The African Union Use of Force to Uphold Democracy and Constitutionalism in Practice: How Far Have We Gone?

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Abstract

This paper makes an assessment of how far the African Union (AU) has gone in exercising the mandate of use of force as one of tools for upholding democracy and constitutionalism within the continent. The key intention of this assessment is to scrutinize the suitability of the use of force in the AU's framework as one of the channels for safeguarding democracy and constitutionalism. The work has employed qualitative research methods, relying on both primary and secondary data. Parallel to that, four case studies from selected AU missions in Africa have been relied upon (Burundi twice, Comoros, Mali and the Gambia). Findings reveal that generally the AU has made significant strides in utilizing its mandate in the use of force in upholding democracy and constitutionalism in Africa by restoring peace, rule of law, stability, human security and in safeguarding people's will. The AU has also proved to be a reliable first responder in African constitutional crises given the fact that intervention by the UN system takes too long to be engaged and that the UN does not deploy peacekeeping forces where there is no comprehensive peace agreement. Despite that encouraging development, critical challenges still exist. The AU has not succeeded in addressing one notorious vice in Africa which largely contributes to recurrent constitutional crises, namely bad governance. Bad governance exists in various forms such as disrespect of presidential term limits, nepotism and willful disregard of the will of the people in general elections. Other challenges include financial constraints to adequately fund large scale operations, excessive reliance of donors for its peace operations, lack of political will from some African states, and difficulties in harmonizing interests of all parties to conflicts. In order to address these challenges, the AU should achieve its financial autonomy. It should explore further on the lead nation approach and put in place a more formal system on terms and conditions of participation of those nations and anchoring peace support operations. The UA should also make more efforts to instill upon African leaders the culture of good governance because it will greatly reduce constitutional crises which necessitate the use of force in addressing them. Lastly, the AU should discourage procuring of peace deals without the free consent of all the key actors in constitutional crises. Free consent is crucial in ensuring that the peace deals will be adequately respected. The overall outcome of this assessment therefore serves as an encouragement of the AU to continue working tirelessly

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in improving the mechanism of use of force because it has proved to be a potential tool for upholding democracy and constitutionalism in appropriate circumstances.

Introduction

One of the key responsibilities entrusted upon the African Union (AU) is to uphold democracy and constitutionalism among its Member States as articulated in the AU Constitutive Act under the objectives and principles of the Union. The objectives include promoting peace, security, and stability on the continent,[1] promoting democratic principles and institutions, popular participation and good governance,[2] as well as promoting and protecting human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.[3] Further to that, the Union's relevant guiding principles include respect for democratic principles, human rights, the rule of law and good governance,[4] and condemnation and rejection of unconstitutional changes of governments.[5] Those objectives and principles are reiterated in the African Charter on Democracy, Elections and Governance (ACDEG) of 2007.

In performing that task, the AU has been applying various methods depending on the prevalent circumstances. One of those methods, which constitutes the focus of this paper, is the use of force. The paper makes an assessment of AU's progress from its inception up to now in the use of force for purposes of upholding democracy and constitutionalism in Africa. It starts by explaining the methodology used in conducting this study. Thereafter, the paper briefly explores the background which gave rise to AU's use of force regime; followed by a discussion on the emergence of that regime. Subsequently, the article looks at the framework of cooperation on the use of force between the AU and African Regional Mechanism (RMs) on the use of force to address constitutional crises in Africa. That part is followed by an extensive exploration of selected case studies and then an evaluative analysis on AU's progress in using force to uphold democracy and constitutionalism in Africa. Those two parts constitute the heart of this study. A discussion on lessons learned from AU's progress will follow, and lastly the paper will be finalised by recommendations and concluding remarks.

A. Methodology

This is a qualitative research relying on both primary and secondary data. Primary data has been obtained through semi-structured interviews with three respondents. One respondent is

1 AU Constitutive Act (11 July 2000), article 3(f).
2 Ibid., article 3(g).
3 Ibid., article 3(h).
4 Ibid., article 4(m).
5 Ibid., article 4(p).

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from the East African Community Secretariat Headquarters in Arusha (Tanzania) while the other two are from the AU Headquarters in Addis Ababa. The choice of those respondents was based on their immense practical and theoretical experience in the field of peacebuilding in Africa in general and use of force in particular. The interview with the respondent in Arusha was done face-to-face while interviews with the other respondents were carried out virtually due to COVID-19 -related travel restrictions. The interviews were conducted on a strict condition that the responses are the respondent's personal views and do not reflect an official position of their institutions. Primary data was also collected from relevant reports and commentaries. On the other hand, secondary data was obtained from a detailed review of relevant legal instruments, periodicals and scholarly work.

At the centre of this assessment are a number of relevant AU missions in Africa in which force was used, but given the need to make this study as specific as possible it will be unrealistic to do a detailed analysis of all the missions. In view of that, this paper focuses on only four case studies, namely, the Comoros, Burundi, the Gambia and Mali. The major reason for those choices is that the missions deployed in those countries contain diverse elements which offer a good basis fora detailed analysis. In Comoros the paper focuses on the 2008 operation democracy while in Burundi, two missions, namely, the African Union Mission in Burundi (AMIB) and the African Prevention and Protection Mission in Burundi (MAPROBU), are highlighted. As for Mali and The Gambia, African-led International Support Mission to Mali (AFISMA) and the 2017 intervention led by the Economic Community of West African States (ECOWAS) are respectively analysed.

B. Background

The United Nations (UN) Charter prohibits use of force except for only two exceptions.[6] Those exceptions are self-defence, as noted in Article 51, and action under Article 42, taken by the UN Security Council (UNSC) so as to maintain international peace and security pursuant to Chapter VII of the UN Charter.[7] The right of self-defence can be resorted to individually or jointly.[8] As a result, even in situations where a state is acting in self-defence, it must ultimately yield to the international order as established by the UN Charter, and the decisions of the UNSC.[9] Further to that, self-defence can only legally take place when an

6 Article 2 (4) of the United Nations Charter provides that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

7 *Jean Allain*, 'The True Challenge to the United Nations System of the Use of Force: The Failures of Kosovo and Iraq and the Emergence of the African Union', 2003 (https://www.researchgate.net/publication/233668972_The_True_Challenge_to_the_UN_Use_of_Force), p. 240.

8 Ibid., pp. 240–241.

9 Ibid., p. 241.

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armed attack takes place against a state.[10] As noted by the ICJ in the *Nicaragua* case[11] and affirmed later in its 1996 Advisory Opinion in the *Nuclear Weapons* case,[12] self-defence should only be limited to measures that are proportional to the armed attack and necessary to respond to the attack.[13] Actions which are retaliatory or punitive in nature will not be considered as part of self-defence.[14] In the same vein, the methods and extent of the defence must be proportional to magnitude of the attack which has triggered the defence.[15]

With regard to its mandate, the UNSC may sanction the use of force for purposes of maintaining or restoring international peace and security.[16] As originally conceived, the *UN Charter* called for states, under Article 43 to make available to the United Nations armed forces and other items necessary to maintain the peace. The *Charter* further called on a Military Staff Committee to assist the UNSC in the employment of these forces.[17] However, such forces were never made available to the Council on a permanent basis, instead the practice which has developed within the UN is for states to provide troops from their military on an *ad hoc* basis, thus making the Council dependent on the will of individual Member States to act.[18]

In invoking the mandate explained above, the UNSC must first make a determination that situations which affect international peace and security do, in fact, exist. Further, the Council must make that decision by majority vote.[19] Making such a determination, however, is limited by the requirement of receiving both a majority vote of the fifteen members and no negative votes of the five permanent members, thus effectively providing those five members with the ability to veto the passage of any UNSC resolution.[20]

It is apparent that the established parameters for the use of force stipulated under Articles 42 and 51 of the UN Charter are predicated on the ultimate control by the UNSC.[21] That means all regional arrangements such as the AU, which fall under Chapter VIII on regional agencies, are not an exception.[22] Parallel to that regime is the human security and responsibility to protect doctrine. The doctrine makes it clear that sovereignty entails

10 Ibid., p. 242.

11 Military and Paramilitary Activities in and against Nicaragua (Nicaragua c. United States of America), Merits, Judgment of 27 June 1986, I.C.J. Reports 1986, para. 194.

12 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, ICJ Reports 1996, para. 48.

13 *Allain,* note 7, p. 243.

14 Ibid.

15 Ibid., pp. 243–244.

16 UN Charter (26 June 1945), Chapter VII.

17 *Allain,* note 7, p. 244.

18 Ibid., p. 244–245.

19 Ibid., p. 245.

20 Ibid.

21 Ibid., p. 248.

22 Ibid., pp. 248–249.

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responsibility on the part of the state to provide for the security of its citizens.[23] However, when a state is unwilling or unable to protect its population or is targeting its citizens, the responsibility to protect is transferred to the international community.[24] Accordingly, the international community has an obligation to act under these circumstances, even without the consent of the target state.[25] Furthermore, the international community may respond with military force, if necessary and only as a last resort, in the framework of the UN Charter.[26]

The criteria for intervention also referred to as threshold conditions or the "just cause threshold" are derived from established inter- national human rights principles. They are described as: large-scale loss of life, actual or apprehended, with genocidal intent or not, which is the product of either deliberate state action, or state neglect or inability to act, or a failed state situation; or large-scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.[27] The responsibility to protect suggests that authorization for intervention should be provided by the international community, and more specifically, by the UNSC.[28]

Notably, regional organizations or a "coalition of the willing" are permitted to make interventions if the UNSC fails to act.[29]In situations where the UNSC does not respond appropriately, the question of intervention can be deliberated by the General Assembly in emergency special session under the "uniting for peace" resolution, whilst regional or sub-regional organizations within their area of jurisdiction can act under chapter VIII of the UN Charter.[30] On that basis, the UN System recognizes existence of regional arrangements or agencies as long as they are consistent with the purposes and principles enshrined in the UN Charter[31] and on a condition that such regional organizations are authorized by the Council.[32] Parallel to that, regional organizations are obliged to keep the UNSC fully informed of activities undertaken or in contemplation for the maintenance of international peace and security.[33] It is thus clear that regional organizations are required, under the UN framework, to act under the umbrella of the UNSC.[34]

23 *Kristiana Powell* and *Thomas Tieku,* The African Union's New Security Agenda: Is Africa Closer to a Pax Pan-Africana?, in International Journal 60 (2005), p. 945.

24 Ibid.

25 Ibid.

26 Ibid.

27 *International Commission on Intervention and State Sovereignty (ICISS),* 'The Responsibility to Protect' 1 December 2001, p. xii.

28 *Powell* and *Tieku,* note 23, p. 945.

29 Ibid., p. 946.

30 Ibid.

31 UN Charter, article 52.

32 Ibid., article 53.

33 Ibid., article 54.

34 *Allain*, note 7, p. 249.

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However, that is not always the case for Africa. The AU has created its own machinery for peace and security in general and use of force in particular which does not subordinate itself to the UN system. The move came after Africa's realisation that the UN system is not responsive enough to African problems. From the end of the 1990s, the African continent had been marginalized in ways it had not been during the height of the Cold War.[35] This remains true in the area of international peace and security, where African states have come to realize that they cannot depend on the Members States of the UNSC to ensure stability on the continent. As a result, African States have decided to depart radically from the normative framework established by the UN in 1945.[36] By virtue of that exodus, two important developments have been observed. Firstly, Africa seems to be knowingly deviating from the requirements on the use of force stipulated.[37] Secondly, the continent no longer submits to the mandatory pre-condition that, apart from self-defence purposes, recourse to the use of force must always be authorised by the UNSC. It is clear that the continent will invoke the use of force in appropriate conditions whether with or without permission from the UNSC.[38]

Of great importance has been the fact that African states witnessed the precedent-setting intervention of West African troops in both Liberia and Sierra Leone without a Security Council mandate; but just as crucial was the manifest failure of the UNSC to act to prevent the 1994 Rwandan Genocide.[39] These factors led African States to come to the conclusion that they should take control over their own destiny regarding regional peace and security and turn their backs on the normative framework of the United Nations System.[40]

This move can be found in the 1990 intervention by ECOWAS in Liberia.[41] This regional organization, responding to the Liberian civil war, established the ECOWAS Ceasefire Monitoring Group or ECOMOG which sent five thousand troops to keep the peace, restore order and ensure the ceasefire between the Government and the rebels.[42] Although it took until 1996 to maintain peace, the break allowed elections to take place with the result that the former rebel leader, Charles Taylor, became the Liberian President in 1997.[43] Although the Liberian Ambassador to the UN had sought to bring the conflict to the attention of the UNSC in June 1990, the Council failed to consider the issue until January 1991, that is, some five months after the ECOWAS intervention.[44]

35 Ibid.
36 Ibid., p. 259.
37 See UN Charter, article 2(7) and Chapter VIII.
38 *Allain*, note 7, pp. 259–260.
39 Ibid.
40 Ibid., p. 260.
41 Ibid.
42 Ibid.
43 Ibid.
44 Ibid.

