

# Regional Participation in the Maintenance of International Peace and Security under the UN Charter: The Case of African Union and its Sub-Regional Organisations

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## Abstract

*Under Chapter VIII of the UN Charter, the African Union shares the responsibility of maintaining international peace and security and finding African solutions in addressing conflicts on the African continent. Article 52 allows for the setting up of regional organisations to complement the work of the UN, especially in the peaceful settlement of disputes in terms of the Charter. Article 53 establishes a working relationship between regional organisations and the Security Council when it comes to the use of force. The operations of the regional organisations in terms of use of force are directly linked with the Security Council as they cannot act independently of the Security Council. While the Security Council can utilise the regional organisations in peace enforcement, the regional organisations cannot act outside of the UN Charter. On the one hand, the Security Council has neglected conflicts in Africa. On the other hand, it has significantly interfered with the efforts of the region to promote peace and security. There is a need to enhance and reinterpret Chapter VIII on regional arrangements for lasting solutions to be found. The Security Council must be able to take note and pay much attention to views coming from the regional organisations that are closer and with a deep understanding of the on the ground situation. Greater, constant communication channels between the Security Council and the regional organisation must be opened. The African Union should also utilise presently available avenues under the UN Charter to push for greater participation in the maintenance of international peace and security and must enhance its capacity to deal with peace and security issues on the continent.*

*Keywords: Security Council, African Union, Regional Organisations, Peace and Security, UN Charter, Chapter VIII.*

## I. Introduction

In Africa, the idea that the international community should, through the UN, act collectively to bring peace, stability, and security into the world remains a pipeline dream. Although this region

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is one of the most affected, it has limited participation in resolving these challenges. Some of the approaches proposed to the African conflicts in the past have failed or had mixed results 'because they were, for the most part, imposed from the outside on the affected populations, actors or victims of those conflicts.'<sup>1</sup> Only the Security Council acting under Chapter VII reserves the right to determine what constitutes a threat to international peace and security and propose solutions. Article 53 allows it to utilise regional organisations in achieving its objectives. However, due to a lack of equitable representation, African countries have been side-lined in making such determinations and carry little influence to push for its peace and security interests in the Council.

The current structure of the United Nations and Security Council, in particular, is not only anachronistic but no longer reflects the world around it.<sup>2</sup> It has failed to appreciate the current global realities, such as the emerging new powerful countries, populations, balance of power, and the new regional organisations. As a result, the African countries have argued that the Security Council is 'undemocratic' in its functions and fails to capture the interests of the small people who do not have the same rights and privileges as the P-5.<sup>3</sup> 'This arises because Africa's 54 states have little influence over the Security Council's decisions that target them in approximately 75 percent of cases.'<sup>4</sup> It is for this reason that the African leaders, through its Ezulwini Consensus, proposed that, *since the General Assembly and the Security Council are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper appreciation of the nature and development of conflict situations, it is imperative that Regional Organisations, in areas of proximity to conflicts, are empowered to take actions in this regard.*<sup>5</sup>

On the other hand, the UN Charter does not preclude the existence of regional arrangements or agencies to deal with peace and security matters.<sup>6</sup> Under the UN Charter, African Union or other regional organisations share the responsibility of maintaining international peace and security and finding African solutions to address conflicts on the continent. Chapter VIII of the Charter and Security Council Resolutions 1809 and 2033 establishes a formal relationship between the Security Council and regional organisations. The relationship between the Security Council and the regional organisations is provided under articles 52, 53, and 54 of the UN Charter, setting parameters on how the bodies can work together. However, the provisions under Chapter VIII and Resolutions 1809 and 2033 have remained underutilised as the operations of regional organisations in this regard are heavily dependent on the Security Council. The powers and functions given to the Security Council by the UN Charter have become a challenge in the effective operation of regional organisations. The supremacy of the Security Council in peace and security matters is emphasised, as operations by regional organisations under Chapter VIII are by no means a limit to the functions and powers of the Security Council. Concerning peace and security in the region, the African Union argues that it has identified several factors and root

<sup>1</sup> *Security Council Verbatim Records*, 15 April 2013, UN Doc S/PV.6946.

<sup>2</sup> 'Security Council Must Expand, Adapt to Current Realities or Risk Losing Legitimacy, Delegates Tell General Assembly amid Proposals for Reform: *United Nations*, GA 12217, available at <https://www.un.org/press/en/2019/ga12217.doc.htm>.

<sup>3</sup> Brian Cox, 'United Nations Security Council Reform: Collected Proposals and Possible Consequences', *South Carolina Journal International Law and Business*, volume 6, 2009, p.89.

<sup>4</sup> Ville Lattila and Aleksii Ylonen, 'United Nations Security Council Reform Revisited: A Proposal', *Diplomacy and Statecraft*, volume 30, 2019, p.164.

<sup>5</sup> 'The Common African Position on the Proposed Reform of the United Nations: the Ezulwini Consensus', *African Union*, Ext/Ex.CL/2 (VII).

<sup>6</sup> *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, art. 52 (1).

causes of conflicts in the region and established some institutions and mechanisms to address them.<sup>7</sup> They, therefore, believe that strengthened cooperation between the Security Council and the African Union and its subregional organisations will achieve better results in conflict prevention.<sup>8</sup>

## II. Scope, Powers and Functions of the Security Council under the UN Charter

The main objectives of the UN are to promote international peace and security by respecting international law, norms, treaties, and respect for individual state sovereignty. The maintenance of international peace and security through preventing and removing possible threats to peace and security is achieved through collective security measures. As such, the Security Council is the principal organ of the UN tasked with the primary responsibility of maintaining international peace and security on behalf of all UN members.<sup>9</sup> The Security Council's powers and functions are relatively clearly stated in Chapters V, VI, and VII of the Charter. On the other hand, Chapter IV bestows a secondary competence in maintaining international peace and security to the General Assembly. The International Court of Justice in the 1962 *Expenses Advisory Opinion*<sup>10</sup> construed that Article 24 gives primary responsibility to the Security Council but not exclusive responsibility in the maintenance of international peace and security. Article 10 empowers the General Assembly to discuss any matter within the scope of the Charter. Article 11 may discuss any question related to global peace and security brought before it and make recommendations to the Security Council regarding the possible action necessary. While the Security Council is exercising its functions under Chapter VII, the General Assembly must, according to Article 12, refrain from making any recommendations regarding a situation under discussion in the Security Council unless the Security Council so requests. The powers given to the Security Council to deal with international peace and security matters by the Charter are superior to any organ of the UN or outside of the UN system. Further, the General Assembly holds no formal legal powers to influence the operations and functions of regional organisations on peace and security matters. For this reason, the paper is focused on the powers of the Security Council in relation to the regional organisations.

