THE ROLE OF UNITED NATIONS SECURITY COUNCIL AND REGIONAL ARRANGEMENTS IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY: THE CASE OF THE ORGANIZATION OF AFRICAN UNITY (OAU)/AFRICAN UNION (AU)

BY

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DECLARATION

I, RENICE AKELLO MIDAR do hereby declare that this is my original work and that it has not been submitted either in part or in whole for award of a degree in any other university.

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G62/88303/2016

Signed:…………………………………. Date:………………………………….

This thesis has been submitted for examination with my approval as the university supervisor.

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PROFESSOR FDP SITUMA

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DEDICATION

This research paper is dedicated to Carsten Nyalo, Charice Arianna Mula and Curtis Lwanda my all-time inspiration. You will always remain my true measure of success.

LIST OF ABBREVIATIONS

AFISM   **- African-Led International Support Mission to Mali**

AMIB   **- African Union Mission in Burundi**

AMIS   **- African Union Mission in Sudan**

AMISOM   **- African Union Mission in Somalia**

APSA   **- African Peace and Security Architecture**

ASEAN   **- Arab and the Association of South East Asian Nations**

ASF   **- African Standby Force**

AU   **- African Union**

AU PSC   **– African Union Peace and Security Council**

AUHIP   **- African Union High Level Implementation Panel**

CPA   **- Comprehensive Peace Agreement**

DRC   **- Democratic Republic of Congo**

EAC   **- East African Community**

ECOMIB   **- Economic Community of West African States Mission in Guinea Bissau**

ECOMIL   **- Economic Community of West African States Military Mission in Liberia**

ECOMOG   **- Economic Community of West African States Monitoring Group**

ECOWAS   **- Economic Community of West African States**

EU   **- European Union**

IGAD   **- Intergovernmental Authority on Development**

MONUSCO   **- United Nations Organization Stabilization Mission in the Democratic Republic of Congo**

MVM - Monitoring and Verification Mechanism

NATO - North Atlantic Treaty Organization

OAS - Organization of American States

OAU - Organization of African Unity

SADC - South African Development Community

SPLM - Sudan People's Liberation Movement

TGoNU - Transitional Government of National Unity of Somalia

UK - United Kingdom of Great Britain and Northern Ireland

UN - United Nations

UNAMID - African Union-United Nations Mission in Darfur

UNAMIR - United Nations Assistance Mission for Rwanda

UNMIL - United Nations Mission in Liberia

UNMISS - United Nations Mission in South Sudan

UNOMIL - United Nations Observer Mission in Liberia

UNOMUR - United Nations Observer Mission in Uganda-Rwanda

UNSC - United Nations Security Council

UNSMIL - United Nations Support Mission in Libya

UNSOA - United Nations Support Office for AMISOM

USA - United States of America

USSR - Union of Soviet Socialist Republics

LIST OF CONVENTIONS AND TREATIES

Charter of the United Nations 24 October 1945; 1 UNTS XVI.

Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted on July 09, 2002.

The 1963 Charter of the Organization of African Unity; 479 UNTS 39.

The Constitutive Act of the African Union July (2000); 2158 UNTS 3.

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CHAPTER ONE

INTRODUCTION

1.1 Background

The main motivation for the creation of the United Nations Organisation was to save succeeding generations from the scourge of war,[1] and to prevent the occurrence of another war,[2] following the devastating effects of war from the World War I and II. The organ tasked with the primary responsibility for the maintenance of international peace and security under the Charter of the United Nations is the Security Council.[3] The Allied Powers which dominated both the war efforts against the Axis Powers[4] and the post war planning for an international organization visualized the Security Council as the paramount organ of the United Nations with the primary purpose of maintenance of international peace and security.[5]

With a continuation of cooperation that existed in war times amongst the Allies,[6] threats to international peace and security would be effectively met and solutions to disputes found. It was recognized that without cooperation among the most powerful states, solutions were virtually impossible as enforcement would depend on the commitment of the powerful states.[7] It was agreed that the position in the Security Council of the most powerful states should be commensurate with their responsibility for the maintenance of international peace and security.[8]

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[1] United Nations Charter (Adopted on 24th June 1945 and came into force on 24th 0ctober *1945);* 1 UNTS XVI ; <http:/unwebsite.com/charter> (accessed on 22nd June 2018).
[2] United Nations, "Peace and Security," available at http://www.un.org/en/sections/issues-depth/peace-and-security/index.html (accessed 26/5/2018); Rufai Muftau, 'The United Nations at 70: The Journey So Far*'* (2016) 7 (3) Journal of Education and Practice 154 at < https://files.eric.ed.gov/fulltext/EJ1089802.pdf> accessed on 22nd June 2018.
[3] Charter of the United Nations, 24 October 1945; 1 UNTS XVI, Article 24(1).
[4] Jost Dülffer, 'The Tripartite Pact of 27 September 1940: Fascist Alliance or Propaganda Trick?' (1986) 32 (2) Australian Journal of Politics and History, 228 < https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1467-8497.1986.tb00350.x?purchase_referrer=www.google.com&tracking_action=preview_click&r3_referer=wol&show_checkout=1> accessed on 22nd June 2018.
[5] Marume S.B.M., "International Public Administration," (2016) 4(7) Journal of Research in Humanities and Social Science, 1 <http://www.questjournals.org/jrhss/papers/vol4-issue7/A470120.pdf> accessed 25th May 2018.
[6] Norman Davies, *Europe at War 1939 – 1945: No Simple Victory*, (4th Ed (MacMillan, London, 2006), p 23.
[7] Alf Ross, *Constitution of the United Nations: Analysis of Structure and Function,* 2nd Ed, (Law Exchange Limited, USA, 2008), p. 11.
[8] Wolgang Weiß, 'Security Council Powers and the Exigencies of Justice after War' (2008) 12(1) Max Planck Yearbook of United Nations Law Online, 45-111 at < https://www.mpil.de/files/pdf3/mpunyb_02_weiss_12.pdf> accessed 25th May 2018.

The main goal, therefore, was to ensure that the powers that had won the war would continue to be in charge during the post-war reconstruction.[9]

Some of the countries that were in the talks for the establishment of the United Nations, namely, the United States of America, the Soviet Union, the United Kingdom, and the Republic of China,[10] invited France to join them as permanent members of the Security Council with the veto power.[11]

The overall mandate of the United Nations Security Council in the maintenance of peace and security among member states is defined in Article 24 of the Charter of the United Nations. It states:

> In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.[12]

Under Article 25, the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Charter. Thus, the primary responsibility for maintaining international peace and security was concentrated on the Security Council and unanimity by the permanent members was required on all votes on substantive matters.[13]

The United Nations Security Council has powers to, among others, determine the existence of any threat to the peace, breach of the peace, or act of aggression and, in this respect, to make recommendations or decide what measures should be taken for the maintenance and/or restoration of peace in a particular country or region.[14] But before making recommendations referred to above, it can call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable.[15]

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[9] Ibid, 51.
[10] Dan Pleasch, *America, Hitler and the UN: How the Allies Won World War II and Forged A Peace*, (3rd edn, I.B. Tauris, London, 2011), 82.
[11] Peter Malanczuk, *Akehurts's Modern Introduction to International Law*, (7thedn, Routledge, United Kingdom,London 1997), p. 27.
[12] Charter of the United Nations, 24 October 1945, Article 24.
[13] Ibid., Article 27(3).
[14] Ibid ., Article 39.
[15] Ibid ., Article 40.

The Security Council has powers to decide what measures, not involving the use of armed force, are to be employed to give effect to its decisions and may call upon the Members of the United Nations to apply such measures.[16]

These measures may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.[17]

Should the Security Council consider these measures to be inadequate or to have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.[18] Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.[19]

The Charter of the United Nations recognises the utility of autonomous international organizations of the various geographical regions of the world. Articles 52, 53, and 54 of the Charter of the United Nations envisage the existence of regional arrangements or agencies for dealing with matters relating to the maintenance of international peace and security as are appropriate for regional action.

Article 52(1) of the Charter specifies that membership of a state in the United Nations does not preclude the simultaneous "existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations."

Under Article 52(2), members of regional organizations are required to make every effort to achieve pacific settlement of local disputes before referring them to the Security Council of the

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[16] Charter of the United Nations, 24 October 1945, Article 41.
[17] Ibid.
[18]Thierry Tardy, 'The UN and the Use of Force: A Marriage against Nature' (2007) 38 (1) Security Dialogue Journal, 49 <https://www.jstor.org/stable/26299740?item_view=read_online&refreqid=excelsior%3Abaf6ff6f1806a038b2f07d6b4ff80469> accessed on 24th June 2018.
[19] Charter of the United Nations, 24 October 1945, Article 42.

United Nations. Accordingly, regional organizations take priority over the Security Council to act in cases of local disputes which are to be settled by peaceful means.

Existing regional organizations that handle some aspects of peace and security, apart from other regional functions, include the European Union (EU), the Organization of American States (OAS), and the Organization of African Unity (OAU), the predecessor to the African Union (AU), the Arab League, and the Association of South East Asian Nations (ASEAN).[20]

The African Union is, thus, classified within the United Nations system as a regional arrangement.[21] Indeed, Article 4 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union 2002 states that the Peace and Security Council shall be guided by the principles enshrined in the Constitutive Act and the Charter of the United Nations. In earlier instances, there was discontent with the international legal order governing the use of military force, particularly whether the African Union had powers to deploy military forces on their own without seeking authorization from the United Nations Security Council.[22] These tussles were later partly resolved when the African Union resolved to formally acknowledge the primacy of the United Nations Security Council on matters of international peace and security.[23]

The need for partnership and collaboration between the Security Council and regional agencies is necessitated by reasons such as geographic proximity, expediency and burden-sharing, as well as existing commitments in current operations.[24]

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[20] Alyson J. K. Bailes and Andrew Cottey, "Regional Security Cooperation in the Early 21st Century" in Stockholm International Peace Research Institute, *SIPRI Yearbook 2006: Armaments, Disarmament and International Security* (Oxford University Press, New York, 2006) available at <https://www.sipri.org/sites/default/files/YB06ch04.pdf> accessed on 15th May 2018. See also Alan K. Henrikson, 'The United Nations and Regional Organizations: "King-Links" of "Global Chain' (1996) 7(35)Duke Journal of Comparative International Law,143 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1374&context=djcil> accessed on 27th May 2018.

[21] Arthur Boutellis & Paul D. Williams, 'Peace Operations, the African Union, and the United Nations: Toward More Effective Partnerships in Peace Operations,'(2014) 113(451) African Affairs Journal, 254, 261< https://www.ipinst.org/wp-content/uploads/publications/ipi_rpt_peace_operations_revised.pdf> accessed on 27th May 2018.

[22] Ibid., pg. 8.

[23] Ibid., pg.8.

[24] Mauricio Artiñano, "Peace Operations Partnerships: The UN Security Council and (Sub-) Regional Organizations," Center for International Peace Operations <http://mobil.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/ZIF_Policy_Briefing_Mauricio_Artinano_Mar _2012_ENG.pdf> (accessed 13/5/2018); Wyss, M. and Tardy, T., *Peacekeeping in Africa*, 1st ed, (Routledge, United Kingdom, 2014) at 11; Mauricio Artiñano, *Peace Operations Partnerships: The UN Security Council and (Sub-)Regional Organizations* (Berlin Center for International Peace Operations Policy Brief, 2012), p. 3.

Indeed, framers of the United Nations Charter recognised that the Security Council would be suffocated by an avalanche of disputes and situations if some immediate agencies for handling them did not exist[25].

The history of collaboration between the Organization of African Unity and the United Nations dates back to 1965.[26] The Organization of African Unity signed a cooperation agreement with the United Nations on 15 November 1965, which was updated on 9 October 1990 by the then two Secretaries-General of the two organizations.[27] This collaboration arises from the primary responsibility of the United Nations Security Council to maintain international peace and security under Article 24 of the Charter of the United Nations and to work with regional agencies under Chapter VIII of the Charter of the United Nations.

There is a general understanding that regional agencies, such as the African Union, and the United Nations Security Council, cannot handle security challenges without working together.[28] The Organization of the African Unity (and now the African Union) lacked, and continues to lack, necessary material and financial muscle to maintain peace and security in Africa on its own.[29] Significantly, in the 1990s, the Organization of the African Unity defined its priority as conflict prevention, and the primary responsibility of peace keeping in Africa lay with the United Nations.[30]

After deliberations, the African Union created a Peace and Security Council in 2002. It was mandated to cooperate and work closely with the United Nations Security Council.[31] This milestone was a culmination of discussions and resolutions that adopted the Protocol Relating to the Establishment of the Peace and Security Council of the African Union on 9 July 2002.[32]

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[25] ibid
[26] Boutellis & Williams (n 18).
[27] S/RES/1197 (1998), Preamble to Resolution 1197 (1998) adopted by the Security Council at its 3928th meeting, on 18 September 1998 at < http://www.worldlii.org/int/other/UNSC/1998/52.pdf> accessed on 25th June 2019.
[28] Conrad Rein, 'Enhancing Peace and Security in Africa through Institutional Cooperation' (2015) 36 Contemporary Security Policy, 256.
[29] cf Boutellis & Williams, 263.
[30] Paul D. Williams, 'The Peace and Security Council of the African Union: Evaluating an Embryonic International Institution,' (2009) 47(4) The Journal of Modern African Studies, 604.
[31] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 2001 *(PSC Protocol, AU Doc 2002 <http:/www.african-union/root/AU/organs/psc/protocol>* (accessed on 31st May 2018).
[32] Ibid.

The Protocol established the Peace and Security Council as "a standing decision-making organ for the prevention, management and resolution of conflicts' that should be 'a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa."[33]

Between 2003 and 2014, the African Union had undertaken at least nine key peace operations in the Central African Republic, the Comoros, Mali, Somalia, Burundi and Sudan.[34] Despite these initiatives, peace and security challenges in Africa seem to have been too many for the African Union to handle alone.[35] The African Union depends on the United Nations for logistical and financial facilitation, especially when handling serious peace and security cases.[36]

The challenge that exists is how to draw a distinction between a matter of international peace and security and one that calls for intervention by regional arrangements only. For instance, following the 1994 genocide in Rwanda, the United Nations Security Council was criticized for reluctance and failure to intervene.[37] In the absence of intervention by the United Nations Security Council, the Organization of African Unity established the International Panel of Eminent Personalities to investigate the 1994 Genocide in Rwanda and the Surrounding Events (IPEP).[38]

The mandate of International Panel of Eminent Personalities was to examine the situation which led to the genocide and the failures of the Convention on the Prevention and Punishment of the Crime of Genocide [39] and to make recommendations for redress, and action to prevent it from happening again. [40] This was in response to the Rwandan genocide of 1994 and related events, including the war in the DRC from late 1990s.[41]

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[33] Ibid., Article 5(2).
[34] African Union Commission, *African Union Handbook 2018* (African Union Commission and New Zealand Ministry of Foreign Affairs and Trade, Addis Ababa, 2018), 77-82.
[35] Boutellis & Williams (n 18).
[36] Ibid.
[37] Dunbabin J.P.D, "The Security Council in the Wings: Exploring the Security Council's Non-Involvement in Wars," in Vaughan Lowe et al, (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (Oxford University Press, Oxford, 2008), 503.
[38] International Panel of Eminent Personalities (IPEP), 'Report on the 1994 Genocide in Rwanda and Surrounding Events (Selected Sections)'(2001)40(1) International Legal Materials, 141-236,http://www.jstor.org/stable/20694080 accessed on 29th June 2018
[39] Convention on the Prevention and Punishment of the Crime of Genocide, as adopted by the United Nations General Assembly on 9th December 1948.
[40]Ibid, (n38)
[41]Ibid.

Under the Charter of the United Nations, the Security Council, as the organ tasked with the primary responsibility for the maintenance of international peace and security, should ordinarily coordinate timely and efficient responses to such conflict. However, if one of the five permanent members was involved in the regional groups' actions, a veto to override any resolution or decision taken by the Security Council could result.

The type and nature of consultation and cooperation between the United Nations Security Council and the African Union in implementing peace and security strategies in Africa is yet to yield material fruits.[42] The African Union and the Security Council have often taken different approaches when responding to crises, putting into question the manner in which the two security organs co-ordinate their activities in conflict areas in Africa. For instance, the African Union Peace and Security Council and the United Nations Security Council were divided on the approach to the crises in Libya and Cote d' Ivoire in 2011.

Similarly, in 2013, United Nations Security Council passed Resolution 2100 of 2013[43] authorizing a United Nations force for Mali, known as the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), without consulting or involving the African Union. According to the African Union, this resolution was "not in consonance with the spirit of partnership that the African Union and the United Nations have been striving to promote for many years, on the basis of the provisions of Chapter VIII of the United Nations Charter."[44]

The Conflict Situation in South Sudan

In the context of the discussion at hand, the conflict in South Sudan is a critical parameter for examining the interaction of the mandates, and the extent of collaboration, between the United Nations Security Council and the regional security arrangements in Africa. Throughout the discussion, this paper critically analyses the complementary roles and processes of the two-tier security arrangement within the United Nations and the African Union and discusses how these have been employed to manage the recurring security uncertainty in South Sudan.

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[42] Ibid.
[43] S/RES/2100(2013).
[44] African Union, "AU Doc PSC/PR/COMM (CCCLXXI)," (2013), par 10.

The African Union, for instance, established a Mediation Support Unit for South Sudan in 2016.[45] Its role was to, inter alia, support the work of African Union mediators and improve the African Union's ability to respond to changing demands of conflict mediation, especially in the context of the South Sudan crisis.[46] However, it has been contended that the African Union's role in South Sudan crisis was initially delayed, unclear and uncoordinated and its effect or impact has not been felt so far.[47]

The African Union had also established a Commission of Inquiry on South Sudan in a move that was separate from the formal mediation process and its main mandate was to investigate the gross human rights violations, war crimes and crimes against humanity since 2013.[48] It released a report on the findings, but this having been an informal intervention, the actual positive impact of the report is yet to be established.[49] Although this paper offers detailed discussions of the regional and global efforts to contain the conflict in South Sudan, it is against the foregoing background that the study on the role of the Security Council and regional organizations in the maintenance of peace and security proceeds.