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In undertaking this military intervention, ECOWAS was obviously in violation of the normative order as established by the UN Charter.[45] Without the consent of the UNSC, ECOWAS states were in breach of their obligations regarding the use of force as UN Members States; while the organization itself was in violation of Article 53 UN Charter which prohibits taking of enforcement actions under regional arrangements or by regional agencies without the authorization of the UNSC.[46] Despite that non-compliance, the ECOWAS intervention was supported by the UN and the whole of the international community.[47] While the UNSC tacitly accepted the role of West African States in Liberia for more than two years, it declared its support openly for ECOWAS in November 1992 when, by virtue of Resolution 788, it commended ECOWAS for its efforts to restore peace, security and stability in Liberia.[48]

Again, in 1998, ECOWAS intervened in Sierra Leone without the authorization of the UNSC.[49] The move was a result of a coup d'état in May 1997, where the elected President of Sierra Leone was deposed.[50] While OAU was to call for the restoration of the elected President, the UNSC invoked Chapter VII in October 1997, demanding that the military junta take immediate steps to relinquish power in Sierra Leone and imposed travel restrictions on its members as well as a petroleum and arms embargo.[51] The Council, while not giving ECOWAS a green light to intervene, did authorize it to ensure strict implementation of the provisions regarding the embargo.[52] With the international community firmly against those who had taken power, the parties agreed to the October 1997 Conakry Peace Agreement which had attached to it a six-month time frame.[53] When it became clear that the peace was not holding, ECOMOG troops intervened in February 1998 without UNSC's authorization, reinstalling the elected President to power.[54]

Thereafter, ECOWAS moved to institutionalize the power it had appropriated from the UNSC in the domain of peace and security.[55] By its 1999 Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, ECOWAS decided that its newly established Mediation and Security Council could authorise all forms of intervention and decide particularly on the deployment of political and

45 Ibid., p. 261.
46 Ibid.
47 Ibid.
48 Ibid.
49 Ibid.
50 Ibid.
51 Ibid.
52 Ibid.
53 Ibid.
54 Ibid., pp. 261–262.
55 Ibid., p. 262.

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military missions.[56] Those two undertakings marked the beginning of a new chapter on the way Africa handles her own problems. They revealed Africa's strength and determination in taking care of peace and security in the continent especially after it had become clear that prompt assistance from outside sources is unreliable.

The 1994 Rwanda Genocide was another wake-up call for Africa following the disappointments from the UN system. The traumatic effects of the Genocide moved African states to establish a mechanism to ensure that such mass killing would not happen again.[57] The memory of African States and the continent as a whole remains scared by the mass slaughter which transpired in its midst and the indifference to it manifested by the international community as demonstrated by the UN own acknowledgement of its failure to prevent, and subsequently, to stop the genocide.[58] A Panel of eminent personalities brought together by the Organization of African Unity (OAU) stated that members of the UNSC, specifically France and the United States, consciously chose to abdicate their responsibility for Rwanda.[59] Two weeks after the genocide had commenced, the UNSC decided to reduce its peacekeeping forces in Rwanda; and a month into the murder spree, which saw approximately 800,000 Tutsi and moderate Hutus killed, Council members were still, though well informed of what was transpiring on the ground, unwilling to use the term "genocide" and, as a result, delayed action which could have mitigated some of the atrocity.[60]

The reputation of the UNSC was further tarnished in the eyes of African States for its authorization of *Operation Turquoise*, a French peacekeeping mission which, in essence provided assistance to the *génocidaires* allowing them to escape to create, in Eastern Zaire (currently Democratic Republic of the Congo), a rump genocidal state on the very border of Rwanda.[61] The OAU Panel noted that the genocide had repercussions which went far beyond the borders of Rwanda, as it noted that the 1994 genocide in one small country ultimately triggered a conflict in the heart of Africa that has directly or indirectly touched at least one-third of all the nations on the continent.[62]

In view of those developments and in the light of the doctrine of human security and responsibility to protect, the OAU Panel called upon the OAU to establish appropriate structures to enable it to respond effectively to enforce the peace in conflict situations.[63] That call was heeded by the OAU, as it sought to reinvent itself and move towards taking command over its own destiny with regard to issues of the use of force.[64]

56 Ibid.
57 Ibid., p. 263.
58 Ibid.
59 Ibid.
60 Ibid.
61 Ibid.
62 Ibid.
63 Ibid., p. 264.
64 Ibid.

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C. Use of Force under the African Union

The use of force by the AU in the territory of a Member State can occur in four (4) forms. The first one is by way of an intervention pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.[65] A decision to intervene under this option is done by the Assembly on its own initiative without the consent of the territorial state.[66] The second form is intervention upon a request by a Member State in order to restore peace and security.[67] The third situation was introduced in the 2003 Protocol which amended the AU Constitutive Act in Article 4 (h), although the said amendment has not yet come into force. The amendments extended the right to intervene to situations that pose a serious threat to legitimate order to restore peace and stability in the Member State of the Union upon the recommendation of the Peace and Security Council (PSC). Ben Kioko emphasizes that the addition to Article 4 (h) of the AU Constitutive Act was adopted with the sole purpose of enabling the Union to resolve conflicts more effectively on the continent, without ever having to sit back and do nothing because of the notion of non-interference in the internal affairs of member States.[68] Lastly, AU's intervention can take place in the form of peace support missions as provided for under Article 7(1(c)) of the PSC Protocol, 2002.

Similar provisions on those situations allowing use of force are reiterated in the 2002 Protocol Relating to the Establishment of the AU Peace and Security Council (PSC Protocol) in Article 4(j) and (k); as well as Solemn Declaration on a Common African Defence and Security Policy such as in Article 11(f) and (h). Moreover, Article 7(1(c)) of the PSC Protocol empowers the PSC to authorize the mounting and deployment of peace support missions.

From those provisions, it can be deciphered that a constitutional crisis which can justify the AU's intervention is mainly the one which leads to war crimes, genocide and crimes against humanity or if there is a request by a territorial state in which the crisis has occurred so as to restore peace and security in that country. The Constitutive Act and the Protocol on the PSC provide the AU with unparalleled powers to trump the sovereignty of member states in order to protect vulnerable populations and restore peace and security.[69] These changes, if put into practice, may move Africa closer to an inclusive peace that is centred on protecting vulnerable populations.[70]

Each form of intervention has its own nature and scope. An intervention without the consent of territorial state will happen in response to war crimes, genocide and crimes

65 AU Constitutive Act, article 4 (h).

66 *Ben Kioko,* The Right of Intervention under the African Union's Constitutive Act: From Non-interference to Non-intervention, in International Review of the Red Cross 85 (2003), p. 817.

67 AU Constitutive Act, article 4 (j).

68 *Kioko*, note 66, p. 817.

69 *Powell* and *Tieku*, note 23, p. 14.

70 Ibid.

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against humanity. The aim would be protection of human security from those crimes. AU's attempt to deploy the African Prevention and Protection Mission in Burundi (MAPROBU) in 2015 is a clear illustration in this case. An intervention upon a request by a Member State in order to restore peace and security can have the effect of protecting both the state security and the population which is in jeopardy as a result of loss of peace and security. A good example is the request made in 2008 by the Comoros central authority to the AU for support to re-establish the authority of the Government of the Union of Comoros on Anjouan. With regard to peace support operations, these can be for protecting both human security and state security depending on the extent of a particular mandate. AMIB is an appropriate example of such operations. The intended end result of this mission was to protect civilians as well as restore a constitutional order in the country.

Decisions to intervene are made by the Assembly of the Union at two levels, namely, on its own initiative[71] and at the request of a member State.[72] Decision making by the Assembly is by consensus or, failing which, by a two-thirds majority of member States eligible to vote.[73] Generally, the Assembly meets at least once a year in ordinary session; but also, it can meet in extraordinary sessions at the request of any Member State and on approval by a two-thirds majority of the Member States.[74] It is worth noting that decisions to intervene in situations that pose a serious threat to legitimate order in the Member State of the Union are made upon the recommendation of the PSC.[75]

The AU will choose a mode of intervention depending on the nature of constitutional crisis in existence and other determining or peculiar circumstances. In the Comoros, the AU deployed Operation Democracy because there was a request for assistance. AMIB was deployed in Burundi due to the complex nature of the conflict which greatly endangered lives of civilians and the constitutional order. Most importantly, the choice was triggered by the need of an urgent response and the fact that the UN could not intervene because there was no comprehensive peace agreement in force yet.

For the case of MAPROBU, the AU was prepared for the first time to make an intervention without the request of the host nation (Burundi) because the violence that had erupted was too severe as far as human security was concerned and there was no indication that the host government was going to request assistance. In the Gambia during the constitutional crisis caused by the sitting President Yahya Jammeh's refusal to concede defeat, the type of intervention was determined by the crisis which was posing a serious threat to the country's legitimate order whereby the purpose of the intervention was to restore peace and stability.

71 AU Constitutive Act, article 4 (h).

72 Ibid., article 4 (j).

73 Ibid., article 7(1).

74 Ibid., article 6(3).

75 Ibid., article 4(h). See also Protocol on Amendments to the Constitutive Act of the African Union of 2003 (11 July 2003).

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The AU carries out the use of force mandate through its mechanism for peace and security, namely, the African Peace and Security Architecture (APSA). As indicated above, the actual power of decision in situations of recourse to the use of force is vested in the Assembly of Heads of State and Government, the supreme organ of the AU. Below that Assembly is the PSC, which became fully operational in 2004.[76] The PSC works closely with a number of established mechanisms and structures which assist it in its work. The first mechanism is the Continental Early Warning System (CEWS), which is designed to collect data and information from the ground, anticipate and make recommendations for measures to prevent conflicts.[77]

The second one is the African Standby Force (ASF), which was established under Article 13 of the PSC Protocol.[78] The ASF engages in, among others, intervention in accordance with Article 4(h) and 4(j) of the AU Constitutive Act. The ASF is supposed to be composed of regional brigades ready for rapid deployment at appropriate notice on missions decided by the PSC or interventions authorized by the Assembly.[79] The member states contributing to the ASF validated their troops in December 2014. These include motorized and light infantry battalions, reconnaissance squadrons, marine and air assets, civilians and formed police units, among others.[80] This shows a serious commitment in the advancement of the notion of African solutions to African problems.[81] Next there is the Military Staff Committee, which advises and assists the PSC on all questions relating to military and security matters, including those concerning military intervention to stem humanitarian crises.[82]

Another component of the APSA is the Common African Defence and Security Policy (CADSP), adopted by Heads of State and Government of member states of the African Union in the second extra-ordinary session, in Sirte (Libya) in 2004. Some objectives of the CADSP to the use of force include to ensure collective responses to both internal and external threats to Africa, in conformity with the principles of the Union;[83] enable the achievement of the latter's objectives, especially those relating to defence and security matters which are contained in Articles 3 and 4 of the AU Constitutive Act[84] and serve as a

76 See Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Durban (9 July 2002).

77 Ibid., articles 2(2) and 12.

78 Ibid., articles 2(2) and 13.

79 Ibid. , article 13(2).

80 *Kasaija Phillip Apuuli*, 'The AU's Peace and Security Architecture: The African Standby Force', in *Tony Karbo* and *Timothy Murithi* (eds.), The African Union – Autocracy, Diploma and Peace-building in Africa, London, New York and Cape Town, 2018, pp. 149–182.

81 Ibid., p. 173.

82 Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 13(8).

83 Ibid., article 13(a).

84 Ibid., article 13(b).

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tool for the simultaneous enhancement of defence cooperation between and among African States, and the consolidation of national defence.[85]

CADSP also aspires to eliminate suspicions and rivalry among African States, a factor that has traditionally engendered conflicts on the continent and hindered interstate cooperation and integration in Africa;[86] provide a framework for AU Member States to cooperate in defence matters, through training of military personnel; exchange of military intelligence and information (subject to restrictions imposed by national security). CADSP's mandate also extends to the development of military doctrine; and the building of collective capacity;[87] enhancing AU's capacity for and coordination of, early action for conflict prevention containment, management, resolution and elimination of conflicts, including the deployment and sustenance of peacekeeping missions and thus promoting initiatives that will preserve and strengthen peace and development in Africa.[88] Not only that but also CADSP is expected to provide guidance in the development and enhancement of the collective defence and strategic capability as well as military preparedness of Member States of the AU and the continent.[89] Other areas falling under CADSP scope include providing a framework to establish and operationalize the African Standby Force provided for in the Protocol Establishing the Peace and Security Council[90] and integrating and harmonizing regional initiatives on defence and security issues.[91]

African Capacity for Immediate Response to Crisis (ACIRC) is another crucial ingredient. ACIRC was established in 2013 since leaders in Africa were too slow to make quick decision in response to crisis.[92] For example, it was observed that it had taken leaders in ECOWAS eleven meetings in eleven months polishing the decision to intervene in Mali, until one day they woke up and the rebels were matching towards Bamako.[93]

ACIRC's main aim is to provide Africa with a strictly military capacity with high reactivity to respond swiftly to emergency situation upon political decisions to intervene in conflict situations within the continent.[94] The purpose is to establish efficient, robust and credible force, which can be deployed very rapidly, able to conduct operations of limited duration and objectives or contribute to creating enabling conditions for the deployment of larger AU and/or peace operations.[95] ACIRC is premised on volunteerism by member states

85 Ibid., article 13(c).
86 Ibid., article 13(d).
87 Ibid., article 13(f).
88 Ibid., article 13(j).
89 Ibid., article 13(m).
90 Ibid., article 13(q).
91 Ibid., article 13(s).
92 *Apuuli*, note 80, p. 159.
93 Ibid.
94 Ibid.
95 Ibid.

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and the ability and capacity of states to deploy (within 15 days).[96] Other principles include continentalism rather than regionalism, as well as self-sustenance and collective security.[97] Even though the ACIRC was mooted in May 2013, sadly when the crisis in CAR escalated during that year and beyond, the capacity was not activated.[98]

The above mechanism exists within a governance structure that comprises of the Pan African Parliament;[99] the African Commission of Human and People's Rights; Regional Mechanisms (RMs) for conflict prevention, management and resolution;[100] international organizations (particularly the UN);[101] and civil society organizations.[102] Generally, APSA is a manifestation of the AU's political principle of African solution to African problems, essentially an issue of self-determination.[103] Most of the APSA structures/pillars that are now up and running provide Africa with ownership and a large stake in the process of resolving the problems of peace and security on the continent.[104]

D. Framework of Cooperation between the AU and RMs on the Use of Force to Address Constitutional Crises in Africa

The AU implements the principle of subsidiarity in order to build the capability of Regional Economic Communities (RECs) to ensure peace in the regions,[105] as reflected in, among others, Articles 7(j) and 16 of the PSC Protocol of 2002. RMs are part of the overall security architecture of the Union.[106] The PSC and the Chairperson of the AU Commission are mandated to harmonize and coordinate the activities of RECs/RMs in the field of peace, security and stability to ensure that these activities are consistent with the objectives and principles of the Union;[107]and to work closely with them for an effective partnership in the promotion and maintenance of peace, security and stability.[108] The modalities of such

96 Ibid., p. 171.

97 Ibid.

98 Ibid.

99 Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 18.