The Security Council derives its primary legitimacy and power from the Charter and, most importantly, Article 24 of the Charter, which gives it the authority to act on behalf of the UN members who, according to Article 25, have an obligation to implement decisions of the Council. According to Article 24, it is mandated with the primary responsibility of maintaining international peace and security. Its decisions are binding on all UN members as Article 25 creates an obligation for member states to 'accept and carry out the decisions of the Security Council in accordance with the present Charter.'<sup>11</sup> Article 39 of the UN Charter is one of the single most important article as it defines the competence of the Council and may lead to the adoption of measures under Articles 41 and 42.

<sup>7</sup> *Security Council Verbatim Records*, 15 April 2013, UN Doc S/PV.6946, p.2.

<sup>8</sup> *Ibid.*

<sup>9</sup> *UN Charter*, art. 24.

<sup>10</sup> *Certain Expenses of United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion, 1962, ICJ Rep, p. 151.

<sup>11</sup> *UN Charter* art. 25.

In fulfilling its mandate under Chapter VII, the Security Council, according to Article 39, reserves the right to ‘determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42...’<sup>12</sup> to restore peace and security. Article 41 empowers the Security Council to impose non-military measures such as economic sanctions. Should the measures under Article 41 be considered inadequate, the Security Council may employ the use of force as may be necessary to maintain or restore international peace and security.<sup>13</sup>

A broader interpretation of Article 39 beyond the Charter provisions has been accepted. The Security Council has in the past addressed some situations threatening international peace and security, situations that are not necessarily provided in the Charter.<sup>14</sup> A flexibility that was noted in the *Tadić case* that the Security Council can exercise a very wide discretion under article 39.<sup>15</sup> While political discretion and realities on the ground may influence the ability of the Security Council to make a determination, there exists ‘a body of opinion that the Council is completely free to determine the existence of a threat, unfettered by any limits.’<sup>16</sup> However, as was pointed out by the International Court of Justice in the *Conditions of Admission case* of 1948, the powers of UN organs are subject to a legal limit, and ‘the political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment.’<sup>17</sup> Despite such limitations, some scholars have maintained that the Security Council has the “sole” obligation to determine the presence of a threat to international peace and security.<sup>18</sup> Therefore, since it is within its sole competence to make such a determination, the failure of the Security Council to make determinations concerning the African conflicts raises many questions. In her article, Tamsin PAIGE termed the response by the Security Council to the Rwanda genocide “Wilfully Blind,” because all the responses of ‘the Security Council in the build-up to the genocide served to create the conditions on the ground that allowed genocide to flourish.’<sup>19</sup> The individual actions and responses of the P-5 prevented the Security Council from determining that the Rwandan situation constituted a “threat to international peace and security.”<sup>20</sup>

The failure of the Security Council to decisively deal with international peace and security matters has also ‘gravely damaged its credibility.’<sup>21</sup> The Security Council faces a legitimate crisis

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<sup>12</sup> Ibid, art. 39.

<sup>13</sup> Ibid, art 42.

<sup>14</sup> Monica Lourders de la Serna Galvan, ‘Interpretation of Article 39 of the UN Charter (Threats to Peace) by the Security Council: Is the Security Council a Legislator’, *Anuario Mexicano de Derecho Internacional*, volume 11, 2011, p. 147.

<sup>15</sup> *Tadić Case, Prosecutor v. Tadić*, ICTY, Decision on Defense Motion for Interlocutory Appeal on Jurisdiction, 1995, Case no. IT-94-I.

<sup>16</sup> Robert Cryer, ‘The Security Council and article 39: A threat to Coherence’, *Journal of Armed Conflict Law*, volume 1, 1996, pp. 161-165.

<sup>17</sup> *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)* (Advisory Opinion), 1948, ICJ Rep, p.57.

<sup>18</sup> Sabina Dipalo, ‘The Security Council’s Non-Determination of a Threat to the Peace as a Breach to International Law’, *Pecs Journal of International and European Law*, volume 1, 2018, pp. 61-68.

<sup>19</sup> Tamsin P. Paige, ‘Willfully Blind: The Security Council’s Response to Genocide in Rwanda’, *Journal of International Peacekeeping*, volume 22, 2020, p.136.

<sup>20</sup> Karel Kovanda, ‘The Czech Republic on the UN Security Council: The Rwandan Genocide’, *Genocide Studies and Prevention: An International Journal*, volume 2, 2010, pp. 192-198.

<sup>21</sup> ‘Report of the Panel on United Nations Peace Operations’, *United Nations General Assembly*, 21 August 2000, UN Doc A/55/305-S/ 2000/809.

due to its failure to consistently apply the moral and legal principles, especially Chapter VII, and has often responded selectively to major humanitarian crises after the Cold War. For example, in relation to articles 41 and 42, the P-5 holds excessive powers on the language, text of the resolutions, and the Security Council's ability to make interventions. These interventions have to some extent been used as alternative approaches to punishing certain countries while the veto is used to protect some serious human rights abuses. Sanctions on Syria have been blocked on the pretext that 'a political solution continues to be the only way forward to rid the Syrian people of their suffering.' In contrast, a civil conflict in South Sudan attracted sanctions despite the African Union calling for their removal.<sup>22</sup> Israel broke international law and Security Council Resolutions in its invasion of Palestine, a violation that was condemned by the General Assembly as in Resolution *A/RES/75/20* of 2020 and Security Council Resolution 2334 of 2016, among other Resolutions, but to date, no interventions have been taken against the country. Whereas, in the 2011 Libyan and Ivory Coast "crisis", the Security Council was quick to authorise the use of force.<sup>23</sup> According to Marjorie Cohn, 'the military action in Libya and Ivory Coast set a dangerous precedent of attacking countries where the leadership does not favour the pro-US...'<sup>24</sup>