The arrangements contemplated under Chapter VIII of the United Nations Charter are such that there exist regional agencies that are expected to cooperate with the Security Council in the maintenance of peace and security among member states. In spite of African Union Peace and Security Council being in place, and the provisions of the United Nations Charter, the regional peace arrangement is still not as effective as envisaged, in so far as peace and security in Africa is concerned. Although there have been significant instances of consultations between the African Union and the United Nations Security Council, these consultations are yet to translate into a common understanding of the foundation of the cooperation between these two organs.[50]

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[45] African Union Commission, 'Report of the Meeting on the Operationalization of the African Union Mediation Support Unit (AU MSU)' held at the AU Headquarters in Addis Ababa from 6th – 8th September 2016 (Commission of the African Union, 2016) at < https://www.up.ac.za/media/shared/237/final_msu-meeting-report.zp102340.pdf> accessed June 14, 2019.
[46] Ibid.
[47] Boutellis & Williams (n 18), 255.
[48] Mia Swart, 'The African Union Commission of Inquiry on South Sudan,' (2016) 1 African Yearbook on International Humanitarian Law, 137, 138.
[49] Final Report of the African Union Commission of Inquiry on South Sudan, Addis Ababa 15 October 2014, at <http://www.peaceau.org/en/article/abc > accessed on June 14, 2019.
[50] Ibid., pg. 141.

Despite the numerous cases of international disputes and insecurity in Africa, there remain very few instances where the United Nations Security Council has substantially either collaborated with or used the African Union for maintenance of peace and security in Africa.[51]   What has been witnessed, in most instances, is the Security Council moving in to quell an insecurity situation on its own without consulting or involving the African Union, and the African Union, on the other hand, objecting or criticizing the Security Council for such moves.[52]

In other cases, such as Libya, the African Union has moved in to quell situations of disputes and insecurity and, even when its efforts seemed fruitless, they have hesitated to seek assistance or to collaborate with the United Nations Security Council.[53]

1.2 Statement of the Problem

Articles 53 and 54 of the Charter of the United Nations envisage regional agencies that are to collaborate with the United Nations Security Council in the maintenance of international peace and security. Some scholars have, however, argued that the African Union is not one of the regional agencies envisaged therein and this has affected any collaborative attempts between the two organisations in the maintenance of peace and security in Africa.[54]

A look at the Preamble to the Charter of the OAU shows that the key aim for its formation was to eradicate colonialism and neo-colonialism from the continent.[55] The Constitutive Act of the African Union provides the main objectives for its formation to include; achieving unity among African states and people, acceleration of political and economic integration of the continent, promotion of peace, security and stability in the continent, and promotion of cooperation in all

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[51] Ibid., pg.144.

[52] UN Security Council, *Security Council Resolution 2100 (2013)*, S/RES/2100 (2013), for instance, where the United Nations Security Council passed a resolution to authorize a United Nations Force for Mali without consulting or involving the AU.

[53] Chinedu Thomas Ekwealor,, 'The African Union Interventions in African Conflicts: Unity and Leadership Conundrum on Libya' (2016) 5 (1) Journal of African Union Studies, 63. At <https://www.researchgate.net/publication/304782040_The_African_Union_Interventions_in_African_Conflicts_Unity_and_Leadership_Conundrum_on_Libya> accessed 18/11/2018.

[54] Bjørn Møller, 'The African Union as Security Actor: African Solutions to African Problems?' (Working Paper no. 57 - Regional and Global Axes of Conflict – Crisis States Working Papers Series No.2, Danish Institute for International Studies, 2009) at < http://www.lse.ac.uk/international-development/Assets/Documents/PDFs/csrc-working-papers-phase-two/wp57.2-african-union-as-security-actor.pdf> accessed 20/10/2019.

[55] Preamble to the OAU Charter, Addis Ababa, Ethiopia, 25th May 1963.

spheres of human endeavours so as to raise the living standards of African people.[56] Indeed, the African Union shifted focus from supporting liberation movements in the erstwhile African territories under colonialism and apartheid, as envisaged by the OAU since 1963, to an organization spear-heading Africa's development and integration.[57] While this is laudable, scholars have argued that maintenance of peace and security in Africa has remained a peripheral objective of the AU with its main focus being economic integration.[58] This then begs the question on whether the OAU and now AU were the regional organisations envisaged in the aforementioned chapters of the Charter of the United Nations in as far as collaboration in maintenance of peace and security is concerned.

What, then, is the nature of the collaboration between the United Nations Security Council and the African Union in the maintenance of international peace and security in Africa? Relatedly, the cooperation between the United Nations Security Council and the African Union Peace and Security Council needs to be critically assessed in the face of concerning security lapses in Africa for example in Rwanda, South Sudan, Democratic Republic of Congo amongst others.

With reference to South Sudan, the conflict has coalesced into a volatile security situation despite the existing cooperation arrangements between the United Nations Security Council and the African Union Peace and Security Council. The practical inference from this is that there are identifiable underlying interests that shape the collaboration between the global and regional security agencies that may not necessarily be neutral or convergent.

1.3 Hypothesis

This study is premised on the hypothesis that the African Union Peace and Security Council is not the kind of regional agency for the maintenance of international peace and security as envisaged under the Charter of the United Nations.

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[56] Constitutive Act of the African Union, Lome, Togo, 11th July 2000, Article 4.
[57] The shifting approach from political liberalization to economic development and cooperation runs throughout the substantive text of the Constitutive Act of the African Union.
[58] Fredrik Söderbaum & Björn Hettne, "Regional Security in a Global Perspective" in Ulf Engel & João Gomes Porto, *Africa's New Peace and Security Architecture: Promoting Norms, Institutionalizing Solutions* (Ashgate Publishing, Ltd., London, 2010) pp. 33-50.

1.4 Research Questions

This paper addresses four research questions, that is:

i.   What is the nature of the collaboration between the African Union and the United Nations Security Council in light of the provisions of Articles 53 and 54 of the Charter of the United Nations?

ii. To what extent has the United Nations Security Council collaborated with the African Union in the maintenance of international peace and security in Africa?

iii. What co-operation challenges do the United Nations Security Council and the African Union face in the effective resolution of disputes and maintenance of peace and security in Africa?

iv. Is the African Union Peace and Security Council the kind of regional agency for the maintenance of international peace and security as envisaged under the Charter of the United Nations?

1.5 Theoretical Framework

There are four theories of international organizations, namely, realism, rationalism, radicalism and functionalism.[59] Realism maintains that international organizations are basically meeting places for states, where they go and exchange matters of mutual interest.[60] The conference may be formalized by a treaty, and then a permanent institution is created. The treaty is a contract voluntarily entered into by states over which the states are the masters.[61]The state is the dominant actor in the creation and functioning of the international organization.[62]

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[59] Nigel White, *The Law of International Organizations,* (2nd edn, Manchester University Press, Manchester, 1996), p. 73.
[60]Stephen D. Krasner, 'Realist views of International Law' (2002) 96 American Journal of International Law, 265.
[61] Emily O'Brien and Richard Gowan, 'What Makes International Agreements Work: Defining Factors for Success' (September 2012) Center On International Cooperation, New York University at < https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7839.pdf> accessed on 22nd August 2019.
[62] Ibid.

Rationalism tries to rationalize the creation and functions of international organizations. The theory uses the historical development of international organizations as being linear in progression.[63] There are many actors on the international plane. The state is not the dominant, but one of the many actors in the international arena. International organizations can and do govern or regulate state behaviour. States are answerable to the international organizations they create. The constituent treaty is a constitution that embodies the rule of law not politics. It is through the constitution that the organization regulates state behaviour.[64]

According to radicalism, international organizations are seen as being hierarchical and regulate weaker states either politically, legally or economically.[65] The theory emphasizes the political order of international organizations. It is the political order, rather than the legal order, that dominates international organizations.[66]

Functionalism theory holds that international organizations are established to perform specific functions. International organizations represent cooperation between actors, mainly states. The cooperation is mainly for purposes of carrying out matters of common interest.[67]

This study utilizes the functionalism theory of international organizations as advanced by David Mitrany.[68] Functionalism is the doctrine that societies or systems have "needs" and that we can explain institutions and practices in terms of the functions they perform for the survival of the whole.[69] International organizations represent cooperation among states, the primary actors.

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[63]Oona A. Hathaway, 'Rationalism and Revisionism in International Law' (2006) Faculty Scholarship Series Paper <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1856&context=fss_papers> accessed on 9/7/2018.

[64] Nigel (n58) 74.

[65]Fatouros, A., 'Radical Perceptions of International Law and Practice' (1972) 66 American Journal of International Law, 162-182 <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2890&context=facpub> accessed on 9/7/2018.

[66] Ernst-Ulrich Petersmann, 'Constitutionalism and International Organizations' (Winter 1997) 17 (1) Northwestern Journal of International Law & Business, 398 at < https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1450&context=njilb> accessed on 22nd October 2019.

[67] Ibid.

[68]Adrian-Claudiu P., 'David Mitrany and Functionalism: The Beginnings of Functionalism,' (2010)1(12) Revista Romana de Geografie Politica, 162-172, at <http://rrgp.uoradea.ro/art/2010-1/14_OK_Popovici.pdf> accessed on 26/6/2018.

[69]McLean I., McMillan, A. *Oxford Concise Dictionary of Politics*, (Oxford University Press, Oxford, 2009), 214.

The cooperation is mainly for carrying out matters of common interest. States, in exercise of their sovereignty, create and join international organizations which would meet their perceived interests.[70]

The theory views society as made up of component parts whose inter-relation contributes to the maintenance of the whole.[71] It focuses on the problem of order, specifying forces that bring cohesion, integration, and equilibrium to the society. According to the French sociologist, Auguste Comte, all institutions, beliefs, and morals of society are interrelated as a whole, and so the method of explaining the existence of any one item is to discover the law which governs the co-existence of all phenomena.[72] Thus, normative functionalists see that there is a central value system in every society, and emphasis should be given to political socialization that not only teaches appropriate normative expectations, but also regulates the potential conflict which is inherent in situations of scarce resources.[73]

David Mitrany advanced the functionalism theory and proposed a normative aim for international organizations.[74] He offered arguments for both global and regional integration. According to Mitrany, cooperation in international organizations can be achieved through other means without necessarily having a hegemon.[75] The aim, he argues, is to attain peace through an integrated world community that can make "war unnecessary, impractical, or impossible."[76] Here, attention and focus by international organizations is to provide welfare or technically specialized functions for individual groups.[77] This results in an enhanced welfare and a more integrated world community.

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[70] Jan Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations' (2014) 25 (3) European Journal of International Law, 645 at < http://www.ejil.org/pdfs/25/3/2514.pdf> accessed on 22nd October 2019.

[71] Claudiu, (n67)163.

[72] McLean (n68) 216.

[73] Ibid., pg. 217

[74] Claudiu, (n67)171.

[75] Claudiu, (n67) 162.

[76] Ibid.

[77] Gayl D. Ness and Steven R. Brechin, 'Bridging the Gap: International Organizations as Organizations,' (1987)42 (2)International Organisation, 245-273, at <https://deepblue.lib.umich.edu/bitstream /handle/2027.42/51108/340.pdf?sequence > accessed on 25/5/2018.

For a working peace system to be created, and for a durable cooperation in the international arena, an efficient administration of limited resources is key.[78] In Mitrany's conceptualization, regional organizations, especially those involving economic integration, are the best setting for functional cooperation that can make states "less prone to exercise sovereign power for violent conflict."[79] Mitrany does not emphasize the diminishing of sovereignty; rather, he advocates for the tying up of states in a tight web of functional relationship.[80]

This study focuses on role of the United Nations Security Council and the African Union in the maintenance of peace and security in Africa. The African Union and the United Nations Security Council were created to perform specific functions, and the functionalism theory best explains the nature of the cooperation and functioning of these organizations. Functionalism theory helps in understanding and conceptualizing the underlying factors that influence the international community when it comes to cooperation for peace keeping and maintenance of security.

Although this study relies on the functionalism theory to test its hypotheses, other theories are also discussed for a better understanding of the nature of operations of states in the international plane.

The theory of Realism looks into international conflicts.[81] There are three dimensions to the theory of realism. These are the classical realism, neo-realism and neo-classical realism. The classical school of thought is concerned with the human nature. They posit that human beings are greedy and selfish in nature; therefore, war is inevitable.

According to neo-realism, the international system has always been anarchical since there are no authoritative decision-making structures, no mechanism for resolving conflict about how the law

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[78]Klabbers (n70) 648.

[79] Kibet Hillary, 'A Comparison of the Organization of African Unity (OAU) and African Union (AU) Management of Conflicts in the Horn of Africa,' (MA Thesis, University of Nairobi 2009), 29.

[80] Ibid.

[81] Stephen Krasner, 'International Law and International Relations: Together Apart, Together,' (2000) 1 Chicago Journal of International Law, 93 < https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1009&context=cjil> accessed on 25th July 2018.

should be decided.[82] If there were rules at all, they would be set by powerful states, and these rules would change if the distribution of power changed.[83]

The neo-classical school of thought posits that since a sovereign authority with power to enforce binding contracts does not exist, states cannot co-operate or trust each other, and therefore, states only do what is in their best interests.[84] States will want to increase their power. The theory will always look at international relations as a constant battle for survival. In essence, the theory underscores the fact that states mainly focus on their own survival, making them gain power to protect their territories, and consequently, states can only co-operate if their interests will be protected.[85]

Positivism theory focuses on treaties and customs as sources of international law.[86] The theory posits that treaties and customs are the base of international law. The Charter of the United Nations, as a legal instrument, is a source of law and provides principles that aid in maintenance of peace. The Security Council and the Peace and Security Council are creations of international legal instruments and guide in maintenance of peace and security.

1.6 Literature Review

There is a wide range of literature exploring regional arrangements and their roles in the maintenance of peace and security. However, very few scholars have paid attention to the question of cooperation between the United Nations Security Council and regional agencies in maintenance of international peace and security among the affected member states. This study seeks to help address this gap.

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[82] Ibid; cf Kenneth Waltz, *Theory of International Politics* (Addison-Wesley Publishing Co. Inc., Boston, 1979) at < https://dl1.cuni.cz/pluginfile.php/486328/mod_resource/content/0/Kenneth%20N.%20Waltz%20Theory%20of%20International%20Politics%20Addison-Wesley%20series%20in%20political%20science%20%20%20%201979.pdf> accessed on 25th July 2019.
[83] Ibid, Waltz, 195.
[84] Anne-Marie Slaughter Burley, 'International Law and International Relations Theory: A Dual Agenda' (Apr. 1993) 87 (2) American Journal of International Law, 205-239, 207.
[85] Ibid.
[86]Ines Gillich,'the Normativity of Principles within the Positivist Theory of International Law,' (2015) 41 North Carolina Journal of International Law, 2.

Paul D. Williams evaluates the activities of the African Union Peace and Security Council, during its first five years.[87] He examines the Council's political relevance, its efficiency and productivity, and whether it is the institution best placed to deal with Africa's security problems. He attempts to answer the question whether or not the African Union Peace and Security Council is the best placed institution to deal with Africa's security challenges.[88] He finds that, contrary to its mandate to prevent conflicts, the African Union has paid little attention either to the prevention of conflict or to structural issues that encourage 'bad governance' within member states.[89] The Peace and Security Council has largely acted as a 'fire-extinguisher,' only rushing to cool down matters when it is too late.[90]

Further, Williams and Arthur analyze the challenges facing United Nations–African Union cooperation on peace and security issues and examine their partnerships in various peace operations.[91] They argue that the structuring and design of the debates on peace operations in contemporary Africa have been influenced by both the great or super power politics as well as the specific operational and financial challenges generated by the African Union's big missions in Darfur, Somalia and Mali.[92]

Williams and Arthur, in assessing the challenges and opportunities in the United Nations–African Union relationship, focus on attempts by the United Nations and the African Union to engage in partnership peacekeeping and analyze the principal challenges to this endeavour as well as sources of conflict and cooperation between the two institutions.[93] Their contribution is useful to this study as it answers the question whether the African Union is one of the regional peace and security arrangements envisaged under the Charter of the United Nations.

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[87] Paul D. Williams, 'The Peace and Security Council of the African Union: Evaluating an Embryonic International Institution,' (2009) 47(4) Journal of Modern African Studies, 603-626.
[88] Ibid.
[89] Ibid., pg. 606.
[90] Ibid., pg. 607.
[91] Boutellis & Williams (n 18), 266.
[92] Ibid., pg. 266
[93] Ibid., pg. 266.

Mauricio Artiñano[94] sets out recommendations for the United Nations Security Council and regional agencies of partnerships that, if considered, can improve cooperation at the strategic and political levels on the planning, management and oversight of peace operations. He observes that the African Union Peace and Security Council is the only regional political body that meets regularly with members of the United Nations Security Council.[95] However, he maintains that joint meetings between the United Nations Security Council and regional agencies are not an effective or feasible method of achieving the desired cooperation in security and peace keeping.[96]

He observes that this is due to logistical challenges and the reluctance of some permanent members of the Security Council who may have no interest in meeting directly with the United Nations Security Council for a detailed discussion on the unanimous voting, and also the involvement of the United Nations Security Council in matters of international peace and security where all of them have an interest.[97]

According to Artiñano, "efforts to improve strategic cooperation should emphasize ways in which the Council can have more regular and substantive interactions with executive representatives of those organizations, such as the Chairperson, President or Commissioners of the African Union, the NATO Secretary-General or the European Union High Representative, or with those organizations' representatives in New York."[98] Annual meetings between the African Union and United Nations Security Council do not suffice.

Artiñano recommends more informal interactive dialogues, as opposed to formal Council meetings and their characteristic restrictive informal consultations.[99] He believes these informal interactive dialogues would help secure more serious substantive engagement with regional and sub-regional organizations prior to finalization of the respective decisions.