100 Ibid., article 16.

101 Ibid., article 17.

102 Ibid., article 20.

103 *Apuuli,* note 80, p. 175.

104 Ibid.

105 *Siphamandla Zondi,* African Union Approaches to Peacebuilding – Efforts at Shifting the Continent towards Decolonial Peace, in African Journal on Conflict Resolution 17 (2017), p. 109.

106 Protocol Relating to the Establishment of the Peace and Security Council of the African Union, article 16(1).

107 Ibid., article 16(1(a)).

108 Ibid., article 16(1(b)).

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partnership shall be determined by the comparative advantage of each and the prevailing circumstances.[109]

That relationship can be seen in, for instance, the work of ECOWAS and East African Community (EAC) in maintaining stability in West and East Africa respectively, and the role of the Southern Africa Development Community (SADC) in successful peace processes in Madagascar, Lesotho and Zimbabwe.[110] SADC took the lead in facilitating mediation processes, in deploying security forces in the case of Lesotho to secure peace, and in peacebuilding measures like training, confidence building and humanitarian assistance.[111] It reported regularly to the PSC and sought endorsement of regional peacebuilding efforts while looking for refreshed mandates. The AU heavily relied on the ability of the region to provide political, security and financial resources to these peace processes.[112]

The role of the EAC in bringing peace back to Burundi in 2015 and the role of the Intergovernmental Authority for Development (IGAD) in facilitating South Sudan's peace negotiations after a devastating civil war in 2016 vindicate the AU approach of devolving responsibility for peacebuilding to regional organisations closest to the situations.[113] Devolution of peacebuilding responsibilities strengthens the capacity of the regional organization to respond swiftly to prevent, manage and resolve conflicts and crises for purposes of building permanent peace.[114]

In general, since its operationalization in 2004, the PSC has worked closely with RECs/RMs by consulting on initiatives aimed at anticipating and preventing conflicts, and in circumstances where conflicts have occurred, in peace-making and peace-building functions. The PSC has also engaged in a regular exchange of information involving RMs in the Continental Early Warning System and the ASF, allowing RMs to participate in PSC deliberations and establishing liaison offices in RMs and vice versa.[115] In the following section, this paper explores five AU missions in which force was used in a bid to restore democracy and constitutionalism.

E. Selected case studies

I. Comoros

In 2007–2009, the AU pursued a forceful intervention, partly in reaction to the escalating secessionist crisis in Anjouan and the failure of previous diplomatic efforts to resolve

109 Ibid.

110 *Zondi*, note 105, p. 111.

111 Ibid.

112 Ibid.

113 Ibid., pp. 111–112.

114 Ibid., p. 111.

115 *Samuel Makinda* and *Wafula Okumu,* The African Union Challenges of Globalization, Security, and Governance*,* New York, 2008, pp. 89–90.

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matters.[116] The intervention was known as 'Operation Democracy' and in response to a request from the Comoros central government. Presumably, it was easy for the central authority to the request because the intervention would enable it to defeat the Anjouanese secessionists and retain power.

1. Problem and AU's Action

The Comoros islands originally consisted of four islands: Grande Comore (Njazidja), Mohéli (Mwali), Anjouan (Nzwani) and Mayotte.[117] In the mid-19th century Mayotte came under French control.[118] Fifty years later the other islands followed suit.[119] In 1947, the Comoros was given the status of an overseas territory and in 1961 became self-governing.[120] After a referendum, three of the islands Mohéli, Grand Comore and Anjouan became independent in 1975, while the fourth island, Mayotte, remained under French administration. The history of the Comoros since its independence has been marked by instability.[121]

There has for example been around 20 coup d'états over the past three decades.[122] Much of the unrest is a consequence of a continuous power struggle between the three islands.[123] In 1997 Anjouan and Mohéli declared their respective islands independent, something that was not recognized by neither Comorian government nor the International Community.[124] To solve the disagreement and facilitate decentralisation the three islands whilst remaining part of the Comoros were given their own president, parliament and local government as a result of the OAU-brokered Antananarivo Agreement, from 2001.[125] In addition, a presidency for the Union of the Comoros, which would rotate between the islands every four years, was established.[126] The Comoros thus became a federation.[127] This was complemented by an agreement signed by the Comorian parties in 2003, stipulating the

116 *Centre for Humanitarian Dialogue*, 'The AU and the Search for Peace and Reconciliation in Burundi and Comoros' (2011), p. 35 (https://hdcentre.org/wp-content/uploads/2016/07/The-AU-and-the-search-for-Peace-and-Reconciliation-in-Burundi-and-Comoros-FINAL-September-2011.pdf) accessed on 15 October 2022.

117 *Emma Svensson*, 'The African Union's Operations in the Comoros MAES and Operation Democracy' (2008), p. 12 (https://au.int/sites/default/files/documents/39226-doc-176._the_african_union_operations_in_comoros-maes_and_operations_democracy.pdf), accessed on 15 October 2022.

118 Ibid.

119 Ibid.

120 Ibid., pp. 12–13.

121 Ibid., p. 13.

122 Ibid.

123 Ibid.

124 Ibid.

125 Ibid.

126 Ibid.

127 Ibid.

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holding of elections before the end of 2004.[128]Despite the newfound self-determination established on Anjouan and Mohéli by the creation of the federation, secessionist sentiments still existed on the islands, particularly on Anjouan.[129]

Apart from having local governance, the islands also managed their own finances.[130] Nonetheless, each island had to contribute to the federal budget and in 2003 a revenue sharing agreement according to which all the islands, as well as the Union as a whole, should receive a certain percentage of the total revenue came into effect.[131] Those who were in favour of secession on Anjouan disliked the revenue sharing mechanism mainly because Anjouan was the richest of the islands due to its hosting of the only deep-water port inside the Union, which gave control over the international trade and did not wish to share these revenues.[132]

Economic disparity and the control of resources were thus important drivers in the conflict that would later result in the establishment of MAES and Operation Democracy.[133] Allegations of the revenue sharing mechanism not being properly adhered to by all the islands halted the cooperation between the islands prior to the 2006 Union of the Comoros presidential election, as the custom revenue from the Moroni port, located on Grande Comore, decreased significantly.[134] Even so, the elections took place as planned and, due to the rotation of the presidency, *Ahmed Abdallah Sambi* from Anjouan was chosen president of the Union.[135] The elections were widely regarded the first democratic transition of power in the Comoros.[136]

In 2007, the elections of the presidents of each island were held.[137] Prior to the elections the constitutional court ruled that the term of the elected president of Anjouan, *Mohamed Bacar*, was over and that he should step down.[138] *Bacar* had previously come to power through a coup in 2001 and then got elected president in 2002.[139] *Bacar* argued that the court ruling was biased and questioned the legitimacy of the court, refusing to surrender his power.[140] As a consequence incidents of violence and intimidation occurred

128 Ibid.
129 Ibid.
130 Ibid.
131 Ibid.
132 Ibid., pp. 13–14.
133 Ibid., p. 14.
134 Ibid.
135 Ibid.
136 Ibid.
137 Ibid.
138 Ibid.
139 Ibid.
140 Ibid.

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on Anjouan.[141] In the turmoil ensuing from the government of the Union trying to enforce the court order, two national soldiers were killed by the Anjouan security forces, and as a result of the instability, the government of the Union postponed the elections.[142]

Nevertheless, *Bacar* went ahead with elections as originally planned and declared victory, claiming to have won 90 % of the votes.[143] Both the AU and the government of the Union of Comoros rejected the result of the election, declaring it invalid.[144] In an attempt to put pressure on *Bacar*, the AU imposed targeted sanctions on him and other political leaders on Anjouan during the fall of 2007.[145] These, however, had little effect and in early 2008 the president of the Union therefore asked for more support from the AU to increase its backing of the government of the Union's attempts of regaining control over Anjouan.[146] This resulted in the establishment of Operation Democracy.[147]

In that operation the AU applied to military action[148] and succeeded to restore the central authority on the island.[149] The AU's interventions in Comoros both accomplished their primary objectives swiftly and without difficulty.[150] The 2006 elections proceeded according to plan and the Anjouanese secessionists were defeated.[151] Thereafter, the AU, in partnership with the international community and key actors such as France, has led the efforts to facilitate the process of national reconciliation in Comoros.[152] In the decade since the missions, Comoros has become more stable.[153]

Operation Democracy in the Comoros succeeded despite the fact that the AU's usual leading nations did not participate.[154] South Africa, Kenya, and Nigeria all stayed on the side-lines during the military operation.[155] In fact, South Africa, which had been the key player in other earlier AU involvement in Comoros, specifically opposed the use of force.[156] The fact that the military intervention took place over the wishes of the dominant southern African state, argues *Kwaku Asante-Darko*, underscores the primacy of the AU

141 Ibid.
142 Ibid.
143 Ibid.
144 Ibid.
145 Ibid.
146 Ibid.
147 Ibid.
148 *Centre for Humanitarian Dialogue*, note 116.
149 Ibid.
150 *James Dobbins* et al., Africa's Role in Nation Building, An Examination of African-Led Peace Operations, Santa Monica, 2019, p. 166.
151 Ibid.
152 *Centre for Humanitarian Dialogue,* note 116.
153 Ibid.
154 *Dobbins* et al., note 150, p. 140.
155 Ibid.
156 Ibid.

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as a continental organization over the position of any of its individual Member States.[157] Importantly, the Comoros also requested that the AU intervene in its internal affairs.[158] Comorian forces were part of the operation, and the local population generally supported the intervention.[159] The military collaboration between Tanzania and Sudan, along with support from Senegal, Libya, and France, rapidly accomplished its central mission.[160] The AU's Comoros mission demonstrated that it could undertake effective short-term peace operations.[161] This was possible because the mandates were carefully aligned to the needs and capabilities of the missions.[162]

Since Operation Democracy, the Comoros has remained reasonably stable, holding several rounds of successful elections, though with some minor fights and property destruction between factions.[163] Many commentators remain concerned that the underlying conditions that led to conflict, in particular very poor economic prospects and poor capitol-periphery relations, have not been adequately addressed.[164] However, overall, the AU has held up its efforts in Comoros as a qualified success story.[165]

2. Constraints and achievements

The major constraint of the mission is that the AU has been criticised for resorting to the use of force in Comoros.[166] For example, South Africa was not in support of a military intervention on a ground that the situation could be contained politically.[167] As a result, South Africa did not take part in the mission. However, the military intervention was requested and supported by the Comoros' central government. Most importantly, the use of force had the intended impact in that it removed Colonel *Bacar* and contributed to an environment receptive to dialogue.[168] The swift victory of the combined forces of the AU and the central Government of Comoros prevented an escalation of the dispute between Anjouan and the central government[169] hence justifying the use of force. Another setback is that AU's leading nations like South Africa did not participate mainly due to having

157 Ibid.
158 Ibid.
159 Ibid.
160 Ibid.
161
162 Ibid.
163 World Peace Foundation, 'Comoros Short Brief', 2017 (https://sites.tufts.edu/wpf/files/2017/07/Comoros.pdf), p. 4 (accessed 15 June 2022).
164 Ibid.
165 Ibid.
166 *Centre for Humanitarian Dialogue*, note 116, p. 67.
167 Ibid.
168 Ibid.
169 Ibid.

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a different opinion on the appropriate mode of intervention. However, since this was a small-scale mission, the absence of those nations did not affect the success of the mission.

With regard to achievements, operation Democracy did accomplish what it was there to do, to wit, restoring the authority of the Government of the Union by taking control over the island in just about 24 hours.[170] This implies that when the AU applies appropriate strength, in proportion to the type of crisis it is supposed to solve, it might indeed accomplish what the mandate has stipulated.[171] Operation Democracy has been a breakthrough for the AU when it comes to planning and conducting peace operations.[172] The force generation process was quick and the mission reached the number of troops that was needed to accomplish its mandate.[173] In comparison with other AU PSOs, it did so with almost no support from partner countries.[174] Operation Democracy was much narrower in its mandate and deployed in a far less complicated conflict environment with relatively little resistance from *Bacar* and his security forces, which made it fairly easy for the operation to gain control over Anjouan.[175] When compared to other peace operations, Operation Democracy shares several features with, for example, many European Security and Defence Policy (ESDP) missions; such as a limited scope, set time and clear objectives.[176] These operations have been considered significant successes, at least by the European Union (EU), and their contribution should, like that of Operation Democracy, not be any less appreciated simply because they had a more specific task and limited scope.[177]

In general, AU showed strong political will in its engagement in Comoros and was instrumental throughout the process.[178] This experience highlights the seriousness with which parties consider the AU, as with other mediators, when it speaks and acts swiftly, decisively, and with clarity.[179]

II. Burundi

Two relevant missions will be examined namely the African Union Mission in Burundi (AMIB) and the African Prevention and Protection Mission in Burundi (MAPROBU).

170 *Svensson*, note 117, p. 23.
171 Ibid.
172 Ibid.
173 Ibid.
174 Ibid.
175 Ibid., p. 24.
176 Ibid.
177 Ibid.
178 *Centre for Humanitarian Dialogue,* note 116, p. 60.
179 Ibid.