Furthermore, the current working methods and decision-making procedures exclude the rest of the world who are not adequately represented.<sup>25</sup> According to Binder, 'the Security Council should be contested because its institutional design and its decision-making procedures violate almost all of the criteria identified for "legitimate global governance," including inclusiveness, transparency, accountability, and consistency.'<sup>26</sup> The working methods, especially in informal negotiations, 'allow the dominant states on the Council to pick from among the members and non-members only those whose contribution to deliberation they feel is valuable to them,'<sup>27</sup> and may not invite those with a dissenting opinion. This has greatly contributed to the mistrust between members and non-members of the Security Council. Over the year the elected 10 (E10) have shown to be frustrated by the little influence they have in the Council as opposed to the overbearing dominance of the P-5, with South Africa having to complain that 'resolutions and decisions of the Council are often drafted in small groups and presented as *faits accomplis* to elected members'<sup>28</sup> and therefore suggested that, while they support wider consultation by the Security Council, 'its decisions should be open to debate among all members of the Council'.<sup>29</sup>

<sup>22</sup> 'Adopted by the Peace and Security Council (PSC) of the African Union (AU) at its 967th meeting held on 26 November 2020, on the situation in the Horn of Africa: How best to support the transitions in Somalia, South Sudan and Sudan', *Peace and Security Council of the African Union*, 26 November 2020, PSC/PR/COMM. (CMLXVII).

<sup>23</sup> *UNSC S/RES/1973*, 17 March 2011; *UNSC S/RES/1975*, 30 March 2011.

<sup>24</sup> Marjorie Cohn, 'The Responsibility to Protect: The Cases of Libya and Ivory Coast', *E- International Relations*, 2011.

<sup>25</sup> 'Calls for Greater Inclusion of Elected Security Council Members, Limited Veto Use in Addressing Atrocity Crimes Dominate Open Debate on Working Methods', *United Nations Security Council*, 8 February 2018, Press Release SC/13197.

<sup>26</sup> Martin Binder, 'The Politicization of International Security Institutions: The UN Security Council and NGOs', 2008, *WZB Discussion Paper No SP IV* 2008-305.

<sup>27</sup> Ian Hurd, 'Myths of Membership: The Politics of Legitimation in UN Security Council Reform', *Global Governance*, volume 14, 2008, pp.199-211.

<sup>28</sup> Daniel Moeckli & Raffael N. Fasel, 'A Duty to Give Reasons in the Security Council: Making Voting Transparent', *International Organizations Law Review*, volume 14, 2017 p.13; *UNSC*, 26 November 2012, UN Doc. S/PV.6870, p.17 .

<sup>29</sup> *UNSC Verbatim Records*, 26 November 2012, UN Doc. S/PV.6870, p. 17.

### III. Regional Organisations Under Chapter VIII and The Supremacy of the Security Council

The UN Charter Chapter VIII on Regional Arrangements provides for a relationship between the Security Council and regional organisations on matters related to maintaining international peace and security. The Security Council also acknowledged the importance of increased cooperation between the Security Council and regional organisations through Resolutions 1809 of 2008 and 2033 of 2012. Resolution 1809 was adopted 'recognising that cooperation with regional and sub-regional organisations in matters relating to the maintenance of peace and security and consistent with Chapter VIII...can improve collective security.'<sup>30</sup> It further recognises 'that regional organisations are well-positioned to understand the root causes of armed conflicts owing to their knowledge and familiarity with regions, factors which may be beneficial in their efforts to influence the prevention or resolution of conflicts.'<sup>31</sup> Resolution 2033, apart from reaffirming the primary responsibility of the Security Council for the maintenance of international peace and security, specifically expressed 'its determination to take effective steps to further enhance the relationship between the United Nations and... the African Union, in accordance with Chapter VIII of the United Nations Charter.'<sup>32</sup> The resolution also recognised that, by virtue of their proximity to conflict areas, regional organisations are in a better position to understand the complexities of the conflicts and can help prevent and or find solutions to the conflict. Further, the World Summit of 2005 was very emphatic on the need to have a closer relationship between the Security Council and the regional organisations. However, the operations of regional organisations on peace and security matters are largely dependent on the Security Council.

Article 52 (2) gives regional organisations powers to peacefully settle local disputes before referring them to the Security Council. Before referring local disputes to the Security Council, members of such arrangements are authorised to make all efforts to achieve pacified settlement of local conflicts.<sup>33</sup> The use of such arrangements to achieve pacific settlement of local disputes shall be encouraged by the Security Council. In its Presidential Statement, the Security Council in 2019 recognised and welcomed the 'signing of the Agreement on Peace and Reconciliation in the Central African Republic by the CAR authorities and 14 armed groups.....within the framework of the African Initiative for Peace and Reconciliation in the CAR and under the auspices of the African Union...'<sup>34</sup> The Security Council in the past has allowed for regional organisation processes to go ahead of the Security Council. In resolution 144 of 1960 on Cuba, the Security Council, despite objections from USSR (which abstained) and from Cuba (not a Security Council member but a party to the dispute), decided to adjourn the consideration of the question to allow for the regional organisation process to take place since the matter was under consideration by the regional organisation. However, while the regional organisation is seized with the matter, nothing in the Charter prevents the Security Council from handling the matter under Chapter VII or obliges the Council to take note of the decisions of such organisations. Whenever the Security Council considers a situation a breach of peace and security, the Council retains full competence regardless of the regional organisations' competence on the matter. USSR in 1954

<sup>30</sup> *UNSC Res 1809*, 16 April 2008, UN Doc S/RES/1809.

<sup>31</sup> *Ibid.*

<sup>32</sup> *UNSC Res 2033*, 12 January 2012, UN Doc S/RES/2033.

<sup>33</sup> *UN Charter*, art. 52 (2).

<sup>34</sup> *UNSC Presidential Statement*, 9 April 2019, UN Doc S/PRST/2019/3.

used its veto on draft Resolution S/3236/Rev.1 to support its position in favour of asserting the jurisdiction of the Security Council over the regional organisations.<sup>35</sup>

