which the Peace and Security Council shall function are: the promotion of peace, security and stability in Africa; early warning and preventive diplomacy; peace-making, including the use of good offices; mediation, conciliation and enquiry; peace support operations and intervention pursuant to article 4(h) and (j) of the Constitutive Act; peace-building and post-conflict reconstruction; humanitarian action and disaster management; and any other function may be decided by the Assembly.

In discharging these responsibilities mentioned above the council is to be supported by different organs within PSC itself and AU at large most notably the AU Commission, a Panel of the Wise, a Continental Early Warning System (CEWS), an African Standby Force (ASF), and a Special Fund.¹⁵

Despite the long lists of responsibilities under article 6 of the protocol, for the sake of precision one can summarize the shares of responsibilities of the council, as it is provided in article 2(1) of protocol in the following ways:

A. Responsibility and mandates of PSC in Conflict prevention

Conflict prevention is the most important aspect in ensuring peace and security in the member states. And it is argued that no conflict prevention mechanism can be sustained without a viable early warning and risk assessment system. In preventing conflict, therefore, the PSC is supported by continental early warning system (CEWS) and the panel of the wise under article 11 of the protocol. In this regard; article 12 of the PSC Protocol establishes the Continental Early Warning System (CEWS). With regard to its function, it is consisted of two units: the situation room and Observation and Monitoring Units of Regional Mechanisms. The former is tasked with the collection of data and analysis of such data and that will be a basis for an early warning indicator module (Art. 12 (4)). The latter on the other hand will collect and process data at their level and transmit it to the former, i.e., Continental Situation Room.

Besides, article 12(5) of the PSC Protocol provides that the chairperson of the AU Commission shall use the information gathered through the CEWS timely to advise the Peace and Security Council on potential conflicts and threats to peace and security and to recommend the best course of action. The panel of the wise too helps the council and the Chairperson of the Commission on all issues pertaining to the promotion, and maintenance of peace, security and stability in Africa.¹⁶

¹⁵ Article 6 of PSC protocol

¹⁶ Article 11(3) of PSC's protocol, 2002

However, there is critique that argued the PSC has devoted relatively little attention either to the prevention of conflict or to structural issues that encourage 'bad governance'.¹⁷ William views the African Union peace and Security Council as the one who acts as fire extinguisher dealing only with issues after they erupt. He argued that Most of the countries that have become the focus of the Council's deliberations have experienced a coup or armed insurgency.

Be the practical limitation as it may, it crystal clear at least legally speaking, that AU's peace and security has shared a great deal of responsibilities with member states to proactively before developing in to full blown conflict.

B. Responsibilities and Mandates of PSC in managing conflicts

Equally important in the maintenance of peace and security is the notion of conflict management. Owing to a number of reasons conflict may not prevented early from its inception. Then the next sharers of responsibility to PSC are conflict management. Conflict management is aimed at restoring life to normality in the event of conflict the Council plays a crucial role including, if necessary, the use of coercive methods to forestall conflict.¹⁸

In support of this responsibility of the council, the protocol established an African stand by force under article 13. It is composed of standby multidisciplinary contingents with civilian and military components in their country of origin, and is ready for rapid deployment at appropriate notice.

Among other things, the Standby Force is mandated to observe and monitor missions, support peace missions, peace-building, including post-conflict disarmament and demobilization¹⁹; and intervene in a member state in accordance with article 4(h) and (j) of the Constitutive Act.