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1. African Union Mission in Burundi

The AMIB was the first AU-mandated armed peace operation. AU opted for this type of operation because the conflict was very complex to the extent that there was a threat of outbreak of another genocidal war. By then there was no urgent international intervention and UN was unwilling to intervene due to the absence of a comprehensive peace agreement. Most importantly, the crisis occurred at the time when AU had just been transformed from OAU and so the Union was eager to prove its commitment to providing African solutions to African problems.

a. AU's Action

AMIB's deployment was authorised in 2003 before the inauguration of the AU's Peace and Security Council.[180] The peace mission mirrored the AU's ambition to intervene in African conflicts where the UN was either not too interested or delayed in responding to a volatile security situation in which there was no comprehensive peace agreement.[181]

The Burundian conflict was centred on the control of state power and apparatuses.[182] The conflict was rooted in the unequal distribution of state power and socio-economic benefits along ethnic lines.[183] Burundian state institutions were privatized by ethnic and regional identities hence creating a disconnection between the state institutions and the population.[184] Despite the Hutu's demographic strength, the minority Tutsi had dominated Burundi's political and economic lives in both the pre- and post-independence periods, and ethnicity became an instrument in the hands of the political elite for political and socioeconomic competition.[185] The privatisation of the state by the ruling elite had always been exploited through patronage and clientelism.[186] The Tutsi's control of power on many occasions caused Hutu uprisings.[187] The Tutsi's monopoly of state power is a product of history; it was exploited by the colonial administration for its benefit and continued by the leaders of the Burundian post-colony.[188]

Burundi's low-intensity ethnic conflict exploded in October 1993 due to the assassination of President *Melchior Ndadaye* and other high-ranking officials by the extremist

180 *Isiaka Badmus,* The African Union's Role in Peacekeeping Building on Lessons Learned from Security Operations*,* New York, 2015, p. 112.

181 Ibid.

182 Ibid. p. 113.

183 Ibid.

184 Ibid.

185 Ibid., pp. 113–114.

186 Ibid., p. 114.

187 Ibid.

188 Ibid.

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elements within the FAB (*Forces Armées Burundaises).*[189] The killing plunged the country into a spiral of violence as the Hutu massacred many Tutsi.[190] *Ndadaye's* assassination created a tense situation that resulted in retaliations by the combination of the FAB, *gendarmerie* and militias in the indiscriminate killings of Hutu peasants and officials.[191] The consequences of the inability of the political elite to resolve the crisis that engulfed the country in a timely manner meant that the parliament was deadlocked, and hence the country experienced what has been described in the Burundian political literature as a "creeping coup," through which the Tutsi elite in the opposition were gradually restored to power with the help of the military.[192] Various efforts including peace talks were made to resolve the conflict at no avail. Eventually, the Central Organ of the OAU Mechanism during its 91st Ordinary Session in Addis Ababa mandated the deployment of AMIB on 2 April 2003.[193] A number of factors accounted for AMIB's deployment.[194] First, the conflict in Burundi was seen both by the AU and the RPI (Regional Peace Initiative on Burundi) in the context of the interlocking nature of the wider Great Lakes region's conflict dynamics.[195]

On that basis, regional leaders were convinced that the existence of peace and security in Burundi is a sine qua non for, and a first step towards stability in, the Great Lakes region.[196] Second, and also from the AU's perspective, AMIB's deployment was located within the context of the APSA, for it serves as an opportunity for the AU to showcase the APSA's main imperatives – "Africa must unite," "The responsibility to protect" and "Try Africa first" – and the AU's self-imposed responsibility as a security actor in Africa to the broader international community.[197]

The purpose of the mission was to facilitate the implementation of the ceasefire agreements, and to ensure the defence and security situation in Burundi is stable and well managed by newly created national defence and security structures.[198] AMIB was meant to act as a stabilisation force in preparation for a multidimensional UN peace mission to be mounted later when the conditions allowed for such a deployment.[199] With this end-state in view, AMIB was assigned a set of objectives that involved supervising the implementation of the ceasefire agreements; supporting the disarmament, demobilisation

189 Ibid.
190 Ibid.
191 Ibid., p. 114.
192 Ibid., pp. 116–117.
193 Ibid., p. 121.
194 Ibid.
195 Ibid., p. 121.
196 Ibid., p. 122.
197 Ibid.
198 Ibid.
199 Ibid., p. 136.

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and reintegration (DDR) of ex-combatants; creating favourable conditions for the presence of a UN peacekeeping mission; and contributing to political and economic stability in Burundi.[200]

AMIB was conceptualised as an integrated peace mission, comprising military contingents (MILCONs) and civilian personnel, and it had a Civil-Military Coordination Centre (CIMICC).[201] The civilian component was to help the mission with logistics and administrative support, and promote mutual understanding among AMIB, the Government of Burundi) and the local population.[202] AMIB was not fully operational until the arrival of the main bodies of the Ethiopian and Mozambican contingents between 27 September and 17 October 2003.[203] That late arrival due to financial limitations and the fragility of Burundi's ceasefire, delayed AMIB's reaching close to its authorised strength.[204] The situation became worse due to the AU's decision that the TCCs (troops contributing countries) were to be self-sustaining for the first 60 days of deployment before AU reimbursements.[205] This is a requirement that only a few African TCCs can meet.[206] The deployments of the Ethiopian and Mozambican contingents were made possible with support from the US and UK governments, respectively.[207]

b. Constraints and achievements.

AMIB was donor driven and donor-dependent demonstrating that the AU did not perform well in the area of financing its mission in Burundi.[208] As a result, the mission did not achieve much in terms of its DDR objective.[209] The mission was envisioned to implement the World Bank-funded DDR programme, which involved cantonment and disarming of about 20,000 ex-combatants.[210] Due to a number of challenges, including the delay by the Government of Burundi in meeting the World Bank's requirements, its implementation did not commence until December 2004, six months after the expiration of the African mission's mandate.[211] Despite these challenges and its limited resources, AMIB went ahead

200 Ibid., p. 122.
201 Ibid.
202 Ibid.
203 Ibid., p. 123.
204 Ibid.
205 Ibid.
206 Ibid.
207 Ibid.
208 Ibid., p. 136.
209 Ibid., p. 125.
210 Ibid.
211 Ibid.

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to implement its DDR-mandated tasks.[212] The problem here is that the AU lacked resources to sustain its force, and as a result, its mission was unable to canton a large number of ex-combatants.[213] Afterwards, the cantonment area ran out of food and medical supplies and lacked tangible infrastructure, hence AMIB sought assistance from international donors such as the German Technical Cooperation (GIZ), WHO, EU, and UNICEF.[214]

That problem unveiled the resource and capacity constraints often associated with African peace operations, which did not allow the mission to fully implement its mandate.[215] The UN Secretary General, in a report on Burundi, acknowledged, the financial and logistic constraints under which AMIB is operating prevent the force from fully implementing its mandate.[216] AMIB's lack of required financial resources originated from three sources.[217] First, within Africa, the AU member states were not enthusiastic about providing the requisite funds to the mission.[218] Since the TCC were to be self-sustained, Ethiopia and Mozambique deployed their troops with external support.[219] The implication of the self-sustainment concept of the AMIB operation for the TCCs was that the Ethiopian and Mozambican contingents' deployment was delayed, and after their deployment to Burundi, their operational status was affected by financial constraints and uncertainty.[220] Second, the AU itself was financially and logistically incapacitated.[221] Its resources limitations were also due to the fact that since its inauguration, the AU had been operating with a budget deficit, which made the institution rely on external donors for its peace operations.[222]

As a result, the institution was unable to provide sufficient funds for AMIB and relied on financially incapacitated TCCs to fund the deployment and sustenance of their troops.[223] Third, the UN's indifferent attitude towards this problem confirmed its unwillingness to sufficiently fund the operation.[224] This is due to the fact that the AU was newly established and its future was not completely certain.[225] Given the questionable character of the OAU,

212 Ibid.
213 Ibid.
214 Ibid.
215 Ibid., p. 127.
216 Ibid.
217 Ibid.
218 Ibid.
219 Ibid.
220 Ibid.
221 Ibid.
222 Ibid.
223 Ibid., p. 128.
224 Ibid.
225 Ibid.

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and the fact that AMIB was the AU pioneering mission, donors were not enthusiastic in adequately supporting AMIB in the way the AU had expected.[226]

In addition to being insufficient, the funds were disbursed very slowly, which was also a source of the problems the AU faced with the AMIB operation.[227] With its financial resource limitations, the AU relied on external donors to fund AMIB's budget.[228] The pledges from the partners, amounting to some US$ 50 million, fell far short of the budget.[229] Even worse, actual donations into the trust fund amounted to just US$ 10 million.[230] This situation showed how uncommitted African leaders are to the AU and the APSA in reality.[231] Out of the US$ 120 million required to fund the African mission for 12 months, only US$ 20 million had been made available to AMIB.[232]

The dangers of excessive reliance on external donors for African peacekeeping are illustrated by the Ethiopian and Mozambican experiences in AMIB.[233] Once these contingents were deployed in Burundi, with the assistance of the United States and the United Kingdom, their sustainability became South Africa's responsibility.[234] Thus, South Africa's leadership role helped AMIB to be a relative success story.[235] That role underscored the AU's need for the resources of a lead African nation (or nations) to be involved in the mission for its sustainability, at least for the first few months of African peace operation.[236] AMIB could not have been a relatively successful mission without Pretoria's commitment and resources.[237] Nigeria's leadership role in the ECOWAS's peace and intervention operations in West Africa is also a good example of this effort.[238] In the 1990s, the Nigerian-led ECOMOG troops were deployed in Liberia and Sierra Leone without proper logistics and financial arrangements in place.[239] Lack of adequate resources did not allow some ECOWAS member states to deploy troops to these missions but Abuja shouldered responsibility as the lead nation of the ECOWAS peace and intervention operations in both countries.[240]

226 Ibid.
227 Ibid.
228 Ibid.
229 Ibid.
230 Ibid.
231 Ibid.
232 Ibid.
233 Ibid., p. 137.
234 Ibid.
235 Ibid.
236 Ibid.
237 Ibid.
238 Ibid.
239 Ibid.
240 Ibid.

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Those examples underlined the need for predictable funding for African peace operations and for the AU and other African sub-regional organisations to reflect on how best to finance their future peace operations as well as how the larger international community can fund African peace missions expediently and adequately to ensure that the African institutions are not set up to fail during the onset of their peacekeeping roles.[241]

AMIB was also challenged by the AU's lack of institutional capacity and logistics considering that the mission was authorised when the APSA's institutions were just evolving.[242] These conditions incapacitated the AU in organising deployment.[243] The AU's lack of capacity led South Africa to provide leadership and plan the mission.[244] The late arrival of the Ethiopian and Mozambican troops also revealed the AU's lack of logistical resources that hindered the efficacy of the peace operation at the initial stages.[245] The troops would have been quickly deployed if the AU itself had been well-resourced and equipped for its peace operations.[246] The AU's lack of logistics, especially modern equipment, negatively affected the mission's ability to deliver on its revised RoE (Rules of Engagement) for civilian protection, as it was unable to move out of secured areas. The logistics problem was heightened, because even when the UN assisted with equipment, it still took four to six months to arrive.[247] That was a very long period of time which could allow more atrocities to happen. As far as the AMIB operation is concerned, the AU has not been able to bridge the gap between its ambition and the capacity to run totally successful peace operations.[248]

Existence of those challenges does not mean that AMIB did not yield positive results; rather, the mission recorded some notable achievements despite being deployed in a very dangerous security environment and at a time when the APSA institutions were just evolving.[249] The mission successfully supervised the implementation of ceasefire Agreements. The deployment and presence of the African force helped to deter further political violence and stabilised the country with the exception of *Bujumbura rurale* (Bujumbura Rural) where the Rwasa's PALIPEHUTU-FNL remained very active. About 95 per cent of the entire country was relatively stable at the end of the AMIB operation.[250]

The relative stability of the country brought about by the presence of the AU force was conducive to, and also served as an important factor for, moving the peace process

241 Ibid.
242 Ibid., p. 128.
243 Ibid.
244 Ibid.
245 Ibid., pp. 128–129.
246 Ibid., p. 129.
247 Ibid.
248 Ibid., p. 135.
249 Ibid.
250 Ibid., p. 124.

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forward.[251] Thus, AMIB halted the escalation of violence and was able to manage the violent aspects of the conflict.[252] The reduction of political violence was replaced by acts of criminality in late 2003, but AMIB was able to handle this, helped to oversee the implementation of the ceasefire agreements between the warring parties, and facilitated the CNDD-FDD's participation in the peace process.[253] In this respect, with its limited resources, the AU committed a significant share of its resources to VIP protection; this was for the leaders of the armed groups returning to Burundi to participate in the peace process.[254] If it was not for AMIB's intervention, Burundi would have witnessed a more dangerous violent conflict (beyond what it was before the AMIB operation) with far more devastating consequences.[255]

AMIB's success paved way for a subsequent and stronger UN mission in Burundi. On 21 May 2004, the UN Security Council passed Resolution 1545, which authorised the deployment of a UN Operation in Burundi (ONUB, by its French acronym) with an annual budget of US $333.2 million.[256] This was in line with the agreement with the AU that AMIB would give way to a UN peacekeeping mission in Burundi.[257] On 1 June 2004, the UN officially took over the peace mission with peace building and peace enforcement mandates under Chapter VII of the UN Charter.[258] ONUB was mandated to monitor and provide security for disarmament of armed militias.[259] The rebadged AMIB peacekeepers formed their advance party while other contingents were from Nepal, Pakistan and Kenya.

One important point of note is that AMIB helped to stabilise the political and security situations in 2004, and laid the foundations for a more multidimensional peacebuilding process in mid-2004.[260] This was a major achievement, since deployment of a UN mission takes long time.[261] Without AMIB's intervention, ONUB's deployment would have mostly likely been impossible or seriously delayed hence worsening the effects of the conflict. The ONUB operation ended in December 2006 after it successfully completed its mandate, and the UN Integrated Office in Burundi (BINUB by its French acronym) replaced ONUB with the mandate to coordinate international assistance.[262]

251 Ibid., p. 125.
252 Ibid.
253 Ibid.
254 Ibid.
255 Ibid.
256 Ibid.
257 Ibid.
258 Ibid.
259 Ibid.
260 Ibid.
261 Ibid., p. 136.
262 Ibid., p. 125.