Under Article 53, 'the Security Council shall, when appropriate, utilise such regional arrangements or agencies for enforcement action under its authority.' On some occasions, the UN has used these bodies for the maintenance and enforcement of peace and to build legitimacy in the eyes of the affected, as was the case in Darfur.<sup>36</sup> 'Within the scope of article 53, regional organisations are in a complementary and subordinate position to the Security Council in that they may operate only if they are utilised or authorised by the Security Council.'<sup>37</sup> The General Assembly further emphasised this relationship in Resolution A/RES/49/57 of 1994. In cases where there might exist possible abuse of the authorisation by certain powers within the authorised region, the Security Council might withhold such approval to the regional organisation to intervene. For instance, in a draft Resolution S/3236/Rev1 of 1954 that was vetoed by the USSR, the Security Council, after considering the provisions under Chapter VIII and 'conscious of the availability of Inter-American machinery which can deal effectively with problems concerning the maintenance of peace and security in the Americas, refers the complaint of the Government of Guatemala to the Organisation of the American States for urgent consideration.'<sup>38</sup> In vetoing the draft resolution, USSR contended that 'the Council cannot refuse to accept this responsibility, and no other body can take its place in this respect at the moment' It further made the argument that it was not in the interest of Guatemala' sovereignty and peace and security to refer the matter to the 'very Organisation of the American States which the United States Department is planning to use to settle its accounts with Guatemala.'<sup>39</sup> The Security Council went on to adopt a resolution that called for 'the immediate termination of any action likely to cause further bloodshed and requested all Members of United Nations to abstain... from giving assistance to any such action.'<sup>40</sup> This could therefore be one of the 'procedural safeguards and institutionalised checks and balances under Article 53 against parochial and myopic state interests...'<sup>41</sup>

In their operations, these regional organisations are required to operate within the mandate of the Security Council as they are, under article 54, mandated to keep the Security Council 'fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.'<sup>42</sup> Various regional organisations have recognised the supremacy of the Security Council. For example, under article 1, 5, and 7 of the NATO treaty, the member states are committed to settling disputes as set forth under the UN Charter and 'refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.' Any

<sup>35</sup> *UNSC Verbatim Record*, 20 June 1954, UN Doc S/PV/675; Orlando R. Rebagliati, 'Functions and Powers of the UN Security Council and the OSA in Relation to the Maintenance of International Peace and Security', *Organization of American States*, 2000.

<sup>36</sup> Kilian Spandler, 'UNAMID and the Legitimation of Global-Regional Peacekeeping Cooperation: Partnership and Friction in UN-AU Relations', *Journal of Intervention and State Building*, volume 14, 2020, pp.187-194.

<sup>37</sup> Ugo Villani, 'The Security Council's Authorisation of Enforcement Action by Regional Organisations', *Planck Yearbook of United Nations Law*, volume 6, 2002, p.535.

<sup>38</sup> *UNSC Draft Res S/3236/Rev*, 20 June 1954.

<sup>39</sup> *UNSC Verbatim Records*, 20 June 1954, UN Doc S/PV675.

<sup>40</sup> *UNSC Res 104*, 20 June 1954, UN Doc S/RES/104.

<sup>41</sup> Kiho Cha, 'Humanitarian Intervention by Regional Organisations Under the Charter of the United Nations' *Seto Hall Journal of Diplomacy and International Relations*, 2002, p.134.

<sup>42</sup> *UN Charter*, art. 54.

such collective security action taken under UN Charter Article 51 'shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and Security.' The members further made it clear that implementation of the treaty will not affect 'the primary responsibilities of the Security Council for the maintenance of international peace and security.'<sup>43</sup> Similarly, the Organisation of the American States made a similar commitment to operate within the United Nations and fulfil their regional obligations under the UN Charter and any such measure of self-defence taken 'may be applied until the Security Council of the United Nations has taken the measures necessary to maintain international peace and security.'<sup>44</sup> The provisions in these regional organisations point towards their subordination to the Security Council and give the Security Council the ultimate role of maintaining international peace and security. The subordination of the regional organisations has played a negative role in the context of African peace and security as the AU has been neglected and sidelined in many situations on the continent.

On the African Union side, the failures of the Security Council to act on African situations when they should have resulted in the AU devising a new regional collective security approach by establishing the Peace and Security Council (PSC) and said the establishment 'marks a historic watershed in Africa's progress towards resolving its conflicts and the building of a durable peace and security order'<sup>45</sup>. It further claimed that 'it is also a reflection of our desire to assume a greater role in the maintenance of peace and security in Africa' and that they 'shall at all times move first, promptly, to address conflicts in our continent.'<sup>46</sup> Article 4 (h) of the AU Constitutive Act allows the PSC of the AU, with the authorisation of the AU Assembly, to unilaterally intervene in matters of a member state in respect of grave circumstances; namely war crimes, genocide and crimes against humanity.

In 2003, the Constitutive Act was amended, extending the right to 'a serious threat to a legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council.'<sup>47</sup> The right of the AU to intervene under Article 4 (h) is unilateral and does not require the consent of the affected State. Under Article 4 (j), forces can be 'deployed at the request of the state faced with war crimes, genocide or crimes against humanity.'<sup>48</sup> Under articles 4(h) and 4(j), the PSC can authorise the entire spectrum of peace operations. Nowhere in the Constitutive Act states that the Assembly must seek authorisation from the Security Council before authorising its PSC to intervene. The debate around Article 4(h) results from its supposed conflict with some measures of the UN Charter; namely Articles 2(4) and 53.<sup>49</sup>

Questions have been raised on 'whether the obligation in Article 53 of the UN Charter applies to the AU when exercising its right of intervention for humanitarian purposes in a member state

<sup>43</sup> *North Atlantic Treaty Organisation*, 24 August 1949 arts. 1, 5, 7.

<sup>44</sup> *Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance*, 26 July 1975, art. 3.

<sup>45</sup> 'Statement of Commitment to Peace and Security in Africa: Issued by the Heads of State and Government of The Member States of the Peace and Security Council of The African Union', *African Union*, 2004, AU doc. PSC/AHG/ST.(X).

<sup>46</sup> *Ibid.*

<sup>47</sup> *Protocol on Amendments to the Constitutive Act of the African Union*, African Union, 11 July 2003, para 4(h).

<sup>48</sup> *Ibid.*, para 4(j).

<sup>49</sup> Gabriel Amvane, 'Intervention Pursuant to Article 4(h) of the Constitutive Act of the African Union without United Nations Security Council Authorisation', *African Human Rights Law Journal*, volume 15, 2015, pp. 282-283.



according to Article 4(h).<sup>50</sup> According to Ben Kioko (former AU Legal adviser), *when questions were raised as to whether the (African) Union could possibly have an inherent right to intervene (according to Article 4 (h) of its Constitutive Act) other than through the Security Council, they were dismissed out of hand. This decision reflected a sense of frustration with the slow pace of reform of the international order and with instances in which the international community tended to focus attention on other parts of the world at the expense of more pressing problems in Africa.*<sup>51</sup> However, the right to unilaterally intervene in the AU Constitutive Act, according to Wyse, Christian, ‘stands in stark contrast with the collective security system established by the UN Charter, under which neither states nor regional organisations may use force in the territory of another country, subject to only a few exceptions.’<sup>52</sup> However, in its 2005 Ezulwini Consensus (non-legal), the AU stated that, though it agrees that the Security Council must authorise such intervention, such approval could be granted “after the fact”.<sup>53</sup> This position seems to find support from other UN establishments.<sup>54</sup> One occasion on which the AU came close to invoking Article 4 (h), with possible Security Council authorisation, was concerning Burundi when in 2015 it issued a communique condemning the violence in the country and decided to “unilaterally” authorise the deployment of an African Prevention and Protection Mission in Burundi (MARPROBU). It also requested the Security Council to adopt a resolution supporting its decision. However, when the AU General Assembly met a month later, the level of violence was subdued, and non-consensual intervention was no longer necessary.<sup>55</sup> Hypothetically, it was to be seen what would have happened if the Security Council had not given authority and if the AU had proceeded.