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[94]Mauricio Artiñano, *Peace Operations Partnerships: The UN Security Council and* (*Sub-Regional Organizations* (Center for International Peace Operations Policy Brief, 2012) at <https://mobil.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/ZIF_Policy_Briefing_Mauricio_Artinano_Mar_2012_ENG.pdf> accessed on 14/8/2019.
[95] Ibid, 2.
[96] Ibid.
[97]Richard Butler, 'Reform of the United Nations Security Council*, (2012)* 1 Pennsylvania State Journal of Law & International Affairs, 23-39; Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton University Press, Princeton, 2008),26.
[98] Mauricio Artiñano (n93), pg. 2.
[99] Ibid, 3.

He further recommends that the United Nations Security Council should demonstrate respect for the regional bodies or actors by ensuring that the decisions it makes on joint peace operations are not implemented until regional bodies also meet and make relevant decisions.[100] The United Nations Security Council should engage regional organizations on relevant peace operations before making major decisions on those operations.[101] This will mutually benefit the institutions as they can reach more informed conclusions.

Regional agencies are obligated, under Article 54 of the Charter of the United Nations, to submit regular reports to the Security Council on various activities undertaken in relation to maintenance of international peace and security.[102] According to Artiñano's research and experience, most regional organs only submit skeleton factual reports.[103]

He recommends that regional agencies should consider transmitting relevant decisions of their political bodies to the Secretary General of the United Nations, besides the regular written reports.[104] This will help inform Council members of the decisions and perspectives of the regional organizations on various peace and security related issues.

Artiñano's elaborate work on the cooperation between the United Nations and regional peace and security organs greatly informed this research. His findings on the issues bedeviling the cooperation between the United Nations and regional peace organs resonate with this study's theme and helps to respond to the hypothesis of the study. The gap left by this work is that it does not specifically address the cooperation between the African Union and the United Nations on peace and security. Rather, it focuses on the United Nations Security Council and all the regional agencies envisaged under the Charter of the United Nations.

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[100] Ibid.
[101] Ibid.
[102] Article 54 of the Charter of the United Nations states that, "The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security."
[103] Mauricio Artiñano (n93), pg. 4.
[104] Ibid.

Arthur Boutellis and Paul D. Williams analyze the recent history of relations between the United Nations Security Council and the African Union Peace and Security Council with respect to peace operations.[105]

According to the analysis, in at least some instances, mutual dependence between African Union and United Nations is encouraging the two organizations to put aside some of their major differences for practical reasons.[106]

There are some factors that suggest there is still a significant scope for enhancing collaboration between African Union Peace and Security Council and the United Nations Security Council. These include the emerging or growing convergence in how the United Nations and African Union have designed peace operations in Somalia, since 2011, and Mali since 2012.[107]

Alhassan Abu delves into the security challenges facing African States and the measures taken by the States through the Common African Defense and Security Policy adopted by African Union Heads of State in 2004. [108] It is through the Common African Defense and Security Policy that the concept of the African Peace and Security Architecture was formulated.[109] African Peace and Security Architecture has faced many challenges, the main ones being logistics and financing, as it depends mainly on contributions by development partners.[110] This work gives an insight on what African Peace and Security Architecture has attempted and what it can potentially contribute if challenges are addressed.

Heidi Hardt argues against any form of cooperation between international organizations in respect of the maintenance of international peace and security.[111] She refers to the inter-organizational cooperation in the maintenance of international peace and security as 'hybrid peace operations' which are prompted by the demanding financial resources, inadequacy of troops and competition

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[105]Boutellis & Williams (n 18).

[106] Ibid, 3.

[107] Ibid, 8.

[108]Colonel Alhassan Abu, "The African Peace and Security Architecture: Myth or Reality," Speech at U.S. Army War College, March 2013 < https://apps.dtic.mil/dtic/tr/fulltext/u2/a588906.pdf> accessed on 2nd June 2018.

[109] Ibid.

[110] Boutellis & Williams (n 18) 7.

[111] Heidi Hardt, "African Solutions to European Problems: Conditioning Cooperation among International Organisations on Peace Operations in Europe and Africa," in David J. Galbreath and Carmen Gebhard *(eds) Cooperation or Conflict? Problematizing Organisational Overlap in Europe* (Routledge, New York, 2010),139.

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amongst the institutions of the respective international organizations in taking up the new security landscape.[112]

She further asserts that inter-organizational cooperation is an elusive concept with harmful consequences, whereby international organizations assume expanded overlapping mandates in peace operations without proof of effectiveness of such overlapping mandates.[113]

She justifies her assertion by positing that the increasing overlap in the duties of international organizations in respect of the maintenance of international peace and security provides an extra burden of considering how these organizations should operate coordinately whilst in the field.[114] She then concludes that collective action through cooperation between international organizations reduces the possibility of ensuring sustainable international peace and security, since these international organizations lack their clearly pre-existing independent institutional coordination essential for operating together effectively, making the 'hybrid operations' not to live up to their anticipated effectiveness.[115]

Charles Majinge affirms that the adoption of the Constitutive Act of the African Union[116] presented an irresistible need for the African States to undertake serious measures in addressing peace and security challenges prevalent in the African continent.[117] He notes that the African Union Peace and Security Council is a significant organ whose role is to look into any threat to peace and security as well as to act as the principal body with the responsibility of maintaining international peace and security in Africa.[118]

However, he asserts that the creation of the African Union Peace and Security Council brings to the fore questions in respect of the maintenance of international peace and security.[119]

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[112]Ibid.
[113] For instance, UN Security Council, *Security Council Resolution 1769 (2007) [on establishment of AU/UN Hybrid Operation in Darfur (UNAMID)]*, 31 July 2007, S/RES/1769 (2007), where UNAMID took over operations from the African Union Mission in the Sudan in pursuit of the maintenance of peace and security in Darfur.
[114] Hardt (n110) 142.
[115] Hardt (n110) 148.
[116] The Constitutive Act of the African Union; 2158 UNTS 3.
[117] Charles Riziki Majinge, 'Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council,' (2010) 48 Canadian Year Book of International Law, 97.
[118] Ibid., pg. 98.
[119] Ibid.

He questions how the United Nations Security Council ensures that the regional arrangements that are contemplated under Article 53 of the Charter of the United Nations are adequately emancipated to effectively discharge their functions.[120] He finds that, although the African Union Peace and Security Council has the primary authority to ensure maintenance of international peace and security in Africa, it lacks full capacity to discharge its functions due to the monetary and logistical shortages. He therefore opines that the United Nations Security Council has a primary duty to maintain international peace and security by improving funding to the African Union Peace and Security Council missions in Africa.[121]

In appraising the African Union Peace and Security Council, Majinge asserts that the Council has managed to have a positive impact on defusing conflicts, thereby maintaining international peace and security in Africa despite the prevalent challenges.[122]

This achievement has been made possible partly by the willingness of sub-regional actors, such as the ECOWAS, the SADC, and the IGAD to intervene in tackling security challenges in the auspices of the African Union Peace and Security Council and under its overall authority.[123]

On the ways of enhancing the capacity of the African Union Peace and Security Council in order to respond to the threats to international peace and security in Africa, he posits that international partners are not reliable for assistance in mobilizing resources for carrying out peace and security initiatives in Africa.[124] He further contends that, in respect of the United Nations Security Council, its assistance is not predictable since it depends on the interests of the permanent members thereof to give such assistance.[125]

The above literature provides general information concerning the role of African Union in peace and security maintenance, on the one hand, and that of the United Nations Security Council, on the other. However, the literature is mainly focused on the separate roles of the two organs, but little attention is given to the collaborative role between them, especially with the African Union

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[120] Ibid., pg. 100
[121] Ibid.
[122] Ibid, 99.
[123] Ibid., pg. 139.
[124] Ibid.
[125] Ibid., pg.141.

functioning as a regional organ as envisaged by the Charter. This study attempts to address this gap.

Most of the literature available also focuses on select countries and specific cases to make assumptions and conclusions on the role and the overall effectiveness of the United Nations and that of the African Union in security and peace keeping. This study discusses more cases on the role played by the United Nations and the African Union as a regional agency, and how it has collaborated with the United Nations in the maintenance of peace and security in Africa.

1.7 Research Methodology

This research involved the use of desk review/library studies (documentary review). The desk work entailed review of the relevant secondary sources, such as journals, periodicals, books and other available literature on the relationship between the United Nations Security Council and the African Union Peace and Security Council in the maintenance of international peace and security in Africa.
It also entailed a review of primary materials, such as treaties, conventions, statutes, protocols and cases. These materials are sourced from the library at the School of Law of the University of Nairobi and from the internet.

This research also benefited from an examination of resolutions by the United Nations Security Council and the African Union Peace and Security Council with respect to previous and active conflict scenarios, such as South Sudan.

1.8 Chapter Breakdown
The study compromises five chapters outlined as follows:

Chapter One: Introduction

This chapter conceptualizes and introduces the study as follows:

1.1 Background
1.2 Statement of the Problem
1.3 Hypothesis

1.4 Research Questions

1.5 Theoretical Framework

1.6 Literature Review

1.7 Research Methodology

Chapter Two: The United Nations Security Council and the Maintenance of International Peace and Security

This Chapter discusses the overall mandate of the United Nations Security Council in the maintenance of international peace and security. It covers the following areas:

2.1 Introduction

2.2 The Structure of the United Nations Security Council

2.3 The Role of the United Nations Security Council in the Maintenance of International Peace and Security

2.4 Pacific Settlement of Disputes

2.5 Peace Enforcement

2.6 Peace Keeping Operations

2.7 Regional Arrangements

2.8 The United Nations Security Council and the African Peace and Security Council

2.9 The Effectiveness of United Nations Security Council Operations in Addressing Matters of International Peace and Security

2.10 Conclusion

Chapter 3: The Organization of African Unity (OAU) / the African Union (AU) and the Maintenance of Peace and Security in Africa

The Chapter discusses regional arrangements as envisaged in Chapter VIII of the Charter of the United Nations with a focus on the Organization of African Unity/ African Union. The issues discussed are:-

3.1 Introduction

3.2 The Maintenance of Peace and Security in Africa

3.2.1 African Union: Peace and Security Maintenance Structure

3.2.2 African Union and Sub-Regional Organizations Peace Interventions

3.2.3 African Union: Partner or Sub-Contractor

3.2.4 Challenges Facing the African Union in Promoting Peace and Security

3.3 Conclusion

Chapter 4: The United Nations Security Council versus the African Union Peace and Security Council

This Chapter discusses:

4.1 Introduction

4.2 Establishment of the United Nations Security Council

4.3 The Position of Regional Security Arrangements within the UN System

4.4 United Nations Security Council Resolution 2320 of 2016

4.5 Nature of the collaboration between the United Nations Security Council and the AU in the Maintenance of Peace and Security in Africa

4.6 The Powers and Functions of the African Union Peace and Security Council and its Cooperation with the United Nations Security Council

4.7 The Conflict in South Sudan

4.8 Responses to the South Sudan Crisis by the African Union

4.9 United Nations Security Council's Involvement in the South Sudan Conflict

4.10 Challenges faced by the Peace and Security Council in Discharging its Mandate

4.10.1 External Influence in African Affairs

4.10.2 Difficulty in Cooperation with Global and Sub-Regional Actors

4.11 Overlapping and Conflicting Mandates with the United Nations Security Council

4.12 Conclusion

Chapter 5: Conclusion and Recommendations

This chapter summarizes the findings of the study as regards the hypothesis, draws conclusions based on the findings and makes recommendations on the workings of the United Nations Security Council and regional arrangements specifically the African Union in the maintenance of international peace and security in Africa.

5.1 Introduction

5.2 Conclusion

5.3 Recommendations

CHAPTER TWO

THE UNITED NATIONS SECURITY COUNCIL AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

2.1 Introduction

The main purpose for the creation of United Nations was to preserve world peace.[1] The San Francisco Conference on International Organization led to the adoption of the Charter of the United Nations that became monumental in establishing the framework for maintenance of world peace and security.[2] Right from the preamble, the Charter of the United Nations identified four key goals.[3] These goals were to collectively maintain international peace and security, develop friendly international relations, promote international co-operation in solving international problems, and to create a center for harmonizing actions of nations. The Charter of the United Nations sought to make war unnecessary and illegal and vouched for pacific means of dispute settlement.[4] The ultimate goal was to save future generations from the scourge of war.[5]

The first and second world wars made it vital for states to join and collectively work towards a peaceful universe.[6] Disputes were seen as the major cause of war and, hence, the solution was to encourage pacific dispute settlement mechanisms.[7] Pacific settlement of disputes became the main founding principle of the United Nations. The Charter of the United Nations, under Article 2(3), obligates states to settle their disputes through pacific means.

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[1] Agola A. O., 'U.N Peace Keeping Policy: Some Basic Sources of its Implementation Problems and Their Implications,' (1976) 6 California West International Law Journal 323.

[2] Trudy F., *Maintaining World Peace and Security? The United Nations in a Changing World* (Macmillan International Higher Education, 2014), pg 11.

[3] Charter of the United Nations; 1 UNTS XVI; Article 1.

[4] Frank T., Patel, F., 'UN Police Action in Lieu of War: The Old Order Changeth' (1991) 85 American Journal of International Law 63.

[5] Charter of the United Nations; 1 UNTS XVI; Preamble.

[6] P Shanty, 'Global Issues and Peace Movements' (2017) 2(1) International Journal of Academic Research and Development,37.

[7] William H., 'Towards Peaceful Settlement of International Disputes' (1969) Australian Journal of International Law, 104.

Article 2(4) of the Charter provides that all member states 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 purpose of the United Nations. The principle of *jus ad bellum* and deference to Article 2(4) requires member states not to use force against another state.[8]

Article 33 of the Charter requires states to use pacific methods of dispute resolution, such as mediation, negotiation, judicial settlement, and use of regional agencies or any other peaceful means. These mechanisms promote peace making. Peace making has been described as an action to bring hostile parties to agreement, essentially through such peaceful means as those envisaged in Chapter VI of the Charter.[9] In pacific settlement of disputes, save for judicial means of dispute settlement, the parties do govern the procedure.[10]

International law highly prioritizes pacific settlement of disputes.[11] The Security Council has been given a wide mandate and powers to enable it meet the objective of ensuring pacific settlement of disputes. The Charter gives the Security Council the main mandate of maintenance of international peace and security, determining threats to peace, permitting use of force and deployment of United Nations peacekeeping missions. The Security Council's performance has, however, not been completely successful as it has faced a number of challenges, especially on deadlock due to the veto power.[12]

In a bid to evaluate the performance of the United Nations Security Council in the maintenance of international peace and security, this Chapter involves a discussion of the structure of the United Nations Security Council, the role of the United Nations Security Council in the maintenance of international peace and security, the effectiveness of United Nations Security Council operations

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[8] Darshana Sumanadasa, 'Maintenance of World Peace and Security in the 21st Century –The Challenges before the Security Council of the United Nations Organization,' (2007) 19(2) Sri Lanka Journal of International Law, 32.
[9] Stopford, M., 'Peace-Keeping OR Peace Enforcement: Stark Choices for Grey Areas,' (1996) 73 University of Detroit Mercy Law Review, 505.
[10] Bosco, G., 'New Trends on Peaceful Settlement of Disputes,' (1991)16 North Carolina Journal of International Law and Commercial Regulation, 240.
[11] Alheritiere, D., 'Settlement of Public International Disputes on Shared Resources: Elements of Comparative Study of International Instruments,' (1995) 25Natural Resources Journal, 701.
[12] See Leo Gross, 'Voting in the Security Council: Abstention from Voting and Absence from Meetings' (Feb. 1951) 60 (2) The Yale Law Journal, 209-257.

in addressing matters of international peace and security, and the interface between the United Nations Security Council and the African Union Peace and Security Council.

2.2 The Structure of the United Nations Security Council

The United Nations is an international organization committed to maintaining peace and prevention of war. The Security Council is one of the six principal organs of the United Nations with the mandate of maintenance of international peace and security. The other organs are the General Assembly, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat established under Article 7(1) of the Charter of the United Nations. These organs carry out varied roles in meeting the obligations of the Charter.[13]

In the history of the United Nations, the Security Council has always been the most important organ. The structure of the Security Council is set out under Chapter Five of the Charter of the United Nations as amended in 1965.[14] The Security Council consists of five permanent members and ten (originally six) elected non-permanent members which serve non-renewable two-year periods, with five members being replaced each year.[15] The United Nations General Assembly, in 1963, with the approval of the United Nations Security Council, decided that the non-permanent members should be geographically distributed to different regions (Africa has 5 seats, 1 seat is reserved for the Eastern European states, 2 seats for Latin America and the Caribbean and 2 for Western European and the other states).[16]

The Charter of the United Nations stipulates a two-pronged criterion for the selection of the members (non-permanent) to the Security Council. These are member states' contribution towards maintenance of international peace and security and geographical distribution.[17]

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[13]Pause, J., 'U.N. Peace and Security Powers and Related Presidential Powers,' (1996) 26 Georgia Journal of International and Comparative Law, 16.

[14] Charter of the United Nations; 1 UNTS XVI.

[15] Ibid., Article 23(2).

[16]United Nations General Assembly Resolution 1991 (XVIII) on the Question of Equitable Representation on the Security Council and the Economic and Social Council A/RES/1991(XVIII) https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1991(XVIII) cf Deplano. R., 'The Use of International Law by the United Nations Security Council: An Empirical for Analysis,' (2015)29 Emory International Law Review, 2086.

[17] Blum, Y. Z., 'Proposals for UN Security Council Reform,' (2005) 99(3) American Journal of International Law, 632, 636.

The five permanent members are the United States of America, the United Kingdom, Russia, France and China. These five permanent members, who also hold the veto power, were the main actors in World War II. The main goal was to ensure that the powers that had won the war would continue to be in charge during the post-war reconstruction.