Therefore, in terms of conflict management, unlike its predecessor, the AU's council of peace and Security Council is in principle able to authorize the entire spectrum of peace operations, from small peacemaking missions to large-scale interventions envisaged in Articles 4(h) and 4(j) of the AU Constitutive Act.²⁰

C. Responsibilities and Mandates of PSC in resolving conflict

This is a final conflict maintenance processes and dependents upon the success of the process of conflict management.²¹ Levitt argues that the operational objectives of conflict management should be to impartially monitor cease-fire agreements and other accords and also to preserve peace and security so as to allow for repatriation, demobilization, and the deployment of civil

¹⁷ William page 6

¹⁸ Gumedze, Sabelo, The Peace and Security Council of the African Union : its relationship with the United Nations, the African Union and sub-regional mechanisms– Åbo : Åbo Akademi University Press, 2011

¹⁹ Article 13 (e) of PSC protocol

²⁰ Willam page 7

²¹ Supra note 17 at 44

society and government structures, including political and judicial processes to bring about justice and reconciliation.

So with the view to effectively handle the responsibilities, the Council may invite non-governmental organizations, community-based and other civil society organizations, particularly women's organizations, to address it on issues touching on peace and security in Africa.²² For instance, the commission of the Union, one of the organs established by the constitutive act, has a support in the proper functioning of management of conflict. The commission through its chair person brings to the attention of PSC the matter she/ he deemed is a threat to peace, security.²³ In addition to this, the chairperson is also given power to perform negotiations to resolve or prevent conflicts through his good office, either when requested by the PSC or by his own initiative.²⁴

All in all, AU's council peace and security, through its various organ, has taken vital shares of responsibility and mandate with member states in resolving of conflict.

3. THE AU'S PEACE AND SECURITY COUNCIL: FROM PROMISE TO PRACTICE

It is clear that African States have played a more proactive role in the maintenance of peace, security and stability in Africa since the transition of OAU into AU and with the subsequent establishment of its own Security Council in 2004.²⁵ Of course, the lack of appropriate resources has clearly hampered the ability of the organization's peace operations to meet their objectives.²⁶

With all the limitations, however, the AU's council of peace and Security is taking laudable and immediate responses to the conflicts of Africa with the back of the more interventionist provisions of the constitutive act and the PSC protocol. To this end, the writer in the following section explores practical illustration of intervention by council of African peace and Security Council in a certain types of conflicts in any of member states since its establishment. The followings are just some few illustrations:

3.1. The African Union Mission in Burundi (AMIB)

The peace operation in Burundi was launched in 2003– also known as the African Union Mission in Burundi (AMIB) – was the AU's first operation wholly initiated, planned, and executed by its members.²⁷ The AU deployed AMIB with more than 3,000 troops from South

²² Id at 45

²³ Protocol article 10(2)(a); Rules of Procedure, Rule 26 (2(a))

²⁴ PSC Protocol article 10 (2) (c)

²⁵ Zekarias, page 45

²⁶ Ibid

²⁷ Tim Murithi, page 98

Africa, Ethiopia and Mozambique to monitor the peace process and provide security.²⁸ In this regard, the mission represents a milestone for the AU in terms of self-reliance in operationalizing and implementing peace building.

The mission was mandated, among others, to monitor and verify the implementation of the Ceasefire agreement, secure identified assembly and disengagement area, facilitate the movement of the combatants towards the assembly area and the delivery of humanitarian assistance, facilitate and provide technical assistance to the disarmament, demobilization and reintegration (DDR) process²⁹. It also had the task of establishing conditions which would allow for a UN peace operation to come into the country.³⁰

All in all the mission was initially a traditional peacekeeping deployed to enforce the Arusha peace accords and the rules of engagement (ROEs) were based on use of force in case of self-defense. This was however changed when senior AMIB officials drafted the Rule of Engagements which specifically granted troops of AMIB the mandate to intervene with force to protect civilians under imminent danger of serious injury or death with prior authorization from military and civilian officers.³¹

In conclusion, AU's PSC involvement in the crisis of Burundi demonstrates its determination to remain non indifferent to its conflicts which could be taken as one big departure from the experience of its predecessor and intended to enforce the objectives set by constitutive act of AU and that the PSC protocol.