#### IV. The Security Council and the Participation of the AU in Addressing African Situations

The presence of regional organisations has made it easy for the African governments to intervene in specific situations of particular interest to the sub-region. In Africa, the regional bodies have to some extent been assertive in promoting regional peace and security and, on many occasions, have facilitated the termination of violent conflicts either through diplomacy, peace operations or mediation.<sup>56</sup> Acting under Chapter VIII of the UN Charter, the African Union, through the Protocol establishing the Peace and Security Council, established subsidiary organs, namely, the Continental Early Warning System, the Panel of the Wise (PoW), the AU Policy on Post-Conflict Reconstruction and Development, and the Peace Fund to peacefully assist in finding

<sup>50</sup> Ibid, p. 284.

<sup>51</sup> Ben Kioko, ‘The Right of Intervention under the African Union’s Constitutive Act: From Non-Interference to Non-Intervention’, *International Review of the Red Cross*, volume 85, 2003, p. 807.

<sup>52</sup> Wyse, Christian, ‘The African Union’s Right of Humanitarian Intervention as Collective Self-defence’, *Chicago Journal of International Law*, volume 19, 2018, p. 295.

<sup>53</sup> ‘The Common African Position on the Proposed Reform of the United Nations: the Ezulwini Consensus’, *African Union*, Ext/Ex.CL/2 (VII).

<sup>54</sup> ‘Statement of the Secretary-General, Presenting His Annual Report to the General Assembly’, 20 September 1999, A/54/PV.4; ‘Report on the High-level Panel on Threats, Challenges and Change’, *United Nations General Assembly*, UNGAOR 59<sup>th</sup> Session Agenda 55, 2 December 2004, 272a, UN Doc A/59/565.

<sup>55</sup> Communique of the 565<sup>th</sup> Meeting of the Peace and Security Council of the African Union, *African Union*, 17 December 2015, PSC/PR/COMM. (DLXV).

<sup>56</sup> Peter Arthur, ‘Promoting Security in Africa through Regional Economic Communities and the African Union’s African Peace and Security Architecture’, *Insight on Africa*, volume 9, 2017, p.1.

solutions to conflicts in the continent, through mediation, negotiations, and diplomacy.<sup>57</sup> The establishment of these institutions shows Africa's commitment to solving disputes by peaceful means. According to Arthur, since 2001, African efforts such as mediation and assistance from the international community have seen the resolution of a significant number of conflicts in the region.<sup>58</sup> For example, after the 2008 post-election violence in Kenya, the AU brokered a peace agreement. Earlier in 2000, the Organisation of African Unity (OAU), through the Algiers Agreement, ended the border war between Ethiopia and Eritrea.<sup>59</sup> In West Africa, when in early 2017, ECOWAS intervened to avert a constitutional crisis after President Yahya Jammeh of Gambia had refused to step down after losing the 2016 elections to Adama Barrow. ECOWAS leaders tried to convince him to step down. As he refused, the region threatened with the use of force. The UNSC, in support of the regional efforts, approved Resolution 2337, expressing its support for the region's efforts towards finding a solution to the crisis. The threats and efforts by ECOWAS supported by the Security Council culminated in Yahya Jammeh finally leaving office and the assumption of the President-elect. As of 2017, 'AU had deployed about eight peace operations of its own.'<sup>60</sup>

The AU supported forces have been effective in augmenting UN peace operations in Africa. Africa has proven to be a capable candidate in peace operations, justifying its claim to be on the Security Council. In a 2001-2004 Burundi civil war between the Hutus and Tutsis, the AU led peacekeepers and later, with the UN's help, helped bring stability to the country. In many conflicts such as Central Africa Republic, Darfur, Somalia and the Lake Chad, the AU and UN have worked side by side to bring peace in these regions. 'African-led missions have demonstrated several comparative advantages over non-African sources of peace operations. These institutions have been ready to run risks and take on tasks that others shun.'<sup>61</sup> Some operations worth mentioning that show the capability of the African led operation in augmenting the UN peace operations are when in 2013, the UN deployed the Force Intervention Brigade (FIB) that was deployed to enhance the UN Stabilization Mission to the Democratic Republic of the Congo (MONUSCO) mandated to neutralise the M23 and other rebel groups.<sup>62</sup> According to Tull, 'what emerged as FIB was initially a sub-regional initiative of member states of the Southern African Development Community (SADC) of which the DRC is a member.'<sup>63</sup> The UNSC, after the African countries proposed that MONUSCO was not effective enough in delivering their mandate, accepted to incorporate the African forces into the FIB. Due to the proximity of the Troops Contributing Countries- Malawi, South Africa, and Tanzania- 'the FIB is widely regarded as having been effective in supporting the Congolese armed forces in containing the M23 rebel

<sup>57</sup> Ndubuisi Christian Ani, 'Three Schools of Thought on "African Solutions to African Problems"', *Journal of Black Studies*, volume 50, 2019, pp.135-149.

<sup>58</sup> Arthur (n 56).

<sup>59</sup> Laurie Nathan, 'The Peace-making Effectiveness of Regional Organisations', *Crisis States Research Centre Working Paper No 81*, 2010.

<sup>60</sup> Cedric de Coning, 'Peace enforcement in Africa: Doctrinal distinctions between the African Union and United Nations', *Contemporary Security Policy*, volume 38, 2017, p.145.

<sup>61</sup> James Dobbins et al, 'How African Institutions Help Keep the Peace', *The Africa Centre for the Constructive Resolution of Disputes*, 2019.