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The AMIB operation also revealed how a lead state can fill the gap created by the capacity deficiencies of a peace operation-authorising institution, and make such a peace mission a reality.[263] The appointment of Mandela as the new facilitator for the Burundian peace process in November 1999 saw the inroad of South Africa's diplomacy and resources in Burundi.[264] Mandela not only successfully negotiated the Arusha agreement, but he also used his good office to secure Pretoria's consent to deploy SAPSD in order to prevent the peace process from falling apart.[265] AMIB would have been an impossible mission without the leadership, and human, military and financial resources from South Africa.[266] A study conducted by a Durban-based NGO, ACCORD found that South Africa played a significant role in the transitional operation and was the largest force present on the ground, contributing approximately 1,500 troops, which proved a determining factor for the deployment of the mission.[267] A Swedish defence analyst argued that although AMIB was an AU mission on paper, in reality it was a mission that wholly relied on the leadership of one single TCC, South Africa.[268]

Despite the fact that AMIB was constrained in a number of ways, and there was no comprehensive peace agreement in place, the AU's intervening force was prepared to deter the activities of spoilers of the Burundian peace process, as evidenced by AMIB's ability to repel the attack on the Muyange cantonment site towards the end of July 2003.[269]

AMIB has also underscored the importance of involving civilians in peace support operations. The intervention was an integrated peace mission that involved both civilian and military components.[270] It showed the importance of perfect collaboration and understanding between the military and civilian components of an integrated peace mission for the success of the operation.[271] Despite the fact that the AMIB's civilian component was not as well developed as its military counterpart, its role was fundamental to AMIB's relative success.[272] The establishment of the CIMICC (Civil-Military Coordination Centre), helped to facilitate support for the international humanitarian agencies and local NGOs, and also helped AMIB to coordinate well with local and external partners.[273]

263 Ibid., p. 131.
264 Ibid.
265 Ibid.
266 Ibid.
267 Ibid.
268 Ibid.
269 Ibid., p. 136.
270 Ibid., p. 137.
271 Ibid.
272 Ibid.
273 Ibid.

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One important method that must be obviously accepted in African peace-making processes is the local population's recognition and ownership of it.[274] In Burundi, the people of the country owned the peace process in the sense that the representatives of local populations and the Burundian civil society groups/agencies were pivotal in the peace process; and post-conflict peace building efforts were people-centred as well.[275] The post-conflict peace building efforts targeted assistance towards those affected by the conflict and armed violence.[276] Ownership of the Burundian peace process by the government and the people of Burundi, and the way the DDR process and national rebuilding were conceptualised in the context of the peace operation, helped AMIB to be a success story overall.[277]

Overall, AMIB is a relatively successful peace operation when compared with the previous African peacekeeping operations especially under the OAU regime, for the mission was able to achieve the traditional peacekeeping goals; even though it could not achieve much in its DDR and economic stability mandate.[278] AMIB raised the hope that Africans could manage African conflicts, despite the fact that the APSA's institutions were in the process of being established when the mission was deployed.[279] Moreover, AMIB highlights how the UN and AU could collaborate with one another in dealing with African peace operations.[280] The mission has been described as a successful and it has been recommended as a possible model for future peace operations in Africa.[281]

2. African Prevention and Protection Mission in Burundi

In December 2015 the AU Peace and Security Council (PSC), the continental body's standing collective decision-making body on peace and security, announced a precedent-setting invocation of the AU's Article 4(h) authorizing the deployment of a military mission to Burundi to quell violence related to the dispute over a bid for the third term of the country's then President, the late *Pierre Nkurunzinza*.[282]

274 Ibid., p. 138.

275 Ibid.

276 Ibid.

277 Ibid.

278 Ibid., p. 129.

279 Ibid.

280 Ibid., p. 112.

281 Ibid.

282 *Solomon Dersso*, 'To Intervene or Not to Intervene? An inside view of the AU's Decision-making on Article 4 (h) and Burundi', (2016), Occasional Paper (https://sites.tufts.edu/wpf/files/2017/05/AU-Decision-Making-on-Burundi_Dersso.pdf), p. 1 (accessed on 17 October 2022).

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a. Problem and AU's Action

To AU, an intervention without the consent of the territorial state was appropriate by then because of the danger of Burundi plunging into a deadly violent conflict that would lead to serious violations of human rights and there was no possibility of a request from Burundi for AU's intervention. Since the conflict was triggered by the sitting president's move to cling to power in violation of the Arusha peace agreement, and since the government was largely in support of him, a request for assistance from outside the country was highly unlikely. Probably, in Burundi's opinion, a request for AU's assistance would interfere with the president's desire to overstay in power because the AU would have forced him to comply with the Arusha agreement by leaving office.

In deciding to deploy MAPROBU, for the first time the AU expressly relied on Article 4(h) of the Constitutive Act, which authorizes the AU to intervene in member states in cases of grave circumstances, namely genocide, war crimes and crimes against humanity.[283] Never before had the AU resorted to Article 4(h) in respect to an emerging or on-going crisis, despite the fact that other crises including the recent ones such as in Central African Republic and South Sudan revealed incidents amounting to crimes against humanity or war crimes, or both.[284] Of even greater significance, the AU PSC's 17 December communiqué was also the first instance wherein the AU suggested it would deploy troops with or without the consent of the government of Burundi.[285] Further, although timelines in AU decisions usually do not include threats of sanction for failure to comply, the communiqué was also unique in that it gave Burundi 96 hours to express its consent or face forcible intervention.[286] The PSC took its decision in the aftermath of Burundi's deadliest incident of fighting and carnage since the end of the civil war.[287]

The violence in this episode began with a coordinated and sustained attack by unidentified armed people against three military posts in the capital, Bujumbura, in the early hours of 11 December 2015.[288] In addition to sustained exchange of gunfire and explosions between the government security forces and the attackers, Burundian security personnel also engaged in retaliation; they reportedly rounded up and executed individuals suspected of involvement in the attack.[289] Even by the government's conservative accounting of the casualties, a minimum of 87 people lost their lives at the end of what the Burundi government called mopping-up operations.[290] At the time, the fact-finding mission of the African Commission on Human and Peoples' Rights characterized the situation as manifesting "es-

283 Ibid., p. 2.
284 Ibid.
285 Ibid.
286 Ibid.
287 Ibid., p. 3.
288 Ibid.
289 Ibid.
290 Ibid.

https://doi.org/10.5771/2363-6270-2022-1-84 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-ND

calating violence and violations of human rights.[291] Against the background of worryingly steady escalation of violence that involved serious violations of human rights including, as the Commission's fact-finding mission noted, extra-judicial executions, the events of 11 December were understandably feared to be the beginning of Burundi's descent back to the genocidal civil war of the 1990s.[292]

Burundi was obliged to respond to the AU's request but to no one's surprise, Burundi called the AU's bluff with a firm "no."[293] The issue was tabled in Burundi's parliament and MPs unanimously rejected the AU's plan for deploying troops.[294] In a letter addressed to the AU Commission Chairperson formally responding to the 17 December decision, Burundi's Minister of Foreign Affairs rejected MAPROBU, describing it as an invasion force.[295] This response presented a major challenge to the plan to deploy MAPROBU.[296] First, it negated the AU's preferred option for deploying MAPROBU with the consent of Bujumbura.[297] Second, it also effectively put the operationalization of the decision for deployment of troops on hold.[298] Burundi's refusal presented two additional major tests that the APSA would have to pass before the mission could go forward.[299] First, the relevant APSA components would have to produce the data and analysis to convince member states that the situation in Burundi had reached a point where violence could not be averted other than through forcible intervention.[300] Second, sufficient political will would have to be generated among AU states to follow through with the proposal, by mobilizing adequately equipped combat troops for the mission and storming Bujumbura.[301]

As the summit approached it became apparent that the tests would be difficult to pass.[302] In the process, weaknesses in the APSA also started to show, as some member states began expressing their reservations.[303] In the first instance, the peace talks, led by Uganda under the aegis of the fractured East African Community (EAC) on the basis of the so-called principle of subsidiarity, failed to take off the ground.[304] The resultant political

291 Ibid.
292 Ibid.
293 Ibid., p. 4.
294 Ibid.
295 Ibid.
296 Ibid.
297 Ibid.
298 Ibid.
299 Ibid.
300 Ibid.
301 Ibid..
302 Ibid., p. 5.
303 Ibid.
304 Ibid.

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vacuum allowed the crisis to fester and degenerate, as was made apparent by the violence on 11 December.[305]

Subsequently, in a move indicating that PSC members were not fully convinced of the 17 December decision on MAPROBU, which the AU Commission led, Tanzania made its reservation public.[306] Its then foreign Minister, the late *Augustine Mahiga,* suggested that the option of regional mediation was not adequately pursued and did not believe that forcible intervention was the optimal option.[307] At the same time, even before the summit took place, it can be gathered from the evolution of AU Commission's approach to the proposal on the deployment of MAPROBU, that the mission was already evolving into a so-called MAPROBU-light; that is, a much smaller force with a revised mandate adjusted in light of Bujumbura's concerns.[308]

Burundi's rejection of MAPROBU moved the issue out of the PSC's hands because the PSC lacks the legal authority to effect the deployment of MAPROBU without the consent of Burundi's government on its own.[309] In this circumstance, the PSC's decision to authorize the deployment of MAPROBU could only be followed up and acted upon through a decision of the AU Assembly of Heads of State and Government, as is stipulated in the Constitutive Act of the AU.[310] Article 7 (1) of the Protocol establishing the PSC also clearly articulates that the AU Assembly considers a decision under Article 4 (h) of the Constitutive Act on the recommendation of the PSC.[311] Hence, by the time the summit was opened, the protocol for follow-up on the 17 December PSC communiqué required two further steps namely a meeting of the PSC adopting a decision to recommend that the AU Assembly authorize MAPROBU's deployment under Article 4(h) of the Constitutive Act, and consideration by the AU Assembly.[312]

Following Burundi's rejection of MAPROBU, deliberations were held at PSC and the AU Assembly level and it was eventually decided that a high-level mission consisting of heads of state representing the five regions would be dispatched to Burundi.[313] By the time of the decision, the level of violence had reduced and a non-consensual intervention was no longer warranted.[314] Notably, Tanzania and Equatorial Guinea questioned the existence, or credible and imminent threat, of a civil war or the kind of serious breaches envisaged

305 Ibid.
306 Ibid.
307 Ibid.
308 Ibid.
309 Ibid.
310 Ibid.
311 Ibid., p. 4.
312 Ibid.
313 Ibid., p. 6.
314 *Cedric de Coning,* Peace Enforcement in Africa: Doctrinal Distinctions, between the African Union and United Nations, in Contemporary Security Policy 2017, p. 150.

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under Article 4 (h).[315] With no counter argument in response, MAPROBU option did not succeed.[316]

On 4 February 2016, the AU Commission issued a press release announcing the composition of the high-level delegation, including five heads of state and government from the five regions of Africa, namely *Mohamed Ould Abdel Aziz* of Mauritania (North Africa), *Jacob Zuma* of South Africa (Southern Africa), *Macky Sall* of Senegal (West Africa), *Ali Bongo Ondimba* of Gabon (Central Africa) and *Hailemariam Desalegn* of Ethiopia (East Africa).[317] The delegation's mandate appeared to expand beyond and above the terms of the PSC summit decision and the apparent consensus that prevailed at the Assembly.[318] Strikingly the press release envisaged that the high-level delegation would undertake consultations covering not only on the inclusive dialogue but also the deployment of the African Prevention and Protection Mission in Burundi (MAPROBU), if accepted by the Government of Burundi.[319] Despite the efforts of the AU Commission and some members of the PSC, this episode represents a victory for *Nkurunziza's* government in that MAPROBU was killed off; the promised dialogue remained stalled; sanctions did not materialise; and most AU observers were kept out and those on the ground constrained in various ways.[320]

The Burundi case showed that the AU Commission was willing and able to address an impending crisis that directly related to its mandate to prevent violent conflicts.[321] From late 2014, the AU used various diplomatic instruments, including the deployment of special envoys, a high-level panel and later, human right observers and military experts.[322] When these failed to persuade the Burundian government to open negotiations, the PSC used targeted sanctions to try and diffuse the crisis.[323] The PSC's unprecedented invocation of Article 4(h) in the immediate aftermath of the deadly episode of 11–12 December 2015 was an innovative attempt to reduce violence against civilians and put pressure on the government when all previous measures had failed.[324] Yet, the AU did not directly tackle the principal cause of Burundi's crisis, namely, President *Nkurunziza's* controversial bid for a third term.[325] It seems clear that most observers, including the EAC's ministers of

315 *Dersso,* note 282, p. 6.

316 Ibid.

317 Ibid.

318 Ibid.

319 Ibid.

320 *Paul Williams* and *Nina Wilén*, The African Union and Coercive Diplomacy: The Case of Burundi, in Journal of Modern African Studies 2018, p. 691.

321 Ibid.

322 Ibid., p. 691.

323 Ibid.

324 *Ibid*.