Since its inception in 1946, the Security Council has had only minimal changes in its basic structure and composition, despite the fact that the geo-politics and other international dynamics have changed considerably.[18] This happened in 1965 following the amendment of Articles 23 and 27 of the Charter. The amendment increased the membership of elected members of the Security Council from six to ten.[19]

There have also been two non-structural changes when the representation of two permanent members of the United Nations Security Council changed, that is, the admission of China in 1971 and the succession of the Soviet Union by the Russia in 1991.

After the formation of the United Nations and its organs, including the Security Council, there have been a number of conflicts that have threatened world peace. These include genocides, chronic wars between Arab states and Israel, Middle East conflicts, rise in anti-Semitism, and civil wars in Africa.[20] The Security Council has not been able to sufficiently address these challenges.[21] Its function has met various obstacles, especially due to its composition.[22]

The Security Council has been criticized for among other things, its small size which is not representative; its relationship with the General Assembly; its non-responsiveness during security crises, for example, the situation in Burundi, Rwanda in 1994, and, currently, the crisis in Syria, as well as its undemocratic structure.[23]

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[18]Anna Spain, 'The U.N. Security Council's Duty to Decide' (2013) 4 Harv. Nat'l Security J., 320 at <https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1111&context=articles> accessed on 22/9/2019.

[19] Egon Schwelb, 'Amendments to Articles 23, 27 and 61 of the Charter of the United Nations' (Oct., 1965) 59(4) The American Journal of International Law, 834-856.

[20]Khallaf, Hanouf, 'Veto Syria: Explaining the Power of the United Nations Security Council and the Syrian Refugee Crisis' (2016) Master's Projects and Capstones, 354 < https://pdfs.semanticscholar.org/681b/b8146b6c7f986b6b75fb8230a5910d98a4a5.pdf > accessed on 29th June 2018.

[21] Ibid.

[22] Lin. W.C., 'Reform of the UN Security Council: Challenges and Prospects,' (2009) 37 Taiwan Journal of Political Science, 6.

[23] Okhovat, S., "*The United Nations Security Council: Its Veto Power and Its Reform;*" *CPACS Working paper No. 15/1*(Centre for Peace and Conflict Studies, The University of Sydney 2012), pg. 3.

The General Assembly, in its secondary role of peace keeping, has tried to resolve the challenge of the veto power.[24] The General Assembly Resolution 377A (V), passed on 3rd November 1950,[25] provides that where there is lack of unanimity among the permanent members leading to failure of the Security Council to exercise its primary function in a case that is a threat to world peace, the General Assembly shall consider the matter with a view of making the appropriate recommendations it deems necessary in order to restore international peace and security.[26] The resolution is only applicable where the Security Council's resolution has failed due to veto power and it is highly likely that there would be an act of aggression or threat to peace. However, the resolution is not binding on states. Therefore, it is likely to be ineffective.[27]

There have been calls for reforms of the Security Council, but the reform process has stalled, and the status quo has thus remained.[28] This is attributed to the fact that states still actively oppose each other for self-interest. The states also pay too much attention to the procedural details for the reform and are distracted from focusing on practical steps towards it.[29] As a result, there has been a major power struggle. Member states of the United Nations would like to change the rules appertaining to their different situations, but there is no one agreeable modality on how this should be done in light of the stringent provisions of Article 108 of the Charter of the United Nations.[30]

Reforming the Security Council requires an amendment of the Charter of the United Nations. Article 108 of the Charter provides that amendments to the Charter shall come into force for all members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council.

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[24]Larry Johnson, 'Uniting for Peace: Does it Serve Any Useful Purpose,' (2014) 108 American Journal of International Law, 107.
[25]United Nations General Assembly, 3rd November 1950. A/RES/377 available at <http//.www.un.org/resoltions.com> accessed on 5th November 2018.
[26] Ibid.
[27]Ochab, E., "The UN General Assembly Assisting the UN Security Council:" LSE Human Rights < http://blogs.lse.ac.uk/humanrights/2017/06/14/un-general-assembly-assisting-the-un-security-council/> (accessed on 3rd September 2018).
[28] Richard Butler, 'Reform of the United Nations Security Council' (2012) 1 Penn St. JL & Int'l Aff., ii.
[29] Ibid.
[30] Ochab (n27).

Reforming the Security Council, therefore, remains a mirage as an amendment of the Charter requires the ratification by all the permanent members of the Security Council. With the prevailing power struggles between the five permanent members of the Security Council, who also hold the veto power in their attempt to prove their superiority, it is a near impossibility to imagine that they can at any point read from the same script, share the same ideology and have them unanimously vote to support an amendment that seeks to water down their veto. The Security Council has, thus, proven to be a stumbling block towards any meaningful amendment to the Charter of the United Nations that does not seek to entrench their grip to power in the global geopolitics.[31]

2.3 The Role of the United Nations Security Council in the Maintenance of International Peace and Security

The Security Council is primarily responsible for the maintenance of international peace and security. According to the Charter of the United Nations, it is required to investigate any situation threatening international peace and recommend procedures for peaceful resolution of a dispute. It may also call upon member states to completely or partially interrupt economic relations as well as sea, air, postal, and radio communications, or to sever diplomatic relations; enforce decisions militarily, or by any means necessary to avoid conflict and maintain focus on cooperation."[32]

The Security Council also has the power to make recommendations and can also adopt decisions that are binding on the members of the United Nations.

 Under Article 51 of the Charter of the United Nations, states are authorized to act in self-defense, until the Security Council has taken the necessary steps to maintain international peace and security. The Charter of the United Nations also provides that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council"[33]

The Security Council, under Article 39 of the Charter of the United Nations, is accorded the power of determining the existence of any threat to peace, breach of the peace, or a case of aggression against any member state, or what recommendations should be made in accordance with Articles

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[31]J. Mohan Malik, 'Security Council Reform: China Signals Its Veto' (Spring, 2005), 22(1) World Policy Journal,19-29.
[32] Charter of the United Nations; 1 UNTS XVI, Chapter VII, Articles 39-51.
[33] Charter of the United Nations; 1 UNTS XVI, Article 53(1).

41 and 42 of the UN Charter to maintain or restore international peace and security.[34] The United Nations Security Council is the law enforcement organ with the mandate for maintenance of international peace and security.[35] It has risen to become the most powerful international organ.[36] It basically ensures peaceful settlement of disputes, establishes peacekeeping operations, makes declarations, enforces sanctions and authorizes use of force.[37]

The role of the United Nations Security Council in peacekeeping is quite extensive, but limited.[38] Article 24(2) of the Charter of the United Nations limits the powers of the Security Council by providing that is shall carry out its duties as per the principles and purposes of the United Nations. These principles are provided in Article 1 of the Charter of the United Nations and include justice, human rights and self-determination.

Articles 24 to 32 of the Charter of the United Nations provide for the functions and powers of the United Nations Security Council. The Security Council is at the center of the United Nations collective security system with a role to police and enforce it.[39] Its duties are provided for in Chapters VI, VII, VIII and XII of the Charter of the United Nations.

The decisions of the Security Council in maintenance of international peace and security are binding on the member states. Article 25 of the Charter of the United Nations provides that the members of the United Nations are bound to agree and carry out the decisions of the Security Council in accordance with the Charter.[40] A party to a dispute is required to abstain from voting. Member states who have an interest in a matter before the Council, but are not members of the Security Council, can attend, but cannot vote.[41]

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[34]Rodriguez, R.M., 'A new wave for the Reform of the Security Council of the United Nations: Great Expectations but Little Results' (Master of Contemporary Diplomacy, University of Malta 2010), pg, 8.
[35]Karel Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future' (2003)8 Journal of Conflict and Security Law 16.
[36]Hurd, I., *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton University Press, Princeton, 2007), p. 12.
[37] Ibid.
[38] Jordan Paust, 'Peace- Making and Security Council Powers: Bosnia-Herzegovina Raises International and Constitutional Questions' (1994) Southern Illinois University Law Journal,132.
[39]Sabine Hassler, *Reforming the UN Security Council Membership: The Illusion of Representativeness* (Routledge, London, 2013), pg. 8.
[40] Charter of the United Nations; 1 UNTS XV.
[41] Charter of the United Nations; 1 UNTS XV, Article 30.

The role of the Security Council involves pacific settlement of disputes, peace enforcement and cooperation with regional arrangements for the maintenance of international peace and security. These are provided for in Chapters VI, VII, and VIII of the Charter of the United Nations. Pacific settlement of disputes focuses on prevention of conflict through pacific dispute settlement mechanisms.

Peace enforcement is based on determination of which actions amount to threats to peace although the Charter of the United Nations does not explicitly state which actions amount to breach of peace. It leaves it to the determination of the Security Council. Therefore, clarity is further sought from case studies on the rules of procedure and the Chapter Article.

A case study on a rule of procedure might illustrate cases where that rule has been applied, or instances which were exceptional or unusual, while a case study on an Article of the Charter might highlight a discussion on how that Article was interpreted, and show any relevant decisions that followed from the discussion.[42] For instance, the Council's Resolution 2298 (2016) determined that "the potential for acquisition by non-State actors of chemical weapons in Libya" represented a threat to international peace and security.[43] Similarly, Resolution 2359 (2017) of 21st June 2017 determined that the activities in Mali and in the Sahel region of terrorist organizations constituted a threat to international peace and security in the region and beyond.[44]

2.4 Pacific Settlement of Disputes

The Security Council's role under Chapter VI of the Charter of the United Nations is to call upon parties in dispute to use measures, such as negotiation, arbitration, mediation, and conciliation to settle their disputes.[45] Article 34 of the Charter of the United Nations provides that the Security Council is empowered to investigate disputes and to determine if the disputes threaten world peace.

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[42]United Nations Security Council, 'FAQS about the Repertoire' at < https://www.un.org/securitycouncil/content/repertoire/search-options-and-faq> accessed on 12/8/2019.
[43] S/RES/2298 (2016); Resolution 2298 (2016) Adopted by the Security Council at its 7743rd meeting, on 22 July 2016, at < https://undocs.org/en/S/RES/2298%20(2016)> accessed on 22/10/2019.
[44] S/RES/2359 (2017); Resolution 2359 (2017) Adopted by the Security Council at its 7979th meeting, on 21 June 2017, at < https://undocs.org/en/S/RES/2359%20(2017)> accessed on 22/10/2019.

[45] Ibid., Article 33.

Article 35 of the Charter of the United Nations requires member states of the United Nations in dispute to bring it to the attention of the Security Council and the General Assembly. Non-members can also bring their dispute before it on condition that it is a party to the subject dispute and it binds itself to the obligations of pacific settlement of the dispute as provided for in the Charter of the United Nations in the resolution of the dispute.[46] This enables the Security Council to determine the existence of any threat to peace, breach of peace or acts of aggression.

Under Article 36 of the Charter of the United Nations, the Security Council can recommend appropriate solutions for settling disputes between states. However, the Security Council is required to take into consideration the fact that legal disputes, as a general rule, should be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.[47]

Article 36 of the Charter of the United Nations gives the Security Council the power to recommend appropriate procedures or methods for settling disputes at any stage so long as it has considered the pacific settlement procedures that have been taken by the parties. This is entirely on matters of procedure. Article 37(2) of the Charter of the United Nations gives the Security Council the power to recommend methods of adjustment that parties can take to resolve disputes. It can recommend settlement mechanisms, especially in situations where members in dispute have not settled on a mechanism as provided in Article 37 of the Charter of the United Nations.

2.5 Peace Enforcement

Peace enforcement entails the use of military force to maintain peace.[48]Article 2(4) of the Charter of the United Nations prohibits the use of force against the territorial integrity and sovereignty of a state. The Charter of the United Nations, however, provides two exceptions to the prohibition on the use of force. First, Article 51 of the Charter of the United Nations provides for individual or collective defense if there is an armed attack against a member state. Second, use of force is permitted when there is an enforcement action as provided for under Chapter VII of the Charter of the United Nations.

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[46] Ibid.
[47] Ibid., Article 36(3).
[48] Shashi Tharoor, 'The Changing Face of Peacekeeping and Peace Enforcement' (1995)19 Fordham International Law Journal 409.

Chapter VII of the Charter of the United Nations empowers the United Nations Security Council to investigate actions with respect to threats to peace, breaches of peace and acts of aggression. Article 39 of the Charter of the United Nations provides that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendation or decide what measures shall be taken to maintain or restore international peace and security. The Article provides that the Security Council may take either coercive measures or make recommendations with a view of maintaining or restoring international peace and security.

The International Court of Justice in the case of *Prosecutor vs. Dusko Tadic,[49]* defined threat to peace to be more than a political concept and that the determination of what amounted to threat to peace was not an unfettered discretion left to a state to determine. Rather, the determination must be gauged against the purpose and principles of the Charter of the United Nations. For the Security Council to act under Chapter VII, there must exist a threat to peace. The notion of threat to peace is elastic and capable of covering a very wide range of behaviour of a state.[50] The Charter of the United Nations has not defined what amounts to threat to peace.[51]

Establishing the existence of a threat to peace is not a legal question, but a factual one based on evidence.[52] The Security Council, in the maintenance of international peace and security, requires different standards of evidence.[53] For enforcement action, it requires a higher degree of evidence.[54] This is because peace enforcement uses force. The Security Council has the role to weigh this evidence.[55]

Some of the recent resolutions of the Security Council on enforcement action were the authorizations of use of force for protection of civilians in Ivory Coast and Libya in 2016 and 2018, respectively.[56] On 27th March 2018, the United Nations Security Council approved the

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[49] [1999] IT-94-1-a.
[50] Romana Sadurska, 'Threats of Force' (1988) 82(2) American Journal of International Law 254.
[51] Ian Hurd, 'The UN Security Council and the International Rule of Law,' (2014) 7 (3) Chinese Journal of International Politics, 361.
[52] Bardo Fassbender, 'Review Essay Quis judicabit? The Security Council, Its Powers and Its Legal Control' (2000) 11 European Journal of International Law 223.
[53] Ibid., pg. 224.
[54] Ibid., pg. 225.
[55] United Nations Security Council, *Repertoire of the Practice of the Security Council: Supplement 2016-2017* (United Nations, New York, 2019)331.
[56] Ibid., pg. 225.

extension of the mandate of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) until 31 March 2019.[57] Chapter VII of the Charter of the United Nations requires the Security Council to use force as a last resort and the purpose of the enforcement action is to maintain peace and not law.[58] Another example of the enforcement action is the deployment of the United Nations Operation in Côte d'Ivoire (UNOCI) by the Security Council, acting under Chapter VII of the Charter, by Resolution 1528 (2004) of 27 February 2004.[59]

Article 40 of the Charter of the United Nations provides for the use of provisional measures before the Security Council decides whether an action is a threat to peace. Article 41 of the Charter of the United Nations advocates the use of sanctions other than the use of force where it is possible, underscoring the fact that the use of force should be a last resort.

It provides that the Security Council may decide what measures, not involving use of force, are to be employed to give effect to its decisions. These measures include the partial interruption of economic relations, communications and severance of diplomatic relations.

In cases where sanctions are deemed inadequate, Article 42 of the Charter of the United Nations provides that the Security Council can use air, sea or land forces as may be necessary to restore or maintain peace. Some of the operations that may be employed by the United Nations Security Council include operations by sea, land or air forces of member states.

Article 43 of the Charter of the United Nations is based on the principle of equitable sharing in the burden of preserving and enforcing world peace.[60] It requires member states of the United Nations to provide the necessary assistance to the Security Council for peace enforcement. This is by contributing armed forces, facilities and passage in accordance with the agreement that the member state shall have with the Security Council.

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[57] SC/13265- Resolution 2409 (2018) / adopted by the Security Council at its 8216th meeting, on 27 March 2018.
[58] Kelsen, H., *The Law of the United Nations* (London: London Institute of World Affairs, 1950), pg. 294.
[59] S/RES/1528 (2004) Resolution 1528 (2004) Adopted by the Security Council at its 4918th meeting, on 27 February 2004. Pursuant to this Resolution, UNOCI was authorized to, inter alia, to use all necessary means to carry out its mandate to observe and monitor the implementation of the comprehensive ceasefire agreement of 3 May 2003.
[60]Damrosch, L., 'The Role of the Great Powers in United Nations Peace –Keeping,' (1993) 18 Yale Journal of International Law 434.

The United Nations Security Council has applied the concepts of international peace and security and threats to peace in non-interstate situations, such as humanitarian crises, civil wars, and systematic violations of human rights in armed conflicts.[61] These were mostly witnessed in the 1960s and 1970s as African and Asian states gained independence.[62] The United Nations has played a big role in maintaining world peace and it can be argued that it has averted a third world war.[63]

The use of enforcement power under the United Nations has been dependent on the consensus of the members of the Security Council.[64] Establishment of peace enforcement measures is considered integral in maintaining world peace.

The Security Council, under Article 43, has been granted a wide discretion to consider whether it can act on a matter. It also has the discretion to decide the measures that it can take to fulfil its primary duty under the Charter of the United Nations.

2.6 Peacekeeping Operations

Chapters V, VI and VII of the Charter of the United Nations provide no explicit legal basis for peace keeping operations. Peace keeping operations were brought to address conflicts, especially where Chapters VI and VII could not be used.[65] The pacific measures proved inadequate and it was a challenge getting an agreement by the Security Council on the enforcement measures provided under Chapter VII of the Charter.[66] Peace keeping operations were thought to be enforcement measures under Chapter VII, but in *Certain Expenses Case,[67]* the International Court of Justice, in its advisory opinion stated that peace-keeping forces were not enforcement measures under Chapter VII of the Charter. In the opinion of the Court, the Security Council was in charge

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[61] Ibid., pg. 434.
[62] Ibid., pg. 434.
[63] Spain, A., 'UN Security Council's Duty to Decide,' (2013)4 Harvard National Security Journal 382
[64] Orakhelashvili, A., 'The Legal Basis of the United Nations Peace Keeping Operations' (2003) 43 Virginia Journal of International Law 487
[65] Nyamuya, J., 'From Congo to East Timor in Forty Years: The UN Finally Crossing the Rubicon Between Peace Keeping and Peace Making?' (2000) 4 Newcastle Law Review 46.
[66] Ibid.
[67] (1962) ICJ Reports 151.

of the enforcement powers and it was within the power of the Security Council to implement the less forceful measures which included peace keeping.[68]

Since Articles 41 and 42 of the Charter deal with enforcement, it can be argued that they provide no legal basis for peacekeeping. Article 40 of the Charter provides that the Security Council may call upon members to comply with such provisional measures at it deems desirable.