3.2. The African Union Mission in Sudan (AMIS)

From 2004 to 2007 the AU was also involved in promoting peace in the Darfur region of Sudan through its African Union Mission in Sudan. On March 28th 2004 the AU sent an Armed Protection Force to Darfur, as a response to increasing levels of violence between government forces and rebel groups, which was causing civilian casualties and refugee flows.³²

From the inception of the conflict, the PSC was actively involved in finding both political as well as military solution for the conflict. The PSC in this case had expanded the size of troops and gave them an explicit mandate to protect civilian.

As a whole, the involvement of the PSC with authorization of fully fledged peacekeeping operation in Darfur also signals the total shift from non-intervention principle of the OAU into non-indifference principle which in turn signifies the determination of the Union to assume full

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² TIM, Murithi, page 100

responsibility in resolving African crisis with the mandate of the constitutive acts of African Union.

3.3. African Union mission in Somalia (AMISOM)

The AU launched an operation in Somalia in March 2007, ostensibly to stabilize the ongoing dispute between groups in the country.³³

The mission was mandated to support transitional governmental structures, implement a national security plan, train the Somali security forces, and to assist in creating a secure environment for the delivery of humanitarian aid. As part of its duties, AMISOM also supports the Transitional Federal Government's forces in their battle against Al-Shabaab militants.³⁴

As a whole, The AU's council of peace and security has become the first actor to respond for the conflict of Somalia as that of the conflicts in Burundi and Darfur. AMISOM is deployed with a strong conviction of the Union that it is the primarily responsible body for peace and security of Somalia and its people.

4. HOW AND TO WHAT EXTENT AU'S PEACE AND SECURITY COUNCIL DOES INTERVENES ANY OF THE MEMBER STATES?

In this section the Writer explores the scope of the right to intervene under the constitutive act and peace and Security Council the protocol.

One thing that must be clear from the outset in this regard is the AU's peace and Security Council could not undertake any of the responsibilities in a vacuum. Nor does the council replaces or compete with member states' justice machineries. It would rather carry out through effective cooperation of the member states.

Here, Article 7(4) of the PSC Protocol provides that member states shall extend full cooperation to, and facilitate action by the Council for the prevention, management and resolution of crises and conflicts, pursuant to the duties entrusted to it under the PSC Protocol. Of all the AU organs, the Peace and Security Council is the only one that recommends intervention in a member state against the commission of genocide, crimes against humanity and war crimes, under article 4(h) of the Constitutive Act. So, without the full cooperation of member states in carrying out a recommended intervention, the Council's mandate would be futile.

In this context, therefore, the AU is a creation of its member states through a legal instrument which co-ordinates them through its application and enforcement by the same member states. By

³³ Id at 110

³⁴ Id at 111

extension, the PSCAU Protocol is a creation of the AU member states which also co-ordinate the Protocol through its application and enforcement by the same member states. Thus, member states of the AU remain independent sovereign states while subscribing to the objectives of the international organization.

In this regard, the PSC Protocol creates three important rules, of which the member states to the Council must take cognizance. Firstly, article 7(2) of the PSC Protocol provides that member states agree that in carrying out its duties under the Protocol, the Peace and Security Council 'acts on their behalf'. This means that in all matters relating to peace, security and stability in Africa as a region, the member states cede their power to the Peace and Security Council. Any decisions of the Council, therefore, are binding on all the member states bound by the PSC Protocol.

Secondly, article 7(3) of the PSC Protocol provides that member states agree to accept and implement the decisions of the Peace and Security Council in accordance with the Constitutive Act. This means that member states cannot question a decision of the Council and are obliged to 'accept' and 'implement' such decisions in line with the Constitutive Act.

Thirdly, over and above ceding their power to the Peace and Security Council, and also accepting and implementing its decisions,

More importantly, AU right to intervene cannot be viewed as a euphemism for humanitarian intervention but as a normative commitment of AU States to prevent mass atrocity crimes on the continent. By consenting to Article 4(h), AU States understood themselves to be granting a responsibility to the AU and the international community to intervene where a Member State is unable or unwilling to undertake to protect its population from mass atrocity crimes.