325 Ibid.

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justice and the chairperson of the AU Commission viewed a third term for *Nkurunziza* as unconstitutional and it certainly broke the terms of the Arusha agreement, for which the AU was a guarantor.[326] Yet the AU's room for manoeuvre was constrained for two main reasons.[327]

First, the May 2015 ruling by Burundi's Constitutional Court in favour of *Nkurunziza's* third term meant that legally, *Nkurunziza's* continued rule was constitutional, despite serious doubts about the Court's independence reflected by the vice-president's decision to flee the country immediately after the verdict was delivered.[328] Second, the EAC's leaders were unwilling to criticise the extension of presidential term limits in Burundi given their similar behaviour in their own states.[329]

The appointment of President *Yoweri Museveni* as the EAC's mediator in Burundi gave an indication of how its members saw *Nkurunziza's* bid for a third term.[330] *Museveni*, East Africa¦s longest-serving head of state, who changed Uganda's Constitution in 2003 and banned regulations on presidential term limits, won a contested fifth term in early 2016, extending his 30-year rule.[331] It was thus clear from the start that *Museveni* was unlikely to tackle the root of Burundi's current crisis and question *Nkurunziza's* right to a third term in power.[332] However, it is notable that a leaked report from a meeting between the EAC attorneys and ministers of justice and constitutional affairs on 15 May, 2015 stated that *Nkurunziza* is not eligible to seek re-election for another term.[333] The EAC members never publicly addressed the findings of that report.[334]

Interestingly, Rwanda's president, *Paul Kagame*, initially implicitly advised *Nkurunziza* to step down and refrain from a third term at a symposium in Switzerland in early May, 2015.[335] But as discussions intensified regarding a possible change of the Rwandan constitution authorising Kagame to stay in office until 2034, *Kagame* stepped back from discussions regarding *Nkurunziza's* third term and was also absent from the second EAC meeting in Dar es Salaam following the failed coup attempt in Burundi in mid-May.[336]

Discussions about the Rwandan referendum regarding the constitutional change took place amidst accusations of Rwandan support and training of Burundian rebel groups.[337]

326 Ibid.
327 Ibid.
328 Ibid.
329 Ibid.
330 Ibid., p. 689.
331 Ibid.
332 Ibid.
333 Ibid.
334 Ibid.
335 Ibid.
336 Ibid., p. 689–690.
337 Ibid., p. 690.

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While tensions between the two countries grew, the question of *Nkurunziza's* third term was carefully avoided.[338] Indeed, the accusations of Rwanda's support for Burundian rebels increased *Nkurunziza's* leeway because it diverted attention from his government's role in the crisis while simultaneously providing justifications for suppressing internal opposition groups.[339] That President *Kagame's* alteration of Rwanda's constitution following a contested referendum and then an equally flawed electoral victory drew no significant criticism from African states underlined the region's disregard for presidential term limits.[340] The two remaining members of the EAC, Tanzania and Kenya, kept relatively low profiles during the crisis, despite Tanzania becoming host to more new Burundian refugees than any other country.[341] Initially, President *Kikwete* called on Burundi to abide by the Arusha agreement that limited presidents to two terms in office before *Nkurunziza* announced his third term. However, in late May, the Tanzanian leader changed position, pushing instead for a government of national unity.[342]

This new, conciliatory approach was maintained and most likely reinforced by the new late President *Magufuli's* increasingly autocratic rule in Tanzania.[343] Kenya remained silent on Burundi's crisis, largely because of Nairobi's other priorities, notably concerns about stability during its upcoming elections and its war against al-Shabaab and other militant organisations.[344] In neighbouring DR Congo, President *Kabila* successfully delayed elections using various stalling tactics from early 2015.[345] He also avoided commenting on the Burundian crisis.[346] Discussion of this issue was effectively killed off when the EAC gained the lead role for mediating the negotiations to resolve Burundi's crisis.[347]

In spite of all those twists and turns, Burundi has regained its stability. Democratic life and constitutional order are back as evidenced by the country's successful general elections of May 2020 which led to a subsequent formation of a new Government headed by *Évariste Ndayishimiye*, President of the Republic of Burundi.[348]

b. Constraints and achievements

The major challenge against MAPROBU was the stiff opposition from Burundi's government against the deployment of the mission, arguing that the action would amount to an

338 Ibid.
339 Ibid.
340 Ibid.
341 Ibid.
342 Ibid.
343 Ibid.
344 Ibid.
345 Ibid., p.689.
346 Ibid.
347 Ibid., p. 691.
348 PSC/PR/COMM.3(CMXCIII), (27 April 2021), p. 2.

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invasion. As a result, the planned deployment collapsed. It is obvious that the government opted to protect state security at the expense of human security. Also, the situation has further exposed an abuse of sovereignty by African governments in justifying violation of democracy and constitutionalism. With regard to achievements, even though the mission was not eventually deployed, the mere initial announcement of its deployment helped to defuse the crisis, paving way for dialogue instead. Furthermore, the attempted deployment emphasized AU's readiness to resort to non-consensual intervention so as to safeguard human security in the affected country.

III. Mali

In Mali, AU decided to deploy AFISMA because of the nature of the crisis which posed a serious threat to Malian legitimate order. Further to that, the mission was authorised by the UNSC and it was seen as a suitable option for that conflict.

1. Problem and AU's Action

Following a March 2012 coup d'état led by Captain *Amadou Sanogo*, a number of Islamist extremists groups mainly in the northern part of the country took advantage of the political turmoil to expand their activities, operations, and presence in the vast northern territory of the country.[349]The military coup leaders had cited the lack of support of the central government to their campaign against the Tuareg rebels as the main justification for their actions.[350] At the time, northern Mali was already a battleground for the minority Tuareg rebels and government forces.[351]

Even though there had been some skirmishes in the past (1960, 1990, 2006), the situation this time around was aggravated by the 2011 Libyan conflict and the unexpected fall of the *Gaddafi* regime.[352] The Tuareg returnees gave the rebellion much visibility and reach through the activities of the Movement for the National Liberation of Azawad.[353] The new momentum that this group generated invariably provided an entry point for other splinter groups such as Al-Qaeda in the Islamic Maghreb, Movement for Unity and Jihad in West Africa, and Ansar Dine to come to the fray.[354] The activities of these groups not only threatened to destroy the Malian state and by extension the entire region, it also had

349 *Kwesi Aning* and *Fiifi Edu-Afful,* African Agency in R2P: Interventions by African Union and ECOWAS in Mali, Cote d'Ivoire, and Libya', in International Studies Review 1 (2016), pp. 8–9.

350 Ibid., p. 9.

351 Ibid.

352 Ibid.

353 Ibid.

354 Ibid.

https://doi.org/10.5771/2363-6270-2022-1-84 https://www.inlibra.com/de/page/agb - Open Access - (cc) BY-ND

serious humanitarian consequences for the displaced persons and people fleeing from the conflict.[355]

Once these groups succeeded in taking over the northern part of Mali, apart from imposing a strict interpretation of the sharia law, they also began to loot and destroy the rich artifacts and cultural heritage located in the historic city of Timbuktu in northern Mali.[356] The violence that erupted aggravated the existing humanitarian crises by increasing the risk of food insecurity and other human right abuses.[357]

ECOWAS initiated steps to find a lasting solution to the political situation. First, the subregional body condemned the coup d'état, directed its leaders to relinquish power to the legitimate government and also requested that the country be restored to constitutional rule.[358] Additionally, ECOWAS also called for the rebel groups to lay down their weapons.[359] Second, ECOWAS facilitated the design of a roadmap to restore democracy and also to reform the Malian army.[360] As little progress was achieved, ECOWAS tightened its coercive strategies by imposing economic and diplomatic sanctions on Mali in March 2012.[361] In response, Mali's neighbours who were members of ECOWAS closed their borders and seaports to stifle the activities of the junta.[362] Subsequently, former Burkinabe President, *Blaise Compaore´*, was appointed by ECOWAS to lead the political process of removing the military junta from power.[363] Amid all these processes, the regional body had also proposed the establishment of a peace enforcement mission in Mali (ECOWAS Mission in Mali [MICEMA]).[364] Although ECOWAS came under intense pressure to deploy military forces to Mali, the organization favoured diplomatic efforts considering the financial, material, and human resources and the lack of political will associated with military interventions of such a nature.[365] In the meantime, AU also supported ECOWAS's actions by introducing a wider sanctions regime, ranging from travel bans to freezing asset.[366] Despite the fact that MICEMA was ineffectual, to give a broader African look and to add agency to the entire process, MICEMA was absorbed into AFISMA.[367]

355 Ibid.
356 Ibid.
357 Ibid.
358 Ibid.
359 Ibid.
360 Ibid.
361 Ibid.
362 Ibid.
363 Ibid.
364 Ibid.
365 Ibid.
366 Ibid.
367 Ibid.

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The mission, which was authorised by UNSC Resolution 2085 in December 2012, was envisioned to re-establish government control over northern Mali in 2013.[368] This mission was overtaken by events after Islamist rebels attacked the government-controlled town of Konna in January.[369] The attack prompted a six-month military operation by up to 4,500 French soldiers, who were assisted by African forces to re-establish government control of the north.[370]

In recognition of the complex political and security challenges, the UNSC in April adopted Resolution 2100, establishing the 11,200-strong United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). In July, most AFISMA troops were re-hatted as UN peacekeepers.[371] Meanwhile, the AU and ECOWAS took the lead in supporting negotiations between armed Tuaregs and the Malian government, and in January the AU Peace and Security Council (PSC) mandated the deployment of some 50 human rights observers to Mali.[372]

In 2013, Mali returned to constitutional order after having been assisted by MINUSMA in holding presidential and legislative elections.[373] The country emerged fully from the situation of breach of Constitutional legality in which it was plunged following the coup d'état of 22 March 2012.[374] The successful organization of the Presidential and Legislative elections in 2013 made it possible to establish new institutions.[375] Moreover, the major towns in northern Mali had been liberated.[376] The AU High Representative handed over on 14 July 2014, to the Malian authorities the keys of a first batch of thirteen (13) out of twenty (20) vehicles offered by the AU.[377] Of a market value of one million U.S. Dollars, the donation consists of thirteen (13) pick-ups, four (4) ambulances and three (3) trucks, all of Toyota make.[378]

During the second half of 2014 a series of peace talks took place hosted by Algeria in the capital Algiers[379] and in June 2015, the Malian government and the major actors in the

368 Human Rights Watch, 'Mali, Events of 2013', World Report (2014), (https://www.hrw.org/world-report/2014/country-chapters/mali), accessed on 8 May 2022).

369 Ibid.

370 Ibid.

371 Ibid.

372 Ibid.

373 *Gabriella Ingerstad* and *Magdalena Lindell*, Stabilising Mali, Neighbouring States' Political and Military Engagement, FOI-R-4026-SE, 2015, p. 70.

374 *African Union,* 'Report on Mali and the Sahel and the Activities of the African Union Mission for Mali and the Sahel', PSC/PR/2. (CDXLIX), (11 August 2014), p. 1.

375 Ibid.

376 Ibid., p. 2.

377 Ibid., p. 5.

378 Ibid.

379 *Ingerstad* and *Lindell,* note 373, p. 70.

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constitutional crisis signed a peace deal to restore peace in the country.[380] The signatories were under great pressure from an international mediation team to accept the final text, which was drafted after less than a year of often indirect negotiations.[381] The mediation team was led by Algeria and included MINUSMA, ECOWAS, the AU and the EU, as well as the United States and France, who were initially designated friends of the mediation.[382] However, there has been a lack of will among the signatories to implement the terms of the agreement.[383] Neither the Malian government nor the other parties were enthusiastic about the agreement's text in 2015 on grounds that international duress, particularly from Algeria, France and the U.S., pushed them to sign it.[384]

That state of affairs left the country in considerable uncertainty to the extent that between August, 2020 and May, 2021 it suffered to coup d'états led by the same person, *Assimi Goïta*.[385]In the 2021 coup, the president and prime minister were ousted and arrested; and Colonel *Goïta* has ignored pleas from the UN chief, the AU, ECOWAS, the EU and the USA that the president and prime minister be released without any preconditions.[386] The two men have been held at a military camp outside the capital, Bamako, since they were arrested on Monday evening.[387] In consequence of those events, Mali's membership in the African Union has been suspended with immediate effect and the impoverished country has been threatened with sanctions.[388] The AU called for the military to urgently and unconditionally return to the barracks, and to refrain from further interference in the political processes in Mali.[389] The move follows a similar suspension from the ECOWAS.[390] The coup sparked deep concerns over stability in the volatile Sahel region.[391] Despite a 2015 peace agreement with some armed groups and the presence of 14.000 United Nations troops, attacks are intensifying in the north and centre of the country.[392]

380 *Mathieu Pellerin,* 'Mali's Algiers Peace Agreement, Five Years On: An Uneasy Calm', International Crisis Group, 24 June 2020 (https://www.crisisgroup.org/africa/sahel/mali/laccord-dalger-cinq-ans-apres-un-calme-precaire-dont-il-ne-faut-pas-se-satisfaire), (accessed on 16 June 2022).

381 Ibid.

382 Ibid.

383 Ibid.

384 Ibid.

385 *Paul Melly*, 'Mali Coup: How to Solve the Conundrum', BBC, 27 May 2021 (https://www.bbc.com/news/world-africa-57255601), accessed on 19 June 2022.

386 'Mali's Coup Leader Assimi Goïta Seizes Power again', BBC, 25 May 2021 (https://www.bbc.com/news/world-africa-57239805), accessed on 14 June 2022.

387 *Melly*, note 385.

388 Aljazera News, 'Mali Suspended from African Union, Threatened with Sanction', 2 June 2021 (https://www.aljazeera.com/news/2021/6/2/mali-suspended-from-african-union-after-second-coup-in-9-months), accessed on 20 June 2022.

389 Ibid.

390 Ibid.

391 Ibid.

392 Ibid.

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Almost half a million Malians have been forced to leave their homes and 6,000 people have been killed.[393] That situation is an indication that the AU work in Mali is far from over. The current instability means that at some point AU might have to use force in addressing the situation. Moreover, the unwillingness of the Malian government and the other parties to the peace deal to implement the deal is a clear message that terms of such agreements should not be imposed upon the parties, instead, parties should be allowed to agree freely.