These measures can include peace keeping operations. The powers of the Security Council under Article 40 of the Charter are wide. Peace keeping is a provisional measure to stop a fight.[69]

Peacekeeping operations have been hailed as the most successful innovation in maintenance of world peace and security.[70]   Three requirements must, however, be met before peace keeping operations are conducted. These are consent of the parties, impartiality, and no use of force.[71]

The Charter recognizes sovereignty of states that ideally allows interference in the affairs of a state only after the consent of the state concerned and the use of force is only limited to self-defense.[72] Peace keeping operations in Africa have been carried out in Somalia, Democratic Republic of Congo, Liberia, Burundi, Angola, Sierra Leone, and Sudan.[73]

Peace keeping measures are usually affected by domestic jurisdiction. The Charter, under Article 2(7), provides that the United Nations shall not interfere in internal affairs of a state. This can only be interfered with where the Security Council determines that there is need to maintain peace and security and adopts a resolution to establish a peace keeping operation.[74]

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[68] Ibid.
[69]Hilaire McVoubey & Nigel D. White, *The Blue Helmets: Legal Regulation of United Nations Military Operations (*Dartsmouth Publishers, Michigan, 1996) 34.
[70]Lehmann, T, 'Some Legal Aspects of the United Nations Peace Keeping Operations,' (1985)54 Nordisk Tidsskrift International Review 46.
[71] Ibid., pg. 47.
[72] Ibid., pg. 47.
[73] Ibid., pg. 48.
[74] Article 2 (7) of the Charter provides that domestic sovereignty shall not 'prejudice the application of enforcement measures under Chapter Vll'.

The peacekeeping missions have focused on the protection of civilians where the government is unable or unwilling to protect them.[75] There has been an expansion in the involvement of the Security Council in maintaining world peace as there have been a lot of changes in state relations.[76]

The changing world order has increased the importance of the United Nations. The United Nations Truce Supervision Organization in 1948 was also among the first peace keeping operations when the Security Council maintained peace between Israel and its Arab neighbours.[77] Its mandate was to maintain peace in Middle East. During the Cold War period, a total of 18 peacekeeping missions were carried out.[78]

After the Cold War, there were 15 missions most of them in Africa, such as Mali in 2013, South Sudan, DRC, Ivory Coast, Liberia and Western Sahara. [79] The Security Council also carried out successful operations in Mozambique.[80]

2.7 Regional Arrangements

The Charter of the United Nations recognizes the utility of autonomous international organizations of the various geographical regions of the world. Articles 52, 53, and 54 of the Charter envisage the existence of regional arrangements or agencies for dealing with matters relating to the maintenance of international peace and security as are appropriate for regional action.
Chapter VIII of the Charter promotes the use of regional bodies in the maintenance of international peace and security. Article 52(1) of the Charter supports regional arrangements so long as they act consistent with the purpose and principles of the United Nations. Article 52(2) of the Charter requires the members in regional arrangements to prioritize pacific dispute settlement mechanisms. Article 52(3) provides that the Security Council fully supports regional arrangements.

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[75]Kenny Cóman, 'Responsibility to Recommend: The Role of the UN General Assembly in the Maintenance of International Peace and Security,' (2016)3 Journal on the Use of Force and International Law 5.
[76]John Bolton, 'UN Peace Keeping Efforts to Promote Security and Stability,' (1992)3 Department of State Dispatch Journal 244.
[77]Vera Gowlland-Debbas, 'Security Council Change: The Pressure of Emerging International Public Policy,' (2009) 65 (1) International Law Journal, 135.
[78] Ibid.
[79]Mutharika, P., 'The Role of the United Nations Security Council in African Peace Management: Some Proposals,' (1996)17 Michigan Journal of International Law 544.
[80] Ibid.

Regional arrangements have played a fundamental and expanded role in the peace keeping operations post-Cold War period.[81] There are several reasons that have been propounded to support the increased use of regional arrangements. Firstly, geopolitically speaking, countries that surround an area that has been bedevilled by conflict and insecurity have a greater stake and interest to find lasting peace in the area.[82] This interest is greatly influenced by the mutual economic, political and good neighbourliness interests.[83]

Regional arrangements have been very useful in instances where the United Nations has failed to effectively restore peace. For instance, in 2003, in the aftermath of an almost decade-long Burundian civil war, the African Union had to intervene in order to restore peace and security, following the United Nations' failure to mobilize an immediate response to the then escalating conflict. [84]The African Union deployed the African Mission in Burundi (AMIB) to among others, implement ceasefire agreements, support demobilization, disarmament and re-integration.[85]Although the United Nations joined the peace operations in Burundi eight months after AMIB, the role of the African Union was critical to ensuring stability before a substantive ceasefire agreement was reached.[86]

Regional arrangements enable burden sharing in the tough role of maintaining international peace.[87] Existing regional organizations that handle some aspects of peace and security, apart from other regional functions, include the European Union (EU), the North Atlantic Treaty Organization (NATO), the Organization of American States (OAS), and the Organization of African Unity

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[81] Alan James, 'Peacekeeping in the post—Cold War era' (SPRING 1995) 50 (2) International Journal, 241-265.
[82]Maurice Marnika, 'Regional peacekeeping: The case for complementary efforts' (1996) 25 (3) Peacekeeping & International Relations, 10.
[83] Ibid.
[84] Bellamy., Williams., Griffin., *Understanding Peacekeeping,* pg. 214.
[85] Assefaw Bariagaber, 'United Nations Peace Missions in Africa: Transformations and Determinants' (July 2008) 28 (6) Journal of Black Studies, 830-849.
[86] Ibid.
[87] Fatih K. Bouayad-Agha & Boris P. Krasulin, 'Report on Sharing Responsibilities In Peace-Keeping: The United Nations and Regional Organizations' (Geneva, 1995) at < https://www.unjiu.org/sites/www.unjiu.org/files/jiu_document_files/products/en/reports-notes/JIU%20Products/JIU_REP_1995_4_English.pdf> accessed on 22/10/2019.

(OAU), the predecessor to the African Union (AU), the Arab League, and the Association of South East Asian Nations (ASEAN).[88]

The need for partnership and collaboration between the Security Council and regional agencies is necessitated by reasons such as geographic proximity, expediency and burden-sharing, as well as existing commitments in current operations.[89]   Indeed, as framed, the Charter ensures that the Security Council is not suffocated by an avalanche of disputes and conflict situations by providing intermediate agencies in the form of regional agencies for handling such.

Despite the concurrence of opinion on the vital role regional security arrangements play in maintaining peace and security within the superstructure of the United Nations, certain criticisms have surfaced. One such reproach is the likely abdication of roles by both the United Nations Security Council and the regional security bodies, resulting into conflict avoidance. This happens in active conflict situations where both the UN and a regional security institution are involved, there are at times no clear demarcations of respective roles, thus necessitating working guidelines by stakeholders.[90]

Where there is need for sanctions against proponents of conflicts, the Security Council has been accused by some quarters of stalling and lacking transparency.[91] Thus, regional bodies may only make sanctions recommendations to the Security Council that, despite ostensibly acting in the interest of the entire membership of the United Nations, is many times divided along the interest lines of the permanent-five members.[92]

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[88]Alyson, J.K.B., Andrew C., 'Regional Security Cooperation in the Early 21st Century' available at <https://www.sipri.org/sites/default/files/YB06ch04.pdf> (accessed 15/5/2018).

[89]Artiñano, M., "Peace Operations Partnerships: The UN Security Council and Sub-Regional Organizations," Center for International Peace Operations <http://mobil.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/ZIF_Policy_Briefing_Mauricio_Artinano_Mar_2012_eng.pdf> (accessed 13/5/2018); Wyss, M. and Tardy, T., *Peacekeeping in Africa*, 1st ed, (Routledge, United Kingdom, (2014)11; Mauricio Artiñano, *Peace Operations Partnerships: The UN Security Council and (Sub-)Regional Organizations* (2012)3.

[90] Benjamin Carvalho, Thomas Jaye, Kasumba Yvonne & Wafula Okumu, 'Peacekeeping in Africa: The Evolving Roles of the African Union and Regional Mechanisms' (2010) Norwegian Institute of International Affairs, 13.

[91]PTI, "India slams UNSC Sanctions Committees for 'opacity', 'lack of accountability" The Economic Times (Mumbai, Nov 11, 2018) at <//economictimes.indiatimes.com/articleshow/66576567.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed on 25th June 2019.

[92] Ibid.

There is reduced possibility of actual translation of the common interests of the regional security body into authoritative decisions of the Security Council.[93]

2.8 The United Nations Security Council and the African Union Peace and Security Council

The history of collaboration between the Organization of African Unity and the United Nations dates back to 1965.[94] The Organization of African Unity signed a cooperation agreement with the United Nations on 15 November 1965, which was updated on 9 October 1990 by the then two Secretaries-General of the two organizations.[95] This collaboration arises from the primary responsibility of the United Nations Security Council to maintain international peace and security under Article 24 of the United Nations Charter and to work with regional agencies under Chapter VIII of the Charter.

There is a general understanding that regional agencies, such as the African Union, and the United Nations Security Council, cannot handle security challenges without working together.[96] The Organization of the African Unity (and now the African Union) lacked, and continues to lack, necessary material and financial muscle to maintain peace and security in Africa on its own.[97]

Significantly, in the 1990s, the Organization of the African Unity defined its priority as conflict prevention, and the primary responsibility of peace keeping in Africa lay with the United Nations.[98] After deliberations, the African Union created a Peace and Security Council in 2002. It was mandated to cooperate and work closely with the United Nations Security Council.[99]

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[93] Nebiyou Dagne Tessema, 'The United Nations Security Mechanism and Africa: Challenges and the Way Forward' (SJD thesis, Golden State University, 2014) at < https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1059&context=theses> accessed on 26th June 2019.
[94] Paul Williams 'The Peace and Security Council of the African Union: Evaluating the Embryonic International Institution' (2009)47 The Journal of Modern African Studies 626.
[95] Ibid.
[96] Conrad Rein, 'Enhancing Peace and Security in Africa through Institutional Cooperation,' (2015)36 (2) Contemporary Security Policy 256.
[97] Protocol Relating to the Establishment of the Peace and Security Council of the African Union (9/7/2002), UNTS I-55339.
[98] Williams, Ibid, 604.
[99] Ibid.

This milestone was a culmination of discussions and resolutions that adopted the Protocol Relating to the Establishment of the Peace and Security Council of the African Union on 9 July 2002.[100]

The Protocol established the Peace and Security Council as "a standing decision-making organ for the prevention, management and resolution of conflicts' that should be 'a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa."[101]Article 7 of the Protocol provides the powers of Peace and Security Council. These include addressing conflicts, undertaking peace keeping, peace building and peace support, and instituting sanctions. The Protocol, however, does not include peace enforcement measures.

A more detailed discussion on the interface between the United Nations Security Council and the African Peace and Security Council is done in the subsequent chapters of the study.

2.9 The Effectiveness of United Nations Security Council Operations in Addressing Matters of International Peace and Security

In the discharge of its duties, the United Nations Security Council has made strides and failed in equal measure. For more than 73 years since the establishment of the United Nations, the Security Council has fallen short of the expectation states had in so far as the maintenance of peace and security is concerned. The hope that the national interests of the great powers would coincide with the world community's interest in peace and security has proved vain.

The United Nations Security Council, as the watchdog of international peace and security, has not been fully efficient.[102] Since its formation, there have been a number of conflicts that have threatened world peace. These include genocides, chronic wars between Arab nations and Israel, Middle East conflicts, rise in anti-Semitism, and civil wars in Africa.[103]

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[100] Ibid.

[101] Ibid., Article 5.2.

[102] Oluduon, T., 'Peace and Security as a Catalysts for the Reform of the Security Council:' (2014)10 Review of International Law and Policy 64.

[103]Khallaf Hanouf, 'Explaining the Power of the United Nations Security Council and the Syrian Refugee Crisis' (Master's Thesis, University of San Francisco, San Francisco, United States, May 2016) 33 at < https://repository.usfca.edu/cgi/viewcontent.cgi?article=1371&context=capstone> accessed 16/7/2019.

The Security Council has not been able to sufficiently address these challenges.[104] Its function has met various obstacles, especially due to its composition.[105] The Security Council has been criticized for its small size of 15 member states which is not representative of the larger membership of the United Nations; its working relationship with the General Assembly; its working methods when it is called upon to act, for example, its laxity and omissions in the situation in Burundi, Rwanda in 1994, and currently the crisis in Syria, as well as its undemocratic structure.[106]

The United Nations Security Council has been successful in interstate conflicts but failed in intrastate conflicts.[107] This has been seen in Rwanda and Democratic Republic of Congo. The failure to address African challenges by the Security Council could be attributed to the fact that it has not structured its operations to ensure effective peace management operations.[108] An effective peace operation is one that promotes coordination between it and other international organizations.[109]

The United Nations Security Council's unsatisfactory performance can be attributed to the paralysis it has experienced in its functions.[110] In the Cold War period, the Security Council experienced its highest levels of paralysis due to the veto power.[111]

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[104] Ibid.

[105] Lin, W.C., 'Reform of the UN Security Council: Challenges and Prospects,' (2009)37 Taiwanese Journal of Political Science 6.

[106]Okhovat, S., *The United Nations Security Council: Its Veto Power and Its Reform;*"(*CPACS Working Paper No. 15/1)* (Centre for Peace and Conflict Studies, The University of Sydney 2012), pg. 3.

[107]Bayo, A., "The Factors Behind Successes and Failures of United Nations Peacekeeping Missions : A Case of the Democratic Republic of Congo,' (2012)3(4) Journal of Alternative Perspectives in Social Sciences 926.

[108] Mutharika, P., "The Role of the United Nations Security Council in African Peace Management: Some Proposals,' (1996)17(2) Michigan Journal of International Law 562.

[109] Ibid.

[110] Carswell, A., 'Unblocking the UN Security Council: The Uniting for Peace Resolution,' (2013)18 Journal of Conflict and Security Law 454.

[111]Yilmaz, M.E., 'UN Peacekeeping in the Post-Cold War Era,'(2005)22 International Journal on World Peace 14.

In the recent past, Russia has vetoed a lot of Security Council resolutions especially on Ukraine and Syria. Russia vetoed thirteen proposed resolutions on Syria, resulting in a deadlock and paralyzing the role of the Security Council in maintaining peace and security.[112]

This is because Russia believed the USA wanted to use the Security Council to change the regime in Syria, which is not a function of the Security Council.[113] This is a repeat of what Union of Soviet Socialist Republics (USSR) did during the Cold War.[114] USSR/Russia has vetoed Security Council resolutions 107 times, followed by United States of America (USA) in 79 times, United Kingdom 29 times, France 16 times, and China 11 times. This has highly affected the effectiveness of the Security Council.[115]

There exist doubts as to the neutrality of the decisions of the United Nations Security Council due to the dominant presence of western states.[116] The veto power has given the five permanent member states great powers as compared to that of small states, to the effect that small states cannot collectively influence the decisions of the Security Council.[117] However, the veto power has helped to avoid open conflicts between the superpowers.[118]

African conflicts occupy more than a half of the disputes that the Security Council handles.[119] Between 1991 and 2011, the Security Council resolutions on African conflicts rose from 0.5 % of the total to 66%,[120] the most recent being Somalia, Mali, South Sudan, and Central African Republic.[121]

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[112] Michelle Nichols, 'Russia casts 13th veto of U.N. Security Council action during Syrian war' *Reuters* (London, September 19, 2019 / 7:16 PM) at < https://www.reuters.com/article/us-syria-security-un/russia-casts-13th-veto-of-un-security-council-action-during-syrian-war-idUSKBN1W42CJ> accessed on 25/10/2019.

[113] News Desk, 'Russia accuses US of allying with Daesh to push regime change in Syria' Al-Masdar Al-'Arabi (The Arab Source) (2018-11-24) < https://www.almasdarnews.com/article/russia-accuses-us-of-allying-with-daesh-to-push-regime-change-in-syria/> accessed on 14/8/2019.

[114] Ebere,' R., "Cold War Resurgence: The Case of Syria Uprising," (2014) IOSR Journal of Humanities and Social Sciences 40.

[115] Ibid.

[116] D'Angelo, D., 'The Check on International Peace and Security Maintenance: The International Court of Justice and Judicial Review of Security Council Resolutions,' (2000)23 Suffolk Transnational International Law Review562.

[117] Jan Woulters &Tom Ruys, 'Security Council Reform: A New Veto for a New Century?' (2005) Egmond Institute, 9 http://www.jstor.org/stable/resrep06699 accessed 3rd July 2019.

[118] L. Kirgis, Frederic & Fassbender, Bardo, 'UN Security Council Reform and the Right of Veto: A Constitutional Perspective' (1999) 93 The American Journal of International Law 4, 975.

[119] Temitayo Isaac Odeyemi & Gideon Uchechukwu Igwebueze, 'Africanity and the Quest for a Permanent Seat in the United Nations Security Council for Africa' (2016)16 Journal of Pan African Studies 7.

[120] Boulden, J., 'The United Nations Security Council and Conflict in Africa' in Boulden, J., *Responding to Conflict in Africa* (Palgrave Macmillan, 2013).

[121] Ibid.

African states, and other developing states, have called for reforms of the Security Council in order to have at least one permanent member from these states.[122] Indeed, there have been calls for reforms in the Security Council in order to improve its efficiency in the maintenance of international peace and security.[123]

These calls for reform have, however, been met with insurmountable obstacles arising from the stringent requirements of Article 108 Charter on the requirements for the amendment.