The conditions for intervention under Article 4(h) are mass atrocity crimes which are subject to universal jurisdiction. The noninterference principle in the internal affairs of States embodied in Article 4(g) is therefore qualified by Article 4(h), since mass atrocity crimes are of legitimate concern to the international community, and give rise to prosecution under the principle of universal jurisdiction.³⁵ As responsible Members, by signing the AU Act with the right to intervene under Article 4(h) AU Member States accepted responsibilities of membership flowing from that signature, as well as a *de facto* redefinition – from sovereignty as a right of exclusivity to sovereignty as responsibility in both internal functions and external duties.

All in all, the African peace and Security Council has been serving and is serving as peace keeper, peace maker and political actors in the resolution of conflicts in any of member

³⁵ Dan Kuwali, The end of humanitarian intervention: Evaluation of the African Union's right of intervention

countries. But still, it does not viewed as justification of transgressing state sovereignty nor to replace the individual member states' justice machineries

5. CONCLUDING REMARKS

From the above discussion it is apparent that the genesis of the concept of intervention has rooted since the OAU's time. During that time the assembly of head of state and government held in Cairo, Egypt, in June 1993, adopted Declaration on the Establishing within the OAU of a **Mechanism for Conflict prevention, Management and Resolution**. However, the mechanism was not effective for it had a limited role of intervention in the sphere of member states so as to prevent conflict from developing into full-blown conflicts.

As far as AU is concerned, both the constitutive act and the protocol adopted a more interventionist approach. It is established that African Union constitutive act conferred the right to intervention in respect of grave circumstances specified under article 4(h) of the AU's constitutive act. The incorporation of this principle constitutes a pioneering act in international law since it establishes for the first time in the history of regional arrangements or organizations the right to intervene in a Member State on grounds of violation of human rights or humanitarian law.

The AU's peace and Security Council plays a pivotal role for the proper realization of the right to intervention envisaged under the constitutive act and the protocol. In doing so, the council is to be supported by different organs within PSC itself and AU at large most notably the AU Commission, a Panel of the Wise, a Continental Early Warning System (CEWS), an African Standby Force (ASF), and a Special Fund. The responsibilities and mandates council ranges from prevention of conflict to the resolution of conflicts.

Practically speaking, it is clear that African Union have played a more active role in the maintenance of peace, security and stability in Africa since the establishment of its own Security Council in 2004. In this regard, AMIB, AMIS and AMISOM exemplified AU's council of peace and security active involvement in the internal affairs of the member states in a certain specified forms of conflict as enshrined in the constitutive act.

Lastly, the paper discovered that the responsibilities and mandates of AU's peace and Security Council could not undertake any of the responsibilities in a vacuum. Nor does the council replaces or compete with member states' justice machineries. It would rather cooperate with independent sovereign states shared responsibilities there by sharing the responsibilities.

Reference Materials

1. Zekarias Beshah, African union peace and security council: to compete or complement the un security council, 2010, Addis Ababa University, unpublished)

2. About the Peace and Security Department of the AU, history and background available at www.africa-union.org/root/au/AUC/Departmt accessed on February 7, 2013
3. TIM MURITHI, The African Union's Transition from Non-Intervention to Non-Indifference: An Ad Hoc Approach to the Responsibility to Protect?, P,2 available at http://library.fes.de/pdf-files/ipg/ipg-2009-1/08_a_murithi_us.pdf
4. Boutros-Ghali, Boutros (1992): *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*. New York: United Nations
5. PAUL D. WILLIAMS, The Peace and Security Council of the African Union: evaluating an embryonic international Institution, available at <http://users.polisci.wisc.edu/schatzberg/ps362/Williams2009>
6. Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter*, (Oxford: Hart Publishing, 2004), p.165)
7. Gumedze, Sabelo, *The Peace and Security Council of the African Union : its relationship with the United Nations, the African Union and sub-regional mechanisms– Åbo : Åbo Akademi University Press, 2011*