2. Constraints and achievements

AFISMA suffered from lack of sufficient funds to the extent that it relied on the French and the UN for much of its facilities.[394] Due to the lack of financial and other resources, AFISMA could not fulfil its mission well.[395] The constraints were aggravated by large distances between mission headquarters and areas of operation, coupled with the lack of road infrastructure in Mali.[396] That explains why the mission was eventually absorbed into MINUSMA. In addition, the peace deal that was agreed upon between the Malian government and the other parties to the conflict failed to materialize because all the signatories felt like the terms of the agreement was imposed upon them. Despite those challenges, AFISMA constituted AU's as the first responder to the Malian conflict and did the groundwork for the UN mission to take over. Moreover, AFISMA provided a good number of soldiers to MINUSMA when the latter absorbed the former.

IV. The Gambia

The intervention in The Gambia was in response to the constitutional crisis which emanated from the general elections of December, 2016. Initially, AU and ECOWAS were prepared to make a *forceful* intervention even without the request of The Gambian government because the purpose was to protect the will of the people and prevent a looming severe humanitarian crisis. However, the subsequent presence of ECOWAS troop in the country was predicated upon the new President *Barrow's* request. By then President *Jammeh* had conceded defeat and left office.

393 Ibid.

394 *Mor Diandane Mbow* and *Issaka K. Souaré*, 'Protecting Civilians in Mali and Central African Republic', in *J. M. Okeke* and *P. D. Williams* (eds.), Protecting civilians, in African Union Peace Support Operations: Key Cases and Lessons Learned (https://www.accord.org.za/publication/protecting-civilians-african-union-peace-support-operations/), 2017, p. 80 (accessed on 11 May 2022).

395 Ibid.

396 Ibid.

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1. Problem and AU's Action

The Gambian constitutional crisis was triggered by the refusal of the sitting President *Yahya Jammeh*, who had been in power since 1994, to accept the result of the presidential elections of 1 December 2016.[397] His challenger *Adama Barrow* had surprisingly defeated him.[398] After initially accepting the election result and praising the functioning democratic process in The Gambia, only one week later *Jammeh* refused to cede power.[399] He justified this by alleging serious, unacceptable abnormalities in the election process, which would first require clarification by the Gambian Constitutional Court.[400] The international community strongly rejected and condemned *Jammeh's* refusal to accept the election result.[401] In a presidential statement, the Security Council reiterated its request to the outgoing president to fully respect the result of the expressed will of the Gambian people, and to carry out a peaceful and orderly transition process by the end of his presidential term on 19 January 2017 in accordance with The Gambian Constitution.[402] The AU and ECOWAS, issuing similar statements, made clear that they would accept only *Barrow* as the legitimate representative of The Gambia.[403] In addition, borrowing from the usual wording of the Security Council to authorise military force, official resolutions of the AU and ECOWAS resolved to take all necessary measures to guarantee respect for the will of the Gambian people.[404] Shortly thereafter, ECOWAS announced presence of stand-by forces already alerted and able to intervene to restore the people's wish.[405] A short time later troop contingents from five West African states massed at the Gambian border.[406]

President *Jammeh* rejected these acts as unprecedented interference in the internal affairs of The Gambia and, on 17 January, declared a state of emergency.[407] The Gambian parliament, in which *Jammeh* still retained the majority, extended *Jammeh's* presidential term for three months until a decision of the Constitutional Court on the alleged irregularities in the election and undertook the adoption of an amendment to the Constitution.[408]

397 *Claus Kreß* and *Benjamin Nußberger,* Pro-democratic Intervention in current International Law: the Case of the Gambia in January 2017, in Journal on the Use of Force and International Law 4 (2017), p. 239.

398 Ibid.

399 Ibid.

400 Ibid., pp. 239–240.

401 Ibid., p. 240.

402 Ibid.

403 Ibid.

404 Ibid.

405 Ibid.

406 Ibid.

407 Ibid.

408 Ibid., pp. 239–240.

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Accordingly, 19 January 2017 passed without *Jammeh* transferring power to his elected successor.[409]

The events of the subsequent night remain unclear.[410] Press reports suggest that Senegalese troops crossed the Gambian border soon after midnight without encountering any significant resistance.[411] The New York Times reported that a member of the Senegalese military clarified that this initial border crossing was unintentional, since the Senegalese armed forces were unfamiliar with the terrain.[412] In the further course of 19 January 2017, *Barrow* was sworn in as President in the Gambian Embassy in Dakar, Senegal.[413] He immediately called for international assistance in order to enforce his electoral win.[414] By this stage, the Gambian armed forces were apparently no longer clearly on *Jammeh's* side.[415] Thus, the commanding general announced that the army would not interfere in the political conflict, and the navy declared itself in solidarity with *Barrow*.[416] The UNSC met in a hurriedly called session and unanimously adopted Resolution 2337 (2017).[417] The resolution did not mention the presence of foreign troops in The Gambia neither was reference made to Chapter VII of the UN Charter.[418] Instead, the UNSC was content to confirm the inviolability of *Barrow's* election as president and joined the recognition of his presidency by ECOWAS and the AU as of 19 January 2017.[419] Furthermore, the Security Council expressed full support for the ECOWAS resolution, to ensure, by political means first, the respect of the will of the people of The Gambia as expressed in the results of 1st December elections.[420] Mere hours later the military operation in The Gambia was halted, in order to give negotiations a final chance, with success.[421] On 21 January 2017 *Jammeh* willingly ceded power and left The Gambia.[422] At the request of *Barrow*, ECOWAS troops were stationed in The Gambia, to ensure security in the country.[423]

409 Ibid.
410 Ibid.
411 Ibid., pp. 240–241.
412 Ibid., p. 241.
413 Ibid.
414 Ibid.
415 Ibid.
416 Ibid.
417 Ibid.
418 Ibid.
419 Ibid.
420 Ibid.
421 Ibid.
422 Ibid., p. 240.
423 Ibid.

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The legitimacy of ECOWAS' intervention in the Gambia can be justified upon the philosophical underpinnings of the legal principles and rules dealing with human rights[424] specifically the human security and responsibility to protect doctrine explained above. ECOWAS' action was crucial in protecting the people of The Gambia and the country's constitutional order which were endangered by *Jammeh's* deplorable acts. Furthermore, the justification for ECOWAS' intervention in Gambia lies in the fact that the right to self-determination was protected by the intervention.[425] There had been widespread allegations against the *Jammeh*-led government including human rights abuses, stifling of political opposition, and death in custody.[426]

The situation of things in Gambia had become heightened after the election period showing that a humanitarian catastrophe was looming.[427] As proof of the sense of insecurity and instability in Gambia, many had begun to migrate into the territory of neighbouring Senegal.[428] As at the time of intervention, a humanitarian catastrophe was underway and it took the ECOWAS intervention to forestall the humanitarian crisis that could have ensued.[429]

2. Constraints and achievements

The only noticeable constraint was president Jammeh's refusal to relinquish power to the new president hence aggravating the threat of occurrence of a humanitarian crisis. However, that did not happen, courtesy of ECOWAS' efforts. That intervention was by far a very successful mission. It restored stability in the country, it averted a looming sever humanitarian crisis and it secure the will of The Gambians. ECOWAS helped to prevent what may have developed into a civil war in the small West African state.[430] In addition, this serves as a positive lesson on the important role of African RECS in upholding democracy, good governance and human lives upon threats from some wicked leaders. It proves that Africa is increasingly improving its capability to protect its people.

424 *Elkanah Babatunde,* ECOWAS and the Maintenance of International Peace and Security: Protecting the Right to Democratic Governance, 2017 (https://www.researchgate.net/publication/320464619_ECOWAS_Intervention_in_Gambia_A_Case_Study_of_International_Law_on_the_Use_of_Force), p. 67 (accessed on 11 May 2022).

425 Ibid., p. 68.

426 Ibid., pp. 68–69.

427 Ibid., p. 69.

428 Ibid.

429 Ibid.

430 Ibid.

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F. AU's Progress in Use of Force to Uphold Democracy and Constitutionalism in Practice

AU has made significant progress in utilizing its wide mandate in the use of force in upholding democracy and constitutionalism in Africa. The discussion above has shown how effectively the Union has employed those powers in restoring peace, rule of law, stability, human security and in safeguarding people's will. That is quite a milestone considering that help from outside has proved to be highly unreliable. If it was not for those powers, the violence in Burundi which led to the AU's attempted deployment of MAPROBU without Burundi consent would have escalated into a much serious problem. Moreover, the absence of those powers would have made President *Yahya Jammeh* of The Gambia to overstay in power contrary to the will of his people. The case studies examined herein reveal AU's success in restoring democratic governance and constitutional order.

In the Comoros, Operation Democracy remains a success story of AU's capacity and determination to assist a Member State in addressing a constitutional crisis whenever requested to do so. As indicated above, the situation remains reasonably stable though with some minor fights and property destruction between factions.

In Burundi AMIB was able to secure relative stability despite the complex nature of the crisis, thereby paving way for UN's mission into the country. Similarly, the threat to deploy MAPROBU following the violence that erupted in 2015 had a significant effect in neutralizing that conflict, opening a door for an inclusive dialogue. Eventually, Burundi is finally stable. In 2020, the UNSC noted the improved security situation in Burundi, and that the country had a broadly peaceful election in that year which marked a new phase for Burundi.[431] As a result, on 04 December 2020, the UNSC ended mandatory reporting on the country and encouraged its international partners to continue dialogue towards resumption of development assistance.[432] Subsequently, in 2021, the PSC noted that Burundi has made significant progress in the political and security situation since the outbreak of the crisis in 2015.[433] The country successfully organized general elections on 20 May 2020 which led to a subsequent formation of a new government headed by *Évariste Ndayishimiye*, President of the Republic of Burundi.[434]

For the case of Mali, a constitutional stability was restored in 2014 and a peace accord was signed in 2015, but the situation is still precarious. The government and the other parties to the accord were unwilling to implement the accord on allegations that international duress, particularly from Algeria, France and the U.S., pushed them to sign it.[435]Also, two coups have recently taken place hence giving rise to new tensions. However, AU still has a chance to arrest the situation and resolve it.

431 UN SC Presidential Statement (4 December 2020), p. 1.

432 Ibid., p. 2.

433 PSC/PR/COMM.3 (CMXCIII), note 348.

434 Ibid.

435 *Pellerin*, note 380.

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The situation in The Gambia has remained relatively peaceful since the return to constitutional order.[436] The considerable progress made in terms of policies and institutional reforms reflects Government's commitment towards promoting stability in the country.[437] In particular, the National Security Policy adopted and launched by the Government in June 2019, the establishment and operationalization of the National Human Rights Commission, as well as the Constitutional Review Commission and the Truth, Reconciliation and Reparations Commission are considerable steps towards consolidating democracy and security in the country.[438] The AU Commission, through the African Union Technical Support Team to the Gambia (AUTSTG), continued to provide technical support to thematic areas, as defined by the Gambian authorities, such as Security Sector Reform, rule of law and transitional Justice.[439] The deployment of the AUTSTG has been welcomed by the Government and the people of The Gambia.[440] The AUTSTG also continues to provide inputs focusing on civil oversight and governance of security structures, the establishment of security structures, and mandate of the Military as well as Intelligence, into a joint report to support the Constitution Drafting Committee.[441]

In July 2019, a delegation of the AU Commission conducted a midterm monitoring of the team with an overarching goal to determine the extent to which the project was meeting the expected outcomes in order to identify possible areas that need strengthening.[442] The delegation was pleased to receive positive feedback from various government officials on the work of the team, citing the concrete achievements by the team. The Government even requested the AU to extend the deployment of the Team for an additional year.[443]As a result of those efforts, Gambia conducted another democratic Presidential election in December 2021 and President Barrow was re-elected, receiving around 53% of Saturday's vote with nearest rival Ousainou Darboe on 28%. The event was followed by Parliamentary elections in April 2022. Both processes signify a promising democratic stabilization in the 2.4 million nation.

Despite those gains, 2020 was a bad year because it brought new challenges namely COVID-19, political uncertainties in The Gambia and a tight timeline.[444] Tensions between

436 African Union, 'Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, for the Period from February 2019 to February 2020', 9–10 February 2020, Assembly/AU/5(XXXIII), p. 31.

437 *Pellerin*, note 380, p. 31.

438 Ibid.

439 Ibid., p. 32.

440 Ibid.

441 Ibid.

442 *African Union*, 'African Union Commission Concludes Mid-term Monitoring of its Technical Support to The Gambia', Press Statement, 15 July 2019.

443 Ibid.

444 *Chido Mutangadura*, Hard Times Ahead for the African Union in The Gambia, Political Tensions and the COVID-19 Pandemic Make the AU's Job in The Gambia more Difficult, Institute for

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President *Adama Barrow* and the ruling United Democratic Party (UDM) led by *Ousainou Darboe* came to a head in January 2020 when *Barrow* formally registered his National People's Party.[445] The relationship between *Barrow* and the UDM had deteriorated following the dismissal of several prominent party officials from government.[446] The AU PSC has noted the negative impact of these developments and urged political actors in The Gambia to de-escalate tensions.[447] On top of this, *Barrow's* decision to serve the full five-year presidential term despite his electoral promise to step down after three years triggered protests.[448] Subsequent mass arrests and accusations of heavy-handedness by the police have cast a negative light on security forces.[449]

The coronavirus outbreak has slowed stabilisation efforts by redirecting attention from security sector reforms to supporting the country's strategic response to the pandemic.[450] Although the stabilisation efforts have government backing and political support, *Barrow's* departure from the UDM and the mass arrests place pressure on the government.[451] The AU mission's small size and strategic placement in government allow it greater flexibility and insulate it from popular pressures.[452] However supporting a government that is under political pressure will prove challenging.[453] That situation means that AU still has some work to do in securing sustainable stability in The Gambia.