2.10   Conclusion

The United Nations Security Council has had both positive and negative results in its primary role of maintaining international peace and security. The United Nations' peace keeping policy has not been completely successful. The main obstacle has been the veto power that is vested in the permanent members of the Security Council.[124] Developing countries have been against the concentration of power in the permanent members of the Security Council.[125]

The abolition of the veto power can be a good step towards ensuring reforms in the Security Council through an amendment of the Charter of the United Nations as the world has progressed from the period the veto power was put in place.[126] This is further likely to diffuse the perceptions by non-permanent member states that the Security Council acts represents a concentration of power on the veto states only exercised to further their respective interests.

The upshot of the discussion in this section is that, given its mandate under the Charter, the Security Council has at its disposal an array of measures for maintaining international peace and security, including by collaborating with regional security arrangements. Whether these have been fully utilized to realize world peace and security is debatable, as evident from the discussed instances of success, or at times, the failure by the Security Council to effectively discharge its mandate. Nonetheless, the political and economic interests within and without the Security Council, such as funding still obviously play a key role in the maintenance of world peace and security.

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[122] Ibid, Odeyemi & Igwebueze.
[123] Butler (n28).
[124]Casey, B., 'Keeping Peace: The United Nations' Security Council and the Goal of a Multilateral Security System,' (1994) Suffolk Transnational Law Review 116.
[125] Mendel, T., 'Restructuring the Security Council,' (1992) 1 Dalhouse Journal of Legal Studies 163.
[126] Ibid.

CHAPTER THREE

THE ORGANISATION OF AFRICAN UNITY (OAU) / THE AFRICAN UNION (AU) AND THE MAINTENANCE OF PEACE AND SECURITY IN AFRICA

3.1 Introduction

The Organization of African Unity (OAU) was formed in 1963, with the key aims being to encourage political and economic integration among member states, and to eradicate colonialism and neo-colonialism from the continent.[1] It was formed in the backdrop of a clamour and vigour by the newly independent African states, full of militancy and confident optimism.[2] These were the vibrant Pan-Africanists that had the burning vigour to win freedom against colonialism for those states that were still under the colonial rule. The mission might have been unclear in the passion of the moment, but the motive was clear. The OAU was premised on decolonization of Africa by protecting the fragile sovereignty that had just been achieved by the African states and help those under the racist regimes achieve sovereign independence.[3]

Article II of the OAU Charter[4] set out the purposes of the Organization as being to promote the unity and solidarity of the African States; to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa; to defend their sovereignty, their territorial integrity and independence; to eradicate all forms of colonialism from Africa; and to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

The OAU took little or no steps towards economic development as part of its agenda.[5] Further, it largely adopted the principle of non-intervention in conflicts within its member states.[6]

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[1] Preamble to the Charter of Organization of African Unity; 479 UNTS
[2] K. Van Walraven, *Dreams of Power: The Role of the Organization of African Unity in the Politics of Africa, 1963-1993* (1st Edn, Ashgate, 2019).
[3] The Charter of the Organization of African Unity; 479 UNTS, 39.
[4] Ibid.
[5] World Bank, World Development Report (1981)1 available at http://documents.worldbank.org/curated/en/820211468182071505/World-development-report-1981 <accessed on 7 December 2018>
[6] Henry Wiseman, 'The OAU: Peacekeeping and Conflict Resolution' (1984) New York: Praeger, 130.

The Organisation was widely criticised as a bureaucratic "talking shop" with little power.[7] It struggled to enforce its decisions, and its lack of an armed force made intervention exceedingly difficult. Civil wars experienced in Nigeria and Angola continued unabated for years, and the OAU could do nothing to stop them.[8]

The policy of non-interference in the affairs of member states also limited the effectiveness of the OAU. Thus, when human rights were violated, as in Uganda under Idi Amin in the 1970s, the OAU was powerless and could not stop them.[9] Critics argue that the OAU did little to protect the rights and liberties of African citizens from their own political leaders, often dubbing it as a "Dictators' Club" or "Dictator's Trade Union".[10]

Total unity was difficult to achieve as the OAU was largely divided. The former French colonies, still dependent on France, had formed the Monrovia Group, and there was a further split between those that supported the United States and those that supported the USSR in the Cold War of ideologies.[11] Because of these divisions, it was difficult for the OAU to take action against states involved in internal conflicts because it could rarely reach an agreement on what was to be done.[12]

Soon after achieving independence, a number of African states expressed a growing desire for more unity within the continent.[13] In 1999, a more business-like ideology had cropped into Africans compared to the militancy experienced in 1963 during the formation of OAU. In July 1999, the Assembly decided to convene an extraordinary session to expedite the process of economic and political integration in the continent.[14]

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[7] Mohammed Seid Ahmed, 'Organization of African Unity and the African Diplomacy' (2015)3 (1) IZMIR Review of Social Sciences.

[8] Armstrong Adejo, 'From OAU to AU: New Wine in Old Bottles?' (2001) 4 (1-2) African Journal of International Affairs.

[9] Alice Auma Ochanda, 'A Critical Evaluation of the OAU Charter and its Impact on the Organisation's Performance' (MA thesis, University of Nairobi,2001).

[10] Abass A. *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Hart Publishing, Oxford, 2004)1.

[11] Norman J. Padelford, 'The Organization of African Unity' (1964) 18 (3) International Organization, 521-542.

[12] Ochanda (n9).

[13] Boutros Boutros-Ghali, 'The Addis Ababa Charter' (1964)546 International Conciliation, 12.

[14] The Sirte Declaration, passed at the Fourth Extraordinary Session of the Assembly of Heads of State And Government of the Organization of African Unity (OAU), in Sirte, in the Great Socialist People's Libyan Arab Jamahiriya, from 8-9 September 1999, at < http://highcrimes.lege.net/doc/sweden/14.%20Sirte_Declaration_1999.pdf> accessed on 25/10/2019.

On 9th September, 1999, the Heads of State and Government of the Organisation of African Unity issued a Declaration (the Sirte Declaration) calling for the establishment of an African Union, with a view, inter alia, to accelerating the process of integration in the continent to enable it play its rightful role in the global economy, while addressing the multifaceted social, economic and political problems compounded, as they are, by certain negative aspects of globalisation.[15]

The Constitutive Act of the African Union adopted by the 36th Ordinary Session of the Assembly of the Heads of State and Government on 11th July 2000 at the Lomé Summit, in Togo, lays down the principles of the African Union. The cardinal principles are the right for the AU to intervene in a member state during genocide, war crimes and crimes against humanity, and respect for the hitherto theoretical concept of human rights, among others.[16] Article 3 of the Constitutive Act provides for the objectives that informed the formation of the AU. The objectives include achieving unity among African states and people, acceleration of the political and economic integration spheres of the continent, promotion of peace, security and stability in the continent, and promotion of cooperation in all spheres of human endeavours so as to raise the living standards of African people.

The African Union has shifted focus from supporting liberation movements in the erstwhile African territories under colonialism and apartheid, as envisaged by the OAU since 1963, to an organization spear-heading Africa's development and integration.

3.2 The Maintenance of Peace and Security in Africa

The United Nations has been the primary actor in the maintenance of international peace and security.[17] However, in the last twenty years regional organizations have actively taken up the role of maintaining international peace and security within their jurisdictions.[18]

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[15] Ibid; See also the Constitutive Act of the African Union; 2158 UNTS 3.

[16] Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) OAU Doc. CAB/LEG/23.15 (2001); The Constitutive Act of the African Union; 2158 UNTS 3, Article 4.

[17] Peter Wallensteen, 'International Conflict Resolution, UN and Regional Organizations: The Balance Sheet,' in Peter Wallensteen & Anders Bjurner (eds) *Regional Organizations and Peace-making: Challengers to the UN? (*Routledge, London, 2014)37-51.

[18] Ibid.

Regional bodies have put measures for peace-making and conflict resolution.[19] A number of persistent crises in Africa have constituted threats to international peace and security.[20]

African countries, like Sudan, Somalia, Central African Republic, and the Democratic Republic of Congo, have experienced constant crises which have called for the intervention of regional bodies.[21] In line with the Preamble to the Charter of United Nations, regional bodies have helped in carrying out peace operations to restore peace in their regions and safeguard human rights.[22]

Peace operations have been carried out by the United Nations in African states, such as Burundi, Angola, Zaire, Sierra Leone and Sudan.[23] Africa has had the highest number of conflicts compared to other continents.[24] African states have experienced constant coups *d'état,* civil wars, and cross border conflicts, which have resulted in weak and failed states unable to guarantee peace within their borders.[25]

Africa has had the most challenging conflicts in the world over the last twenty years.[26] The persistent conflicts, that got little or no attention from the United Nations Security Council as the principal organ for the maintenance of peace and security, have prompted the formation of regional arrangements for peace keeping. Some scholars have attributed the prevalence of conflicts in Africa to high levels of poverty, failed political institutions, and economic dependence on natural resources.[27] Yet others opine that bad governance and corruption, human rights violations, ethnic marginalization and proliferation of small arms or light weapons continue to serve as triggers of

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[19]Peter Arthur, 'ECOWAS and Regional Peacekeeping Integration in West Africa: Lessons for the Future,' (2010)57 (2) Africa Today Journal 3.
[20]Osolo A., 'UN Peace Keeping Policy: Some Basic Sources of Its Implementation Problems and Their Implications' (6) Cal. W. International Law Journal 323.
[21]Temitope Oludon, 'Peace and Security as a Catalyst for Reform of the UN Security Council,' (2014)10 Ulusrarasi Hukuk Ve Politika 66.
[22] "We the People of the United Nations; Determined - 'to save succeeding generations from the scourge of war…'"
[23]Sumanadasa, W.A.D.J., 'Maintenance of World Peace and Security in the 21st Century-The Challenges before the Security Council of the UNO,' (2007)19 Sri Lanka Journal of International Law 593.
[24]Christian Scherer, *Genocide and Crisis in Central Africa: Conflict Roots, Mass Violence and Regional war,* (Greenwood Publishing Group, California, 2002) 54.
[25]David Francis, *Uniting Africa: Building Regional Peace and Security Systems,* (Ashgate Publishing, Ltd., 2006) 92.
[26] Ibid.
[27] Ibrahim Elbadawi & Nicholas Sambanis, 'Why Are There So Many Civil Wars in Africa? Understanding and Preventing Violent Conflict' (2000) 9 (3) Journal of African Economies 244-269.

violent conflicts in Africa.[28]While these positions are debatable, it is worth remarking that conflict is not unique to Africa and the prevalence may be attributed to the lack of effective redress measures and a certain degree of institutional failure.

The high levels of civil wars and armed conflicts in Africa have presented opportunities for different varieties of interventions.[29] These interventions have been created for the purpose of resolving and keeping peace within and between states.[30]

Regional interventions in Africa have mainly been carried out by the Organization of African Unity, and its successor the African Union, Economic Community of West African States (ECOWAS), and Southern Africa Development Community (SADC).[31] The United Nations has been more dominant than the regional bodies in African conflicts.[32] It conducted a lot of peace keeping operations before the establishment of the African Union in 2002.[33] The United Nations peacekeeping operations have been carried out in a number of African states, such as Liberia, Mali, Central African Republic, Democratic Republic of Congo, and Sudan.

Article 53 of Charter of the United Nations provides for the engagement of regional arrangements in the promotion and maintenance of international peace. It empowers the Security Council to use regional arrangements for its enforcement actions. However, this arrangement is a delegated role and can only happen with the authorization of the United Nations Security Council.

The United Nations Security Council has had direct interventions in Darfur conflict that led to the deaths of and displacement of millions of people, and in the Democratic Republic of Congo.[34]

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[28] Nancy Anan, 'Violent Conflicts and Civil Strife in West Africa: Causes, Challenges and Prospects' (2014) International Journal of Security and Development, at < https://www.stabilityjournal.org/articles/10.5334/sta.da/> accessed on 25/10/2019.

[29] Frauke Lachenmann &Rüdiger Wolfrum (eds), *The Law of Armed Conflict and the Use of Force: The Max Planck Encyclopedia of Public International Law* (Oxford University Press, Oxford, 2017) 246.

[30] Ibid.

[31]Fredric Soderbaum & Rodrigo Tavares, 'Problematizing Regional Organizations in Africa Security,' in Fredric Soderbaum & Rodrigo Tavares (eds), *Regional Organization in African Security*, (Routledge, London, 2013) 3.

[32]Cedric de Coning, 'Peace Enforcement in Africa: Doctrinal Distinctions between the African Union and United Nations,' (2017)38(1) Journal of Contemporary Security Policy 148.

[33] Ibid.

[34] United Nations Security Council, *Repertoire of the Practice of the Security Council: Supplement 2016-2017* (United Nations, New York, 2019)19.

The United Nations engaged the African Union in a hybrid operation to restore peace and protect the massive abuses of human rights.[35]

The African Union's goal of maintenance of peace in African states led to the establishment of the Peace and Security Council (PSC). The creation of the Peace and Security Council was for the purpose of promoting international peace and security in African states.[36] The Peace and Security Council is a regional arrangement and it is the primary organ, under the Constitutive Act of the Africa Union, that addresses peace and security issues.

In the last decade, interventions by regional organizations have emerged due to a number of reasons. The two main reasons are, firstly, the desire by regional bodies or neighbouring countries to address conflicts of member states and, secondly, the failure of the United Nations in addressing the conflicts.[37] Aside from these, intervention by regional organizations in conflict situations has been necessitated by the proliferation of conflicts in many parts of the developing world and the overload of the United Nations duties.[38] Additionally, regional organizations have a legal stake in conflict resolution and peacekeeping operations arising from their strategic regional interests.[39]

The growth of regional efforts in Africa can also be attributed to the fact that African countries better understand the reasons that often put them on conflict's way, *inter alia,* social-cultural dynamics and political nuances within the region, thus irrigating the clamour by such states to prescribe a home-grown solution.[40] The transformation of institutions governing multi-lateral relations has also influenced the growth of regional interventions.[41]

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[35]Ademola Abass, 'The United Nations, the African Union and the Darfur Crisis: of Apology and Utopia' (2007)54(3) Netherlands International Law Review 430.

[36] Ibid.

[37]Michael Haas, *The Pacific Way: Regional Cooperation in South Pacific* (Praeger, Connecticut, United States 1989) 93.

[38]Thi Hai Yen Nguyen, 'Beyond Good Offices? The Role of Regional Organizations in Conflict Resolution' (Spring 2002) 55 (2) Journal of International Affairs, Toeing the Blue Line: Perspectives on Peace Operations, 463-484.

[39] Ibid.

[40]Ewan Lawson, "Peacekeeping in Africa: The Importance of the Regional?" OCP Policy Center <http//.www.ocpcc.ma/publications/peace-africa-importance-regional.> (accessed on 1st October 2018.)

[41]Ulf Engel & Gomes Porto, 'The African Union New Peace and Security Architecture: Toward Evolving Security Regime?" In Fredric Soderbaum & Rodrigo Tavares (eds), *Regional Organization in African Security*, (Routledge, London, 2013)3.

The establishment of the African Union (AU), as a successor to the Organization of African Unity, has had a lot of positive effects towards regional interventions.[42] The African Union has been involved in a number of peace keeping and maintenance operations since its establishment in 2002.

The United Nations Security Council has not always been successful in addressing peace and security issues in Africa.[43]For instance, the United Nations Security Council did not intervene in the Rwandan genocide that led to the deaths of nearly a million people, mainly of the Tutsi tribe.[44] It is on this basis that the African states resolved to establish the African Union Peace and Security Council to address African conflicts.[45]

The approach to peace and security through regional arrangements is not only an African phenomenon, but a global one.[46] The role of regional organizations in the maintenance of peace and security has created a positive impact and eased the burden on the United Nations.[47] The purpose of Chapter VIII of the Charter of the United Nations that provides for regional arrangements is to embed sustainable and efficient mechanisms of peacekeeping by devolving the duty to regional arrangements that may, inter alia, have closer proximity to the region where there is instability and to fill into the inadequacies of the United Nations Security Council.[48] However, Article 53 of the Charter prohibits regional agencies from carrying out enforcement action if they have not been authorized by the United Nations Security Council. Article 54 of the Charter requires that the United Nations Security Council be informed of the actions being undertaken by the regional arrangements or agencies.

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[42]Boulden, J., *Responding to Conflict in Africa: The United Nations and Regional Organization* (Springer, Berlin, 2013) 26.

[43] Ibid.

[44] Fredric Soderbaum & Rodrigo Tavares, 'Problematizing Regional Organizations in Africa Security,' in Fredric Soderbaum & Rodrigo Tavares (eds), *Regional Organization in African Security*, (Routledge, London, 2013).

[45]Aning Kwesi, Atuobi Samuel Atuobi, 'Responsibility to Protect in Africa. An analysis of the African Union's Peace and Security Architecture' (2009) 1 Global Responsibility to Protect 110.

[46]Cecilia Hull Wiklud & Gabriella Ingerstad, 'The Regionalization of Peace Operations in Africa: Advantages, Challenges and the Way Ahead,'(2015) Totalförsvarets forskningsinstitut (FOI), 45 at < https://www.foi.se/rest-api/report/FOI-R--4031--SE> accessed on 12/7/2019.

[47] Ibid., pg. 45.

[48] Ibid., pg. 47.

The advantages of regional arrangements include burden sharing, geographical proximity, cultural affinity, greater consensus and greater legitimacy.[49] The United Nations peace operations have been on a constant increase, therefore, overstretching its resources.[50]

The failure by the United Nations to address conflicts in Rwanda and Somalia made regional organizations, such as the African Union, feel a greater responsibility to address conflicts in their region.[51] Regional arrangements have enabled the United Nations to devolve the burden of maintenance of peace and security to the regional arrangements.

Regional arrangements usually have the geographical proximity and, hence, easier access for peace operations for the conflicts in their neighbourhoods as compared to the United Nations Security Council. The conflicts also spill into the borders of other states, hence, the resolve to intervene. The advantage of proximity also enables the regional arrangements to detect threats to peace at an early stage. It also makes it easier to deploy the peacekeeping forces.

Another advantage of the regional arrangements is cultural affinity which results to greater consensus.[52] The greater affinity between neighbouring countries usually creates legitimacy and trust. Regional peacekeepers are also able to connect more easily with the local population during peace operations.