<sup>62</sup> Cedric de Coning, 'Africa and UN Peace Operations: Implications for the Future Role of Regional Organisations' in Cedric de Coning and Mateja Peter (eds), *United Nations Peace Operations in a Changing Global Order*, Palgrave Macmillan, 2019.

<sup>63</sup> Denis M. Tull, 'The Limits and Unintended Consequences of UN Peace Enforcement: The Force Intervention Brigade in the DR Congo', *International Peacekeeping*, volume 25, 2018, pp. 167-176.

group.<sup>64</sup>

In the Sahel region, to counter-terrorism and other threats from organised crimes, the five African countries known as the G-5 (Burkina Faso, Chad, Mali, Mauritania, and Niger) in 2017 with international support established an ad hoc intergovernmental coalition 'dedicated to combating terrorism and other types of violent threats.'<sup>65</sup> In Resolution 2391 of 2017, the Security Council 'welcomed the continued determination of the G5 Sahel States to unite their efforts to address the impact of terrorism and transnational organised crime, including through the establishment of a joint force conducting cross-border joint military counter-terrorism operation.'<sup>66</sup> Such task forces have been hailed as representing an active role and willingness of African countries to assume their regional peace and security responsibilities.<sup>67</sup>

However, due to a lack of resources and capacity, the African countries have not effectively dealt with some situations within their competence. In 2012 after Islamic rebel groups launched an offensive attack on the government of Mali and took control of the country, ECOWAS adopted a plan for operations for the deployment of an African-led International Support Mission in Mali (AFISMA). It requested the AU Peace and Security Council to endorse it and 'urged the Security Council to examine the Concept with a view of authorising the deployment of the international military force in Mali.'<sup>68</sup> The concept was subsequently endorsed by the AU PSC and the UN Security Council through resolution 2085, which authorised AFISMA to take all means necessary to protect civilians and asked members to provide the required assistance to the mission. Despite the authorisation and escalation of the conflict, the AFISM was not immediately deployed due to a lack of financial and logistical resources. The government in Mali had to request the French government to intervene. In 2004, the African led intervention forces under the AU mandated IGASOM failed to deploy to Somalia even after getting the nod from the Security Council. The reasons for non-deployment were also the lack of financial and logistical means.<sup>69</sup> With African-driven peace initiatives relying more on external aid, African decisions in this regard are restricted by their ability to source funding.

## V. Challenges in Relation to the Exclusive roles of the Security Council

While Africa has participated in regional peace and security under the purview of Chapter VIII, its relationship with the Security Council in terms of Chapter VIII and the Security Council's overall functions have been a limiting factor in its full participation in addressing African peace and security challenges. The first main challenge comes with the implementation of Article 39. While Charter Article 52 (2) allows regional organisations to refer a situation to the Security Council, when making a determination, the Security Council, especially the P-5, still retains the

<sup>64</sup> Coning (n 62).

<sup>65</sup> Moda Dieng, 'The Multi-National Joint Task Force and the G5 Sahel Joint Force: The limits of military capacity-building efforts', *Contemporary Security Policy*, volume 40, 2019, pp. 481-482.

<sup>66</sup> *UNSC Res 2391*, 8 December 2017, UN Doc S/RES/2391.

<sup>67</sup> Dieng (n 65).

<sup>68</sup> 'Final Communique of the Extraordinary Session of the Authority of ECOWAS Heads of State and Government', *Economic Community of West African States (ECOWAS)*, Abuja Nigeria, 11 November 2011.

<sup>69</sup> Peter Tzeng, 'Humanitarian Intervention at the Margins: An Examination of Recent Incidents' *Vanderbilt Journal of Transnational Law*, volume 50, 2017, pp. 415-437.

right to use veto or threat to use it, to block the adoption of any resolution that might not go well with their interests. Regardless of who would have brought the situation to the attention of the Security Council or the level of international support and opinion, it reserves the sole discretion to make a determination under Article 39. In respect to Western Sahara (known as Africa's last colony), the occupation of that territory has been condemned by the African Union in several resolutions and decisions such as the OAU (now AU) decision AHG/Res.92 (XV) of 1978. As recent as 2016, the AU General Assembly reiterated its 'call for early resolution of the four-decade-long conflict in Western Sahara, in full respect of the international legality.' The AU further appealed to the UN Security Council to fully assume its responsibility in this respect.<sup>70</sup> However, despite the numerous requests by the AU to have the matter addressed by the Security Council and the United General Assembly having in 1970 affirmed the alienable right of the people of Western Sahara,<sup>71</sup> the Security Council has not made a determination under Chapter VII. The failure of the Security Council has been attributed to 'the refusal of the US and the French governments to jeopardise their own strategic relationship with Morocco.'<sup>72</sup> The actions of these outside powers are said to have strengthened Morocco's claim on Western Sahara and were said to have undermined efforts for a referendum that would have allowed for self-determination for the people of Western Sahara.<sup>73</sup> The Secretary-General in his 2006 Report suggested that *those members in the Council who had been supporting the position of Morocco, to do all in their power to make negotiations succeed...it cannot wait for the question of Western Sahara to deteriorate from being a source of potential instability in the region to become a threat to international peace and security. Instead, both the Council and its individual member States should now rise to the occasion and do all in their power to help negotiations get off the ground.*<sup>74</sup> The failure of the Security Council to deal with the referred situation due to the interest of the powerful brings to question the sincerity of the Security Council in implementing Chapter VIII Article 52.

The lack of equitable representation in the Security Council has affected Africa's participation, especially on matters of interest. A number of Security Council interventions on the continent were instead imposed with little participation of the African countries.<sup>75</sup> The inadequate representation of the developing world gives them less ownership in the maintenance of peace and security. Although the Charter and the Resolutions mentioned above guarantee the participation of interested parties and regional organisations, the African region is still relegated to the periphery and largely depends on the P-5.<sup>76</sup> Even though some African countries and regional bodies such as the AU and SADC have in the past been invited to attend Security Council meetings, it is not mandatory for Council members to be guided by the views of invited member countries or organisations. On draft Resolution, S/2008/447 (on Zimbabwean Situation), a draft

<sup>70</sup> 'Decision on the Activities of the Peace and Security Council and the State of Peace and Security in Africa', *African Union*, 2016, Assembly/AU/Dec.598 (XXVI).

<sup>71</sup> *UNGA Res 2711 (XXV)*, 14 December 1970.

<sup>72</sup> Yahia H. Zoubir and Benabdallah-Gambier, 'Morocco, Western Sahara and the Future of the Meghrib', *The Journal of North African Studies*, volume 9, 2004, p.49.