Apart from that, AU has proved to be a reliable first responder in African constitutional crises considering that intervention by the UN system takes too long to be engaged and that the UN does not deploy peacekeeping forces where there is no comprehensive peace agreement. That positive trend by the AU has made constitutional crises in Africa such as in the Comoros from 2007 to 2009, the Gambia from 2016 to 2017 and Burundi in 2015 to be addressed timeously before they could explode into uncontrollable and horrendous ones. Furthermore, Operation Democracy has confirmed an unquestionable capability to effectively handle small-scale interventions even without the support of lead nations. Now, the AU needs to build a similar capacity, especially financially, in handling complex crises so as to avert the shortcomings which were evidenced in AFISMA and AMIB.

Encouragingly, already the AU has been implementing innovative reforms geared at boosting the capacity of its members to finance its operations. In 2016, the AU Assembly

Security Studies, 21 April 2020 (https://issafrica.org/iss-today/hard-times-ahead-for-the-african-union-in-the-gambia), accessed on 11 May 2022).

445 Ibid.

446 Ibid.

447 Ibid.

448 Ibid.

449 Ibid.

450 Ibid.

451 Ibid.

452 Ibid.

453 Ibid.

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decided to "institute and implement a 0.2 % import levy on all eligible imported goods into the continent to finance the AU Operational, Program and Peace Support Operations Budgets starting from the year 2017.[454] So far there has been unprecedented momentum gathered around implementation of the import levy.[455] As of December 2017, Kenya, Rwanda, Ethiopia, Chad, Djibouti, Guinea, Sudan, Morocco, Congo Brazzaville, Gambia, Gabon, Cameroon, Sierra Leone and Cote d'Ivoire have started collecting the levy and depositing the funds within the AU accounts in their respective Central Banks.[456] By 16 June 2020, there were 17 countries, representing about 31 % of AU membership that were at various stages of domesticating the Kigali Decision on Financing the Union.[457]

Collectively, these countries are assessed US$ 73,761,008 for regular budget and US$ 15,307,159 as contribution to Peace Fund, representing 30 %, respectively, of the total amount assessed to Member States to the Regular budget and Peace Fund.[458] These countries owed the Union US$ 41,735,749 (US$ 30,761,020 for regular budget and US$ 10,974,729 for Peace Fund) for prior budgets and as much as US$ 33,359,115 (US$ 22,095,806 for regular budget and US$ 11,263,308 peace fund) for the 2019 budget.[459] As of 16 June 2020, an amount of US$ 7,419,039 was received from these Member States (US$ 6,417,102, US$ 1,001,938 as contribution to regular budget and Peace Fund, respectively).[460] This represents 9 % and 7 % of amount expected.[461] Another US$ 16,181,591 and US$ 7,039,343 was collection in arrears for Regular budget and Peace Fund, respectively.[462] All the 17 countries have remitted to AU either partially or in full for 2020 budget.[463] In addition, an amount of US$ 25,135,107 (US$ 12,767,675 and US$ 8,833,571 for regular budget and Peace Fund, respectively) was in arrears.[464] All of it is attributable to

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

455 *African Union*, 'Status Report, Financing the Union, Towards the Financial Autonomy of the African Union, Status Report – an Update, Version Four', 16 June 2020, p. 2.

456 *Philomena Apiko* and *Faten Aggad,* Can the 0.2 % Levy Fund Peace and Security in Africa? A Stronger AU-UN Partnership in accordance with WTO Rule, Briefing Note No. 103, 2018, https://ecdpm.org/wp-content/uploads/BN-103-Financing-the-African-Union.pdf, p. (accessed on 15 May 2022).

457 *African Union*, note 455.

458 Ibid., p. 3.

459 Ibid.

460 Ibid.

461 Ibid.

462 Ibid.

463 Ibid.

464 Ibid.

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Sudan who due to the economic embargo imposed on them and other considerations made it impossible to remit the funds to AU on time.[465]

The flexibility built into the implementation of the 0.2 % levy appears to have been embraced by many Member States.[466] That flexibility allows Member States to determine the appropriate form and the means they will use to implement the Kigali decision on financing the Union in line with their national and international obligations provided the principles of predictability and compliance are adhered to.[467] The levy mechanism makes it easier for Member States to pay to the Union as it is not subjected to time consuming budgetary procedures and parliamentary approval.[468] The AU 0.2 % import levy offers a sustainable and predictable formula to finance peace and security operations and the Peace Fund as well as the overall budget of the AU.[469] Support for the AU's 0.2 % import levy through UNSC Resolution 2320 of 18 November 2016 reaffirms that support by the UN to the AU in matters relating to the maintenance of international peace and security, is an integral part of collective security as provided for in the UN Charter.[470] If the implementation of the levy is done efficiently, it will significantly boost AU's financial capacity to use force in addressing complex constitutional crises in future.

That aside, AU has not succeeded in addressing one notorious vice in Africa which largely contributes to recurrent constitutional crises, namely bad governance. Bad governance appears to be the cause of most of the crises studied in this paper. Disrespect of presidential term limits, nepotism, wilful refusal to respect the will of the people in general elections are cases in point. Not only that but also bad governance has appeared as an obstacle in finding solutions to some of those crises. A good illustration is the failure of EAC sitting Presidents to be tough on the late President *Nkurunzinza* of Burundi concerning his bid for a third term in office in blatant violation of the Arusha Agreement. Some of those Presidents have a record of disrespecting presidential term limits in their own countries and so they were no better than *Nkurunzinza*. Notably, President *Museveni*, who by then had stayed in power for five terms, since 1986, could not take to task President *Nkurunzinza* who was seeking only a third term.

Without a doubt, bad governance is still a critical problem in Africa which leads to constitutional quagmires that necessitate the use of force in addressing them. The problem critically reverses AU's gains ripped from its peace operations. Hence, there is a need for stronger efforts by the AU in building a culture of good governance across the continent. The question of good governance was emphasized by all the respondents who were inter-

465 Ibid.
466 Ibid.
467 Ibid., pp. 3–4.
468 Ibid., p. 4.
469 Ibid.
470 Ibid.

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viewed. *Leonard Onyonyi*[471] opined that Africa needs to abide by the right governance standards. Issues like violation of human rights make governance challenges worse. He added that if there will be good governance, there will be less conflicts hence no need to use force in response to the conflicts. If justice is available in court to address grievances, to promote peace, there will be no violence and no reason to fight.

According to *Joslain Djeria*,[472] ECOWAS success is partly attributable to the general political stability of its members. West African countries have better governance systems compared to Central Africa. The homogeneity of people in West Africa also contributes to the stability because of the sense of unity. As a result, there are less conflicts in that region. On the other hand, circumstances are different in Central Africa where there is high tribalism and deep ethnic divisions which fertilise conflicts. In his further analysis, *Djeria* maintained that AU has been striving to improve good governance among its members such as by adopting policy documents and promulgating legal frameworks, such as Agenda 2063 and the ACDEG. However, the problem is the member states which ignore and refuse to comply with these instruments. The AU only advocates since it has no coercive force to compel compliance. Therefore, it is upon the African States and leaders to willingly commit to responsible governance.

G. Lessons

AU's progress analysed in this article carries valuable lessons as discussed hereunder;

I. The Role of Lead Nations

The support of lead nations in AU peace operations is very crucial in enhancing financial and logistical capacity, especially because those two areas pose recurrent challenges in complex AU missions. For example, if it was not for South Africa's efforts in filling AMIB's financial and logistical gaps, the mission would not have succeeded in fulfilling its mandate. According to *Emma Svensson*, the need for support from the key states might be crucial since those states carry most of the military capacities on the African continent and are the only ones that can contribute with troops in any larger amount.[473]

However, challenges come when interests/opinions of those states are not aligned with those of AU.[474] For example, the relationship between South Africa and the AU was negatively affected due to the Union's proceeding with Operation Democracy without the

471 Peace and Security Expert at the East African Community. The interview was conducted on the 06 March 2021.

472 Legal Advisor to the Special Representative for Counter-Terrorism Cooperation at The African Union. The interview was conducted on 07 March 2021.

473 *Svensson*, note 117, p. 26.

474 Ibid.

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consent of South Africa.[475] This could influence South Africa to take a less active role in future PSOs.[476]In a worst case scenario, this could result in the AU standing without a major troop contributor when next time needed, further weakening the AU's ability to take appropriate and timely action.[477] To prevent that outcome from happening, AU needs to strike a balance between wishes or those states and those of the AU. Most importantly, AU should engage with lead nations in a way that does not compromise its integrity.

II. Financial Dependence

Missions like AMIB and AFISMA provide a lesson that excessive reliance on external donors for the sustainability of the AU's missions is problematic, as such a practice risks loss of control over such support, and by extension, its peace operations in the African context.[478] Moreover, the piecemeal fashion in which the donors disbursed pledged funds to the AU for the AMIB operation calls for the AU to look for alternative ways to fund and sustain its peace missions, pending the arrival of donor contributions, which may take up to six months.[479]

A clear mandate alone is not enough for a successful peace operation.[480] At the strategic level, mission planners need to operate a peace mission on a realistic and robust mandate to cater for the exigencies on the ground in line with resources, both human and material, that are required to be at the AU's disposal.[481]

III. Effectiveness of Non-consensual Use of Force

It has become apparent that use of force without the consent of the host state is very effective in dealing with rogue Presidents who disrespect the will of their people upon general elections such as in *Jameh's* case; or those who cling to power in contravention of peace deals like *Nkurunzinza's* case in 2015. Most interestingly is the fact that even a mere threat of taking that act can be effective. In Gambia, the strategy compelled President *Jameh* to eventually concede defeat and transfer power to President *Barrow*, while in Burundi it diffused the 2015 conflict and made transition government responsive to dialogue. The non-consensual use of force makes those leaders defenceless and compels them to respect the people's will hence facilitating smooth transfers of power.

475 Ibid.
476 Ibid.
477 Ibid.
478 *Badmus,* note 180, p. 136.
479 Ibid., pp. 136–137.
480 Ibid., p. 137.
481 Ibid., pp. 137–138.

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IV. Timing

In peace support operations, timing is everything.[482] Military intervention too early or too late can become catastrophic, so the ultimate decision to intervene is very important.[483] For instance, the success of the interventions in Comoros and The Gambia was contributed by the fact that the missions were deployed timeously while the crises were still mild. On the other hand, delayed deployment of peace operations causes escalations of conflicts leading to more atrocities, loss of lives and a surge in the costs of running the operations. A good example is the delayed deployment of AFISMA which took almost a year to be put in place.

V. Importance of Free Consent in Peace Deals

As stated above, the unwillingness of all the parties to the Mali peace accord of 2015 is a valuable lesson on the need for peace deals to be signed out of free consent; otherwise, all the efforts in procuring the deals will be in vain. In negotiating a peace deal, free consent of each party is very crucial so as to ensure that the deal will be adhered to and fully implemented.

H. Recommendations

Given the praiseworthy use of force by the AU in making Africa more democratic and compliant to constitutional principles, it is time for the *UN Charter* to be amended so as to categorically allow use of force without UNSC's prior permission. The *Charter* is clearly outdated and so it needs to be reformed so as to conform to the new developments where the world now has strong regional organisations such as ECOWAS and AU which never existed at the time of enactment of the *Charter*. The argument is further justified by the failures of the UN system to promptly respond to constitutional crises in Africa and AU's positive trend revealed above. It is true to a certain extent, as *Wyse* opined, that the UNSC is often paralyzed,[484] hence calling for major reforms that match with the changes of the contemporary world. On the other hand, AU has evidenced significant maturity; hence it deserves that mandate so that the Union can conduct its intervention without there being an impression that it is somehow violating the UN Charter.

The AU should explore more on the lead nation approach and put in place a more formal system on terms and conditions of participation of those nations and anchoring peace support operations. Furthermore, AU should strive to effectively implement the community levy strategy because it is significantly a potential solution to the financial and

482 *Centre for Humanitarian Dialogue*, note 116, p. 67.

483 Ibid.

484 *Christian Wyse*, The African Union's Right of Humanitarian Intervention as Collective Self-Defense, in Chicago Journal of International Law 19 (2018), p. 303.

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logistical problems that have been troubling large-scale peace operations. Member States should also be cooperative in collecting and submitting the levy faithfully and promptly. The Union should make more efforts to instil upon African leaders the culture of good governance because it will greatly reduce constitutional crises which cannot be initially resolved by means other than use of force.

The non-consensual use of force should continue to be utilized as a prompt to constitutional crisis whenever appropriate because it has proved to be a very useful tool in disciplining and deterring rogue leaders who disrespect general election results and who cause blatant violation of democratic and constitutional norms. Waiting for such leaders to request AU assistance is a fairy tale because it is clear to those leaders that AU's presence will work against their wishes.

Lastly, AU should discourage procuring of peace deals without free consent of all the key actors in constitutional crises. The free consent is crucial in ensuring that the peace deals will be respected. On the other, peace deals that a procured without free consent of the parties do not have a chance of being complied with.

Conclusion

This study has established that AU has made praiseworthy progress in democratizing Africa and restoring as well as maintaining constitutionalism through the use of force. If the conflicts analysed herein occurred in the era before the creation of the use of force mandate, it is highly probable that those conflicts would explode uncontrollably like the Rwandan genocide of 1994. However, thanks to the AU's power to use force, now conflicts highly likely to be intervened and diffused promptly hence preventing them from causing severe humanitarian crisis, collapse of constitutional orders and other related atrocities.

AU progress has been possible largely because of support and cooperation from RMs and Member States. That shows how much AU Member States respect and have faith in the Union. That continued support and cooperation is pivotal in enhancing AU's efficiency. Lastly, AU should continue to strengthen its financial and logistical capacity so that it may equally be able to handle large-scale interventions both effectively and timeously.

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