The African Union, ECOWAS, and SADC have been actively involved in the maintenance of peace in African states. They have carried out peace operations alongside the United Nations. The peace operations have been either through their own process or in conjunction with the United Nations.

3.2.1 African Union: Peace and Security Maintenance Structure

Regional arrangements in Africa have evolved in structure and architecture over a long period of time. They started with the Organization of African Unity (OAU). The OAU began peacekeeping

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[49] Ibid., pg. 47.
[50] Ibid., pg. 48.
[51] Fredric Soderbaum & Rodrigo Tavares, 'Problematizing Regional Organizations in Africa Security,' in Fredric Soderbaum & Rodrigo Tavares (eds), *Regional Organization in African Security*, (Routledge, London, 2013).
[52] Ibid.

operations in the 1990s.[53] However, it did not take active part in peace keeping operations.[54] This made most of the peace keeping operations to be carried out by sub-regional organizations, such as ECOWAS[55] or by states as internal issues.[56] This was to uphold the principle of non-intervention and sovereignty of states.[57] The heinous occurrences of genocide, civil wars, abuse of human rights, and increase in levels of refugees called for interventions by the African Union.[58] The Organization of the African Unity was very conservative on the principle of non-interference and it, therefore, resolved not to interfere into the internal affairs of member states.[59] Its ineffectiveness led to its restructuring, which led to the establishment of the African Union in 2002[60].

The African Union, from its establishment, with a membership of 49 countries, focused on a number of items, including the maintenance of peace and security.[61] In tackling matters of sovereignty and the principle of non-interference, the Constitutive Act of the African Union put conditional terms in sovereignty as the capacity and willingness of a state to protect its citizens.[62] This considered human rights as core and justified intervention on humanitarian grounds.

The establishment of the African Union in the year 2002 saw it take an active role in peace keeping and maintenance of security operations.[63] Its establishment created an avenue for external military support in conflict riddled situations in the region. For instance, the efforts by the African Union saw the approval on the 31st July 2007, of UNSC Resolution 1769 of 2007 that recommended the

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[53]Paul Williams, 'International Peacekeeping: The Challenges of State Building and Regionalization,' (2005) 81 (1) International Affairs 167.

[54] Ibid.

[55] Ibid.

[56]Abou Jeng, *Peace Building in the African Union: Law Philosophy and Practice* (Cambridge University Press, Cambridge, 2012) 131.

[57] Ibid., pg. 131.

[58] Ibid., pg. 132.

[59]Laura Varhola & Christopher H. Varhola, 'Regional Engagements in Africa Closing the gap Between Strategic Ends and Ways,' (2011) 2 (4) Prism, 99-110.

[60] Ibid.

[61] Ibid.

[62] Charter of the United Nations, 24 October 1945, Article 4.

[63] Jeremy Sarkin, 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect' (2009) 53(1) Journal of African Law, at < http://www.corteidh.or.cr/tablas/R21990.pdf> accessed on 11/8/2019.

deployment of the African Union-United Nations Hybrid Operation in Darfur (UNAMID).[64] However, it led to the decline of sub-regional peacekeeping operations of regional bodies, such as ECOWAS and SADC as greater cooperation across the continent rendered sub-regional efforts at peace and security maintenance duplicitous.[65]

The development of peacekeeping operations in Africa was also influenced by increase of European Union missions in Africa and United Nations Peacekeeping missions.[66] European Union's funding of peacekeeping operations through the African Peace Facility also contributed to peace operations in Africa.[67] The Fund supported African led peace operations, enabling the African Union to actively participate in peace and security operations.

The African Mission in Burundi (AMIB) in 2003 was the first AU-mandated armed peace operation. [68] AMIB's deployment was authorised in 2003 before the inauguration of the AU's Peace and Security Council. 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.[69] Indeed, at this preliminary stage, African Union showed clear indicators in expanding and entrenching peace in the continent through the rapid progress witnessed in the establishment of the African Standby Force (ASF).[70]

Through the Peace and Security Council (PSC) Protocol, which was adopted in July 2002, the African Union formulated the Africa Peace and Security Architecture (APSA).[71] The African Peace and Security Architecture (APSA) is built around structures, objectives, principles and

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[64] Tim Murithi, 'The African Union's Evolving Role in Peace Operations: the African Union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia' (2008)17(1) African Security Studies 76.
[65] Ibid., pg. 76
[66] Cilliers J., Pottgieter, J., 'The African Standby Force,' in Fredric Soderbaum & Rodrigo Tavares (eds), *Regional Organization in African Security*, (Routledge, London, 2013) 123.
[67] Ibid., pg. 124.
[68] Isiaka Alani Badmus, 'The African Mission in Burundi (AMIB): A Study of the African Union's Peacekeeping Success and 'Triangular Area of Tension in African Peacekeeping' (2017) 17 (1) India Quarterly Journal of International Affairs.
[69] Ibid.
[70] Vanessa Kent & Mark Malan, 'The African Standby Force: Progress and Prospects' (2003)12(3) African Security Studies 77.
[71] Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted by the 1st Ordinary Session of the Assembly of the African Union on 9th June, 2002 at Durban, South Africa. (PSC Protocol, AU Doc. 9.7.2002).

values, as well as decision-making processes relating to the prevention, management and resolution of crises and conflicts, post-conflict reconstruction and development in the continent.[72]

The structure of peace and security measures for the African Union is provided for under the Constitutive Act of the African Union. Article 5(1) of the Constitutive Act lays down the organs of the African Union. These include the Assembly, the Executive Council, Pan African Parliament, the Court of Justice, the Commission, the Permanent Representatives Committee, the Specialized Technical Committee, the Economic, Social and Cultural Council, and the Financial Institutions.

Pursuant to Article 5(2) of the Constitutive Act, which gives the Assembly the power to add organs, the African Union resolved to create the African Union Peace and Security Council to act as a primary organ for peace and security in African states.[73]

The African Union Peace and Security Council was established in 2004. The need for its establishment was due to the proliferation of conflicts in Africa.[74] There was need to have an African body to promote peace and security after the United Nations Security Council's failure to prevent the genocide in Rwanda and after the Security Council had also experienced a lot of challenges in addressing conflicts in Sudan, Sierra Leone, and Liberia.[75]

The objectives of the Peace and Security Council are provided under Article 3 of the Protocol Establishing the Peace and Security Council. These are to promote peace, security and stability; to anticipate and prevent conflicts; to promote and implement peace building and post conflict restructuring activities; to coordinate continental efforts in combating international terrorism; and to develop a defense policy and promote democracy, rule of law and human rights. Its functions are guided by principles provided under Article 4 which include peaceful settlement of disputes, quick response to crisis, respect for human rights and rule of law, sovereignty and non-interference in internal affairs.

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[72] J. Gomes Porto, *Africa's New Peace and Security Architecture: Promoting Norms Institutionalizing Solutions* (Routledge Publishers, New York, 2016) 16.
[73] Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted by the 1st Ordinary Session of the Assembly of the African Union on 9th June, 2002 at Durban, South Africa. (PSC Protocol, AU Doc. 9.7.2002).
[74] Charles Riziki, 'Regional Arrangements and the Maintenance of Peace and Security: The Role of the African Union and Security Council,' (2010) 40 Canadian Year Book of International Law Journal 98.
[75] Ibid.

Article 4(j) of the Protocol provides that the African Union can intervene in cases of war crimes, genocide and crimes against humanity in a Member State. This justifies interventions on humanitarian grounds.

The composition of the Peace and Security Council is provided under Article 5. Unlike the United Nations Security Council, the Peace and Security Council's membership is determined on the basis of equal rights. It comprises of fifteen (15) members, where ten members are elected for a term of two years and five members are elected for a term of three years.

The membership is elected on this positive discrimination criterion so as to ensure continuity of the Peace and Security Council owing to its pivotal role in maintaining peace and security in the continent. The membership is determined on the basis of equitable regional representation and rotation.

Article 5 of the Protocol Relating to the Establishment of the AU Peace and Security Council outlines the criteria for a state to be eligible for membership of the Peace and Security Council as based on its commitment to uphold the principles of the Union, contribution to maintenance of peace and security in Africa, capacity and commitment to shoulder responsibilities in membership, participation in conflict resolution, and peace building at regional and continental level, willingness and ability to take up responsibility for regional and continental conflict resolution initiatives, contribution to the peace fund, respect for constitutional governance, rule of law and human rights.

Article 6 provides for the functions of the AU Peace and Security Council. These include promotion of peace and stability, early warning and preventive diplomacy, peace-making, which includes the use of good offices, mediation, conciliation and enquiry, peace support operations and intervention pursuant to article 4(h) and (j), peace building and post conflict reconstruction, humanitarian action and disaster management and any other function given by the Assembly.

Article 7 provides the powers of the African Union Peace and Security Council. These include anticipating and preventing disputes and conflicts that may lead to genocide or crimes against humanity; peace building functions to resolve conflicts where they have occurred; authorizing the mounting and deployment of peace and support missions; laying down general guidelines for conduct of missions; instituting sanctions whenever an unconstitutional change of government

takes place; implementing common defense policy; recommending interventions to the Assembly; ensuring implementation of the OAU Convention on The Prevention of Terrorism and relevant international, continental and regional agencies to combat terrorism; and supporting humanitarian actions.

Unlike the United Nations Security Council, decisions at the AU PSC are taken on consensual basis or by simple majority. Article 8(12) and (13) outlines the procedure of conducting the business of the Peace and Security Council. There is no veto power.

The decisions of the AU PSC do not therefore face this bottleneck of the veto power. The Protocol empowers the PSC to recommend interventions in internal affairs in the interest of peace and security. For instance, in 2007, the Peace and Security Council recommended the deployment of the African Union Mission in Somalia (AMISOM) peace keeping mission to support the Transitional Federal Government in Somalia.[76]

3.2.2. African Union and Sub-Regional Organizations Peace Interventions

The first African Union mission was in Burundi, referred to as African Union Mission in Burundi (AMIB) from 2003 to 2004.[77] The mission was for peace building and its mandate included to oversee a ceasefire, disarmament, and reintegration of former troops into the Burundian Army.[78] The mission was largely successful in its operations in that it helped to stabilize the volatile situation.[79]

Between 2004 and 2007, the African Union sent a mission for peace building and protection of civilians in Sudan, the African Union Mission in Sudan (AMIS).[80] The troops were contributed by Nigeria, Rwanda, South Africa, Ghana and Senegal.[81] The goal of the mission was to manage a ceasefire between the warring factions, aid humanitarian relief and protection of civilians.

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[76] Adopted by the 69th meeting of the Peace and Security Council on the 19th of January 2007.
[77] Isiaka Badmus, *The African Union's Role in Peacekeeping: Building on Lessons Learnt from Security Operations* (Palgrave Macmillan, London, 2015) 8.
[78] Ibid.
[79] ibid.
[80] Arvid Ekengard, 'The African Union Mission in Sudan(AMIS): Experiences and Lessons Learned' (August 2008) Swedish Defence Research Agency, at < https://www.foi.se/rest-api/report/FOI-R--2559--SE> accessed on 12/8/2019.
[81] Ibid.

This mission, however, faced certain financial resource and personnel challenges.[82]Consequently, the African Union - United Nations Hybrid Operation in Darfur, referred to by its acronym UNAMID, was established which further strengthened the collaboration between the two agencies.[83] The involvement of the United Nations highly aided in the progress of the mission as it provided more finance and improved technical capacity.

In 2007, the African Union deployed the African Union Mission in Somalia (AMISOM) to counter Al-Shabaab insurgents and help the transitional government of Somalia.[84]The mission was authorized by the United Nations Security Council as per the UN Security Council Resolution 2372(2017).[85] The AMISOM forces are still active in Somalia pursuant to recently extended mandate vide United Nations Security Council Resolution 2472 (2019).[86]

The mission has however faced a lot of challenges, especially financial constraints[87]. Despite the African Union's call for support from the United Nations, the response has not been forthcoming. Some states within the region have no purse muscle to fund the expensive peace operations[88].

The African Union further launched the 'Operation Democracy in the Comoros' in 2007 to oust the authoritarian president of Nzwani, Mohamed Bacar, who refused to leave office.[89] The African Union's successful naval and military intervention into the Comoros was a highly significant development for the African Union, and contrasted with more controversial AU interventions into Somalia and Sudan.[90]

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[82] Katherine N. Andrews and Victoria K. Holt , 'United Nations-African Union Coordination On Peace And Security In Africa' (August 2007) Issue Brief: The Henry L. Stimson Center at < https://www.stimson.org/sites/default/files/file-attachments/Issue_brief_AU-UN_FINAL_sept08.pdf> accessed on 18/8/2019.

[83] S/RES/1769 (2007) -Resolution 1769 (2007): Adopted by the Security Council at its 5727th meeting, on 31 July 2007.

[84] Dawit Yohannes Wondemagegnehu & Daniel Gebreegziabher Kebede, 'AMISOM: Charting a New Course for African Union Peace Missions' (2017) 26(2) African Security Review Journal, 199-219 at < https://www.tandfonline.com/doi/pdf/10.1080/10246029.2017.1297583?needAccess=true > accessed on 19/8/2019.

[85] SC/12972, adopted by the United Nations Security Council on 30th August 2017.

[86] S/RES/2472 (2019), adopted by the Security Council at its 8537th meeting, on 31 May 2019.

[87] Ibid, (n84)

[88] Ibid.

[89] Emma Svensson, 'The African Union's Operations in the Comoros' (September 2008) Swedish Defence Research Agency, at < http://www.operationspaix.net/DATA/DOCUMENT/5040~v~The_African_Union__8217s_Operations_in_the_Comoros.pdf> accessed on 12/8/2019.
Ibid., pg. 99.

[90] Simon Massey and Bruce Baker, 'Comoros: External Involvement in a Small Island State' (Programme Paper AFP 2009/1, Chatham House, London, July 2009) at

In 2011, the AU launched the African Union Regional Co-operation Initiative against the Lord's Resistance Army to counter cross border threats in the Central African Republic, Uganda and the Democratic Republic of Congo.[91] This made it look more as a self-defense operation rather than a peace operation. There was also a joint effort between ECOWAS and African Union Peace and Security Council to launch the African-Led International Support Mission to Mali (AFISMA) which was a peace operation in Mali.[92] The purpose of AFISMA was similar to that of AMISOM, that is, to help the Malian government in fighting Islamic extremists and recovering the areas in the north of its territory under the control of terrorist, extremist and armed groups. [93]

ECOWAS is the most active sub-regional body in peacekeeping. The regional body began peacekeeping operations before the formation of the African Union. [94] Before the establishment of the AU, it was the most experienced sub-regional organization in peace operations. [95] It intervened in the Liberian conflict between 1990 to 1999 by launching peace operations under the Economic Community of West African States Monitoring Group (ECOMOG-I).[96] ECOWAS decided to take action in Liberia due to the huge increase of refugees from Liberia into its partner states and the UN's failure to send troops into Liberia.[97]

ECOMOG-1 ran besides the United Nations peace operations in Liberia under the United Nations Observer Mission in Liberia (UNOMIL) which began later in the year 1993.[98] UNOMIL was launched as an observer mission while ECOMOG-1 was a military force. ECOWAS also sent a peace keeping force to Liberia in the year 2003 under the Economic Community of West African

<https://www.chathamhouse.org/sites/default/files/public/Research/Africa/0709comorospp.pdf> accessed 0n 12/8/2019.

[91] Ashley Benner & John Prendergast, 'Ending the Lord's Resistance Army' (2011)The Enough Project (The Enough Project supports peace and an end to mass atrocities in Africa's deadliest conflict zones) at < https://enoughproject.org/files/Ending_the_LRA.pdf> accessed on 21/8/2019.

[92] S/RES/2085 (2012) Adopted by the Security Council at its 6898th meeting, on 20 December 2012.

[93] Ibid.

[94] Ero Comfort, 'ECOWAS (Economic Community of West African States) and sub-regional peacekeeping in Liberia' (1995) Journal of Humanitarian Assistance at < https://sites.tufts.edu/jha/archives/66> accessed on 22/8/2019.

[95] Ibid.

[96] Ibid.

[97] Carolyn M. Shaw, 'Regional Peacekeeping: An Alternative to United Nations Operations?' (1995) 15(2) Journal of Conflict Studies at < https://journals.lib.unb.ca/index.php/JCS/article/download/4546/5387> accessed on 22/10/2019.

[98] UNOMIL was established by Security Council resolution 866 (1993) to among others, monitor compliance with the Peace Agreement, including at points on Liberia's borders with Sierra Leone and other neighbouring countries.

States Military Mission in Liberia (ECOMIL).[99] The peace-keeping forces were later integrated into the UN peacekeeping forces, the United Nations Mission in Liberia (UNMIL).[100]

ECOWAS launched other peace operations in West African nations, including in Sierra Leone, Guinea Bissau, and Côte d'Ivoire.[101] In 2012, it launched operations in Mali to address conflicts in the country and also protect its territorial integrity. ECOWAS also sent its troops, known as the Economic Community of West African States Mission in Guinea Bissau (ECOMIB) to secure elections in Guinea-Bissau after a military coup.[102] In ECOWAS, Nigeria has been more dominant.[103]

Even though the United Nations and the African Union have, in the past, worked in a symmetrical way, things took a turn when the two institutions failed to strike a truce on whether to intervene in the Libyan and Côte d'Ivoire situations.[104]

The United Nations Security Council and the AU Peace and Security Council differed on whether or not to intervene in the two conflicts and, if they were to intervene, on what grounds. On the one hand, African states considered the crisis in Libya as an internal affair and, thus, called for the respect of state sovereignty.[105] On its part, the United Nations Security Council, acted under the North Atlantic Trade Organization, disguised as an attempt at restoring the peace in Libya, but in reality interested in the rich oil resources, occasioned more harm than good to the country.[106]

The United Nations and the African Union recognize that the task of peacekeeping is an onerous one that even though the United Nations Security Council is clothed with the primary mandate of

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[99] Rodrigo Tavares, 'The Participation of SADC and ECOWAS in Military Operations: The Weight of National Interests in Decision-Making' (September 2011), 54 (2) African Studies Review,145-176.