<sup>73</sup> *Ibid.*

<sup>74</sup> 'Report of the Secretary General on the Situation Concerning Western Sahara', *United Nations Security Council*, 19 April 2006, UN Doc S/2006/249.

<sup>75</sup> *UNSC Verbatim Records*, 15 April 2013, UN Doc S/PV.6946.

<sup>76</sup> Ekwealor Chinedu Thomas, 'The nexus between the United Nations Security Council reform and Peace Building in Africa', PhD thesis, University of Kwazulu Natal, 2015, p. 119.

resolution that was said by South Africa to violate article 52,<sup>77</sup> the Security Council was accused of pushing interest against the position of the region by 'giving the impression that it listens to the region only when the message suits certain Council members.'<sup>78</sup> In 2016 when the Security Council adopted Resolution 2303 expressing 'its intention to pursue targeted measures against all actors, inside and outside Burundi, who threaten peace and security of Burundi,'<sup>79</sup> two of the three African countries, including Egypt, abstained. According to Egypt, the resolution failed to consider the concerns of the African countries and had the potential of negatively impacting the efforts of the African Union.<sup>80</sup>

Further, those with the power to make a determination have politicised the Council and selectively dealt with situations and conflicts at the same time undermining the African initiatives. While draft Resolution S/2008/447 was vetoed by China and Russia, it points towards the abuse of power and proximity. The draft Resolution co-sponsored by the UK, a former colonial power, was intended to invoke Article 41 on humanitarian grounds over the conduct of the elections in that country. The draft was described by Zimbabwe as 'a clear abuse of Chapter VII, as it seeks to impose sanctions under the pretext that the country is now a threat to international peace and security, simply because the elections held did not bring out a result favourable to the UK and her allies.'<sup>81</sup> Upon vetoing it, Russia stated that 'there had been some obvious attempts to take the Council beyond its Charter prerogatives... (and) the draft was an attempt to interfere in the internal affairs of a country and ignored the dialogue launched between the parties...(and) a consensus decision of the African Union...'<sup>82</sup> Any Chapter VII resolution would have had the potential of escalating the conflict and undermined the efforts by regional organisations.<sup>83</sup>

In relation to the Security Council and the ICC, a request by the African Union to the Security Council 'to defer the proceedings initiated against President Omar Al Bashir of The Sudan and Senior State Official of Kenya, in accordance with Article 16 of the Rome Statute of the ICC on deferral of cases by the Security Council (was not) acted upon.'<sup>84</sup> France, UK, and USA opposed the deferral.<sup>85</sup> Instead of a Chapter VII action by the Security Council on Omar Al Bashir, African Union believed that 'the search for justice should be pursued in a way that does not impede or jeopardise efforts aimed at promoting lasting peace.'<sup>86</sup> The African Union wanted a different approach instead of the indictment of Al Bashir. As a result, it urged its members not to cooperate with the arrest warrant as they cited that it would be a threat to the then 'ongoing efforts in the promotion of peace, national healing and reconciliation.'<sup>87</sup> In similar situations,

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<sup>77</sup> *UNSC Verbatim Records*, 11 July 2008, UN Doc S/PV. 5933.

<sup>78</sup> *Ibid*, p.15.

<sup>79</sup> *UNSC Res 2303*, 29 July 2016, UN Doc S/RES/2303.

<sup>80</sup> *UNSC Verbatim Records*, 29 July 2016, UN Doc S/PV.7752.

<sup>81</sup> *UNSC Verbatim Record*, 11 July 2008, UN Doc S/PV 5933, p. 3.

<sup>82</sup> *Ibid*, p.9.

<sup>83</sup> *Ibid*, p.5.

<sup>84</sup> 'AU Summit Decision on International Jurisdiction, Justice and The International Criminal Court (ICC) Doc', African Union Assembly/AU/13(XXI), 26-27 May 2013; *AU Summit Decision on The International Criminal Court Doc*. EX.CL./731(XXI), 15-16 July 2012.

<sup>85</sup> Ken Obura, 'The Security Council and the International Criminal Court: When Can the Security Council Defer a Case', *Strathmore Law Journal*, p.118.

<sup>86</sup> 'AU Summit Decision on International Jurisdiction, Justice and The International Criminal Court (ICC) Doc', African Union Assembly/AU/13(XXI), 26-27 May 2013.

<sup>87</sup> *Ibid*; *AU Summit Decision on The International Criminal Court Doc*. EX.CL./1006(XXX), 30-31 January 2017.

the Security Council members have acted differently and used their privileges to protect their interests and allies,<sup>88</sup> a privilege African countries do not have.

Under Article 53, the Security Council retains the right to delegate the implementation of its resolutions to regional organisations. In the implementation of Resolution 1973, Africa was “marginalised” in favour of NATO and the Arab League. However, the initial call for the imposition of a no-fly zone came from the Arab League<sup>89</sup>, a regional organisation of Libya was a member of. This action by the Arab League qualifies under Chapter VIII. However, the main challenge came with the implementation of the resolution. Africa expressed ‘disappointment at attempts to marginalise the continent in the management of a conflict that is primarily its concern.’<sup>90</sup> Some argued that it was because the AU lacked capacity and strategy, was slow to act, and was divided on the course of action to be taken in Libya while a humanitarian crisis was undergoing.<sup>91</sup> The African Union, however, requested the Security Council to formalise its role on Resolution 1973 in terms of Chapter VIII,<sup>92</sup> a formality that was never done. The “marginalisation” of the African Union in favour of NATO could have been due to nothing other than what some scholars called ‘a political intervention introduced to bring about regime change’.<sup>93</sup> According to Grovogui, the AU’s ‘intervention in favour of peaceful resolution infuriated Western powers that they excluded it altogether from the subsequent processes of resolutions of conflicts.’<sup>94</sup> The marginalisation of the African Union could have been intentional as the resolution recognised ‘the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region...requested the Member States of the League of Arab States to cooperate with other Member States in the implementation of paragraph 4.’<sup>95</sup> There was no mention of the African Union except taking note of the communique of the Peace and Security Council of the African Union of 10 March 2011 which established an ad hoc High-Level Committee on Libya. The Council recognised the primacy of the Arab League over the AU. Despite Chapter VIII of the Charter providing for cooperation between the Council and the regional organisations, the Council led by mostly the former colonial powers, unilaterally decided to give primacy to the one regional body over the other and ‘as a matter of sovereign right that Libya was an Arab state and not African one, and that for the purpose of its own intervention, the AU had no authority over North Africa.’<sup>96</sup>

<sup>88</sup> Dapo Akande, ‘The Bolton Speech: The Legality of US Retaliatory Action Against Judges and Officials of the International Criminal Court’, *EJIL Talk*, 14 September 2018, available at <https://www.ejiltalk.org/the-bolton-speech-the-legality-of-us-retaliatory-action-against-judges-and-officials-of-the-international-criminal-court/>; *UNSC, 69th Session, 7353<sup>rd</sup> meeting*, 22 December 2014, UN Doc. S/PV.7353.

<sup>89</sup> *UNSC RES 1973*, 17 March 2011, UN Doc S/RES 1973.

<sup>90</sup> *UNSC Verbatim Records*, 15 June 2011, UN Doc S/PV/6555.

<sup>91</sup> Phillip Apuuli Kasaija, ‘The African Union (AU), the Libya Crisis and the notion of ‘African Solutions to African Problems’, *Journal of Contemporary African Studies*, volume 31, 2013, p.117.

<sup>92</sup> *African Union assembly Decision on Libya*, AU/Dec.385 (XVII), 30 June -1 July 2011.

<sup>93</sup> Christopher Zambakari, ‘The Misguided and Mismanged Intervention in Libya: Consequences for Peace’, *African Security Review*, volume 25, 2016, pp. 44-52.

<sup>94</sup> Siba N. Grovogui, ‘Looking Beyond Spring for the Season: An African Perspective on the World Order after the Arab Revolt’, *Globalizations*, volume 8, 2011, pp. 567-569.

<sup>95</sup> *UNSC Res 1973*, 11 March 2011, UN Doc S/RES/1973.

<sup>96</sup> Phillip Apuuli Kasaija, ‘The African Union (AU), the Libya Crisis and the notion of ‘African solutions to African problems’, *Journal of Contemporary African Studies*, volume 31, 2013, pp. 117-127.

## VI. Analysis and Conclusion

In order to improve the Security Council's working relationship with regional organisations, the focus must be on improving the Council's decision-making processes, enhancing its capacity to collect and manage information, and asserting its relevance to the critical contemporary peace and security matters. The shortcomings of the Council point towards the need to have other players with the capacity and means to play a crucial role in carrying out specific tasks. The High-level Panel on Threats, Challenges and Change had proposed '...the involvement in decision-making of those who contribute most to the United Nations financially, militarily and diplomatically...'<sup>97</sup> Reforming the Security Council will bring legitimacy, improve its functions, and address the imbalances between the great powers and the smaller powers in the Council and would also add a more representative mix of ideas, solutions, and resources to address security problems faced by the world. Africa, therefore, demands full representation and, in this case, means 'not less than two permanent seats with all the prerogatives and privileges of permanent membership including the right to veto,<sup>98</sup> and five non-permanent seats. These reforms will 'ensure that the Council, is consistent with the UN Charter values of universalism, collective responsibility, fairness and equity, is broadly representative and reflects the current state of world affairs.'<sup>99</sup>

When acting under Chapter VIII or Chapter VII on situations that have an impact on regional peace and security, the Security Council must work with regional organisations as espoused in its Resolution 2033, recalling...the importance of developing effective partnership between the United Nations and the regional organisations, in particular, African Union.'<sup>100</sup> The UN Secretary-General in 1992 advised that the cooperation with regional organisations in terms of Chapter VIII would lighten the burden on Council and create a more profound sense of participation in peace and security.<sup>101</sup> Accordingly, the authorisation of specific regional organisations to address a crisis within its region could validate the efforts of the said regional organisation.<sup>102</sup> Regional organisations have an added advantage; despite having vast interests in the affairs of their regions, they tend to have in-depth knowledge of political, economic, and social phenomena in conflicted societies. Further, when acting under Chapter VIII, it must work with regional organisations in good faith as stated in article 2 (2) that when performing their obligations under the Charter, all members, Security Council members included have a legal obligation both under the Charter and under general principles of international law to discharge their duties and functions in good faith.<sup>103</sup> Therefore, participation and cooperation with regional organisations must be done in good faith.

The "lack of inclusion" has resulted in the Security Council failing to adequately address peace and security issues in Africa, thereby weakening its legitimacy on the continent. To be effective,

<sup>97</sup> 'A More Secure World: Our Shared Responsibility: Report of the High-Level Panel on Threats, Challenges and Change', *United Nations General Assembly*, 2 December 2004, 87, UN Doc A/59/565.

<sup>98</sup> 'The Common African Position on the Proposed Reform of the United Nations: the Ezulwini Consensus', *African Union*, Ext/Ex.CL/2 (VII).

<sup>99</sup> Efsthathopoulos Charalampos, 'South Africa's Reform Diplomacy and the Legitimacy of the UN Security Council', *Politikon*, volume 43, 2016, pp. 429-437.

<sup>100</sup> *UNSC Res 2033*, 12 January 2012, UN Doc S/RES/2033.

<sup>101</sup> 'An Agenda for Peace', *United Nations Secretary-General*, 17 June 1992, UN Doc A/47/277.

<sup>102</sup> *Ibid.*

<sup>103</sup> Elias Davidsson, 'The Security Council's Obligations of Good Faith', *Florida Journal of International Law*, volume 15, 2003, p.541.

the decisions of the Security Council on international peace and security must mirror the regional realities. The African problems are both externally and internally caused, and therefore looking at them only from a single point will alienate the other important stakeholders in solving them. Apart from financial and technical manpower, it might be prejudicial only to say it is only the African solutions needed or the Security Council must always take the lead in solving conflicts in Africa. To effectively address peace and security challenges in Africa, the role of the AU under Chapter VIII must be enhanced. In discharging its duties, while acting under Chapter VII, the Security Council must be able to take note and pay much attention to views coming from the regional organisations that are closer and have a deep understanding of the situation on the ground. Greater constant communication channels between the Security Council and the regional organisation must be opened. Further, the AU should utilise presently available avenues under the UN Charter to push for greater participation in the maintenance of international peace and security. They can push for recognition through its three elected members of the Security Council (A3). They should also be in a position to represent the greater interests of the continent rather than their self-interest and be able to bring matters to the attention of the Council, especially those the P-5 seems not to be interested in. Further, to make up for the weakness, the AU must make sure that at every moment, Africa is at least represented by one of its powerful and influential countries such as South Africa, Nigeria, and Egypt, who can provide leadership and articulate the African position.