[100] *Decision A/DEC.1/8/90, Document 50,* p. 67-69; *Decision A/Dec.2/8/90, Document 51,* p**.** 69-70; *Decision A/Dec.3/8/90, Document 52,* p. 70-71 and *Decision A/Dec.4/8/90, Document 53,* p**.** 71-72.

[101] Comfort (n93).

[102] Ibid.

[103] Carolyn M. Shaw, Julius O. Ihonvbere, Kenneth R. Gray & Bill Dickens, 'Hegemonic Participation in Peace Building Operations: The Case of Nigeria and ECOMOG' (1996) 13 (2) International Journal of World Peace at <https://www.jstor.org/stable/pdf/20752076.pdf?refreqid=excelsior%3Af80de8e6cd8f6504ecafcce10bcf2eb9> accessed on 22/8/2019.

[104] Report of the Chairperson of the Commission on the Partnership between the AU and the UN on Peace and Security, 'Towards greater strategic and political coherence' (PSC/PR/2 (CCCVII), 9th January2012, para. 44.

[105] Erfaun Norooz, 'Responsibility to Protect and its applicability in Libya and Syria' ICL Journal at < https://www.icl-journal.com/media/ICL_Thesis_Vol_9_3_15.pdf> accessed on 12/9/2019.

[106] Kjell Engelbrekt, Marcus Mohlin & Charlotte Wagnsson (eds), *The NATO Intervention in Libya: Lessons learnt from the Campaign* (Routledge, London, 2013).

maintaining, it requires cooperation. Today, conflicts have attained a higher magnitude that requires multiple efforts to contain. The African Union offers the necessary political authority for maintenance of conflict in Africa. The lack of resources is often filled by the United Nations under whose spectrum material and financial support receive decisive action.[107]

3.2.3. African Union: Partner or Subcontractor?

The United Nations Security Council and regional organizations have also collaborated in carrying out peace operations. The partnership has been on 'sub-contracting' and 'partnering' co-operation.[108] The regional operations are under the control of the UN, as per the conditions set under Chapter VIII of the Charter of the United Nations, which require the operations to be consistent with the purposes and principles of the United Nations, that regional arrangements or agencies will not take any enforcement action without approval from the United Nations Security Council, and the Council should always be informed of the operations.

Chapter VIII of the Charter provides for a subcontracting relationship between the United Nations and regional bodies for peace-keeping.[109] It also allows for partnerships between it and regional bodies. In subcontracting, the regional bodies carry out the peace operations and the United Nations Security Council monitors their actions. Essentially, the peace operations are United Nations delegated operations.

Subcontracting bears a number of benefits. The legitimacy of the non-authorized regional peace operations is usually in doubt.[110] Through the United Nations Security Council, the regional operations get legitimacy, and being in Africa where such operations have limited resources, the operations access resources from the United Nations. However, the challenge with subcontracting

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[107]See African Union, 'Report of the Chairperson of the Commission on the Operationalization of the Rapid Deployment Capability of the African Standby Force and the Establishment of an "African Capacity for Immediate Response to Crises"' (AU Doc. RPT/Exp/VI/STCDSS/(i- a)2013, 29–30 April 2013), para. 53.
[108]Alex J. Bellamy, Paul D. Williams & Stuart Griffin, *Understanding Peacekeeping* (Polity, Cambridge, 2004); 11.
[109] Charter of the United Nations, Articles 52, 53 and 54.
[110] Ibid.

is that it assumes a hierarchical relationship, which regional bodies do not want to be in, so as to ensure that the subcontracted agency does not exceed its mandate and power.[111]

Partnerships between regional arrangements and the United Nations Security Council provide the added advantage of proximity, mutual interest and increased legitimacy which are more easily identifiable in the regional security organizations compared to the United Nations Security Council.[112]

Unlike 'subcontracting', partnering is more of a horizontal relationship.[113] Partnerships aid in regional peace keeping operations as they enable regional bodies to add capacity in the form of troops contribution, logistical support and also funds.[114] A partnership model gives regional organizations autonomy and further allows for the acceptance of the possibilities and limitations of each partner.[115] Further, the partnership model is likely to aid effective task-sharing and harmonize overlapping responsibilities between the United Nations Security Council and the regional security organizations.[116]

The African Union and the United Nations have partnered in addressing the Somalia situation. The UN created the United Nations Support Office for AMISOM (UNSOA) to aid AMISOM in carrying out its activities. This has provided funding for AMISOM activities. There were also missions in Comoros, Mali and Central African Republic in 2007 and Central African Republic between 2013- 2014.[117]

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[111] Constance Guers, Christophe Martin, & Jean-Luc Wybo, 'The Impact of the use of Subcontracting on Organizational Reliability and Safety' (24th European Safety and Reliability Conference – ESREL, 2014) at < https://hal-mines-paristech.archives-ouvertes.fr/hal-01063681/document> accessed on 23/10/2019.
[112] United Nations, 'Cooperation between United Nations, Regional, Subregional Organizations 'Mainstay' of International Relations, Security Council Hears throughout Day-long Debate' (Security Council 7015th Meeting-SC/11087, 6 August 2013) at < https://www.un.org/press/en/2013/sc11087.doc.htm> accessed on 22/10/2019.
[113] Hikaru Yamashita, 'Peacekeeping Operations between United Nations and Regional Organizations' (2012) 38 (1) Review of International Studies 184.
[114] Ibid.
[115] Ibid., pg. 185.
[116] Muthiah Alagappa, 'Regional Institutions, the UN and International Security: A Framework for Analysis' (1997) 18(3) Third World Quarterly, 421-441.

Article 52 of the Charter provides for regional arrangements. The UN Security Council is mandated to maintain world peace and security.The wording of Article 52(2) suggests that in the task of maintaining world peace and security, regional arrangements can independently tackle those disputes that are of lesser magnitude without referring them to the Security Council. The wording of the Article underscores the fact that conflicts and disputes require cooperation of various actors to manage and resolve them. However, the operations by these regional arrangements are required to be in tandem with the purposes and principles of the United Nations.

It is only enforcement actions that require approval from the UN Security Council. All African states are bound by Article 2(4) of the Charter of the United Nations that prohibits the use of force. Most of the regional arrangements in Africa have been peacekeeping missions, not involving use of force. There are peace enforcement operations that have been carried out by African Union, with the most recent being the AMISOM mission in Somalia.

There are instances where regional organizations have employed peace enforcement measures without approval from the United Nations Security Council. These include Liberia and Sierra Leone, by ECOWAS, and Somalia, Burundi and Comoros, by the African Union.[118] These peace operations have later on been ratified by the UN Security Council.

The African Union has cooperated with the United Nations Security Council and is the only regional body, since 2007, to hold a joint annual conference meeting with the UN Security Council.[119] Its operations are not fully under Article 52 of the Charter of the United Nations.

It can have both a partnering relationship and a subcontracting relationship. The African Union can carry out its operations on its own. It does not have to operate as a subcontractor under Chapter VIII of the Charter of the United Nations, more so in those situations where the threat to peace or breach of peace is of a lesser magnitude in line with Article 52(2).

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[118]Francis Ssekandi, 'The Changing Role of Regional Organizations in Maintaining Peace and Security' (2013) 107 American Society of International Law Journal 325.
[119]Thomas Kwasi Tieku & Tanzeel F. Hakak, 'The Curious Case of Hybrid Paternalism: Conceptualizing the Relationship Between the United Nations and the African Union in Peace and Security' (2014) 4 (2) African Conflict and Peace-building Review, 130 at < https://www.jstor.org/stable/pdf/10.2979/africonfpeacrevi.4.2.129.pdf?refreqid=excelsior%3Af466dd317ff9fdff0d0cee2a7cbfffb3> accessed on 22/8/2019.

3.2.4 Challenges Facing the African Union in Promoting Peace and Security

There are a number of challenges which affect regional arrangements, especially the African Union, in peace operations. The main ones are insufficient resources and lack of capacity.[120] The African Union has not been able to efficiently conduct peace operations in situations that it is required to intervene and restore peace. Lack of resources and capacity have been the biggest constraints to regional peace operations.[121] For instance, the African Union peace operations in Somalia have highly been affected by lack of resources. Additionally, regional arrangements such as the African Union Peace and Security Council have, in comparison to the United Nations Security Council, limited capacity for collection, analysis and dissemination of intelligence in real time in order to enhance their capacity to handle their security and safety needs.[122]

ECOWAS, which has been involved in peace operations more times than the other sub-regional arrangements, has a better capacity. This makes it more efficient compared to SADC. SADC, with less capacity, is unable to handle peace keeping operations as efficiently as ECOWAS. Less than 20 % of African countries donate their troops to AU.[123] In Somalia, Uganda and Burundi were the only countries that contributed forces for a long period of time for the maintenance of peace and security.[124]

Unlike other regional groupings in Africa, ECOWAS has in place a defence pact in the form of the Protocol on Mutual Assistance of Defense, that was adopted by the member states on May 29, 1981.[125]

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[120]Malte Brosig, *Co-operative Peacekeeping in Africa: Exploring Regime Complexity* (Routledge Publishers, New York, 2015) 74.

[121] Ibid.

[122]UNGA Fourth Committee Meeting on 15th 24th October 2005, 'Peacekeeping Problems Arise from Unrepresentative Security Council Lacking Will To Act, Delegate Tells Fourth Committee As It Continues Review' GA/SPD/326 at<https://www.un.org/press/en/2005/gaspd326.doc.htm> accessed 18/8/2019.

[123] Boutellis & Williams (n 18).

[124] Paul D. Williams, 'Paying for AMISOM: Are Politics and Bureaucracy Undermining the AU's Largest Peace Operation?' *IPI Global Observatory* (New York, January 11, 2017) at < https://theglobalobservatory.org/2017/01/amisom-african-union-peacekeeping-financing/> accessed on 19/10/2019.

[125] Economic Community of West African States, Protocol Relating to Mutual Assistance of Defense, 1981, at < http://www.operationspaix.net/DATA/DOCUMENT/3827~v~Protocole_d_Assistance_Mutuelle_en_matiere_de_Defense.pdf> accessed on 25th June 2019.

The Protocol spells out the procedure for intervention in conflict situations in the region. Article 13 specifically anticipates the creation of a standing armed force known as the Allied Armed Forces of the Community (AAFC) and requires all Member States to place at the disposal of the Community earmarked units from the existing National Armed Forces in case of any armed intervention.[126]

In an attempt to end the bloody civil war in Liberia, in August 1990, ECOWAS took the unprecedented step of sending a peacekeeping force into Monrovia. This force, known as the Economic Community Cease-Fire Monitoring Group, (ECOMOG), succeeded in temporarily stopping the bloodshed and ethnic killing and is, therefore, regarded by many as a model of regional conflict resolution.[127] This was after the Security Council and traditional allies of Liberia, such as the United States, failed to take steps to contain the ethnic-based killings.[128]

The ECOWAS example sharply contrasts with the intervention capability of the African Union Peace and Security Council, in which there are no provisions for Member states to collectively contribute armed forces to support peace operations in the continent. This has severely limited the Peace and Security Council's ability to act unilaterally where action by the United Nations and other international actors is not forthcoming and, particularly, its ability to enforce cease-fire agreements and monitor human rights abuses in post-conflict situations.

Finally, competing national interests and varied priorities of member states undermine the Peace and Security Council's mandate. For one, national priorities affect resource mobilization as collective security concerns are usually peripheral to domestic budgetary allocations unless immediate interests of the concerned member state are under imminent threat.

Although the Peace Fund was created to address financing issues, there are high levels of arrears and late payments of Member States' assessed contributions.[129]

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[126] Protocol Relating to Mutual Assistance of Defense, 1981, Article 13.
[127] Human Rights Watch, 'Waging War to Keep the Peace: The ECOMOG Intervention and Human Rights' (June 1993) Volume 5, Issue No. 6, at < https://www.hrw.org/reports/1993/liberia/> accessed on 26th June 2019.
[128] Max Ahmadu Sesay, 'Collective Security or Collective Disaster? Regional Peace-Keeping in West Africa' (1995) 26 (2) Security Dialogue, 205–222.
[129] African Union Report, "Securing Predictable and Sustainable Financing for Peace in Africa"(August 2016), at < http://www.peaceau.org/uploads/auhr-progress-report-final-020916-with-annexes.pdf> accessed on 26th June 2019.

As a result, the Fund is highly dependent on external partners, with the consequent underlying interests of the donors. Recent public health concerns, such as the outbreak of Ebola, have made many AU members vulnerable and caused a shift of focus from human security.

3.2.5 The proposed African Humanitarian Agency (AfHA)

The proposed AfHA was endorsed by the Assembly of African Union which also adopted the Common African Position in January 2016 which is aimed at achieving effective humanitarian action by 2025.[130] The African Union wants African nations, multi-country alliances, or African NGOs to lead humanitarian coordination and response by 2025, with the AfHA replacing the current leadership provided by UN agencies and other organisations.[131] The aim is for AfHA to provide the general policy direction for the African-led humanitarian system, strengthen the disaster management bodies of member states, and create sub-regional hubs for training and funds mobilisation.[132] Although it is yet to be operationalized, it remains to be seen if the new body will overcome the historical challenges of the existing African Union Peace and Security architecture in as far as peace building and conflict prevention and resolution is concerned.

3.2.6 Comparison of African Union with other Regional Organizations

This section briefly discusses the key confluence and divergent points between the African Union Peace and Security Council and other regional peace agencies.

3.2.6.1 The Organisation of American States

The OAS is the world's oldest regional organisation. It has been in existence since 1948 and draws its membership from all the 35 sovereign states of the Americas.[133]

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[130] African Union Press Release No. 054/2019: 'Member States Experts Meeting on the Operationalisation Of African Humanitarian Agency Opens' at < https://au.int/sites/default/files/pressreleases/36459-pr-pr_054-_on_member_states_meeting_on_african_humanitarian_agency.pdf> accessed on 24/10/2019.
[131] Oheneba Boateng, 'Three Challenges for the African Union's New Humanitarian Agency ' (The Global Public Policy Institute (GPPi), Berlin), *The New Humanitarian* (28 Aug 2019) at < https://www.gppi.net/2019/08/28/three-challenges-for-the-african-unions-new-humanitarian-agency> accessed on 25/10/2019.
[132] Ibid.
[133] Monica Herz, 'Does the Organisation of American States Matter?' Working Paper 34 - Regional and Global Axes of Conflict (Institute of International Relations, PUC-Rio, April 2008) at <http://www.lse.ac.uk/international-development/Assets/Documents/PDFs/csrc-working-papers-phase-two/wp34.2-does-the-oas-matter.pdf> accessed on 26/10/2019.

Like the Constitutive Act of the AU , Article 2 of the OAS Charter mandates it to 'guarantee the peace and security of the continent'.[134] While the OAS Charter recognises state sovereignty under its Articles 19 and 21, it expressly waives state sovereignty where measures are adopted for the maintenance of peace and security in accordance with existing treaties.[135]This is in contrast to the Constitutive Act of the AU that provides for non-intervention in the affairs of a member state unless war crimes, genocide or crimes against humanity have been committed.[136]

Additionally, like the African Union, the OAS also has in place a Peace Fund that was established in June 2000, vide OAS General Assembly Resolution 1756 (XXX-O/00) in Windsor, Canada. The Fund operates in a similar manner as that of the AU.

The OAS security structure under the Charter was designed for collective security operations and for dispute settlement through diplomatic consultation.[137] The key difference with other regional security agencies however, lies in Chapter VI of the OAS Charter that endorses the principle of collective security – an attack on one state is considered an attack on all. Article 28 of the OAS Charter provides as follows:

> Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.

Regarding conflict between states in the hemisphere, the emphasis lies on peaceful means for settlement of disputes.[138] In this regard, the Charter of the OAS establishes an Advisory Defense Committee to advise on problems of military cooperation that may arise in connection with the application of existing special treaties on collective security.[139]

To a considerable extent, the OAS has succeeded in preventive diplomacy and playing a crucial role in preventing the escalation of both intra-state and inter-state disputes into violent conflicts.[140]Active examples include the deployment of Special Missions to the Dominican

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[134] Charter of the Organization of American States (A-41), Article 2 (a); Signed in Bogotá in 1948 and amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993.
[135] Charter of the Organization of American States (A-41), 1948, Article 23.
[136] Constitutive Act of the African Union, 2000, Article 4.
[137] Herz (n133)11.
[138] Ibid.
[139] Charter of the Organization of American States (A-41), 1948, Article 66.
[140] Herz (n133)23.

Republic and Haiti Border (2015); the OAS Special Mission to the Venezuelan – Colombian border (2015) and the Mediation of the Chixoy Hydroelectric Dam case, Guatemala (2006 – Present).[141]

3.2.6.2 The Organisation for Security and Cooperation in Europe (OSCE)

This organization has its origins in the 1975 Conference on Security and Co-operation in Europe (CSCE) which culminated in the adoption of the Helsinki Final Act, OSCE's constitutive document.[142] With 57 participating States in North America, Europe and Asia, the OSCE is the world's largest regional security organization. The OSCE works to build and sustain stability, peace and democracy for more than one billion people, through political dialogue and projects on the ground.[143]

Through the Charter for European Security, 1999, the OSCE has in place a Permanent Council mandated to establish field operations, decide on their mandates and budgets.[144] Aside from the field operations, the Charter sets up Rapid Expert Assistance and Co-operation Teams (REACT) at the disposal of the OSCE for rapid deployment within the participating States. [145]

Like the African Union Peace and Security Council, the OSCE's approach to collective security is similar. Practical differences between these two bodies in terms of the success of their respective mandates are notable from the prevalence of armed conflict in their member state territories.

3.3 Conclusion

Since its establishment in 2004, the African Union has addressed a number of threats and challenges to international peace. The structure for the maintenance of peace under the African Union has been developing. There have been mixed results in the conflicts that the African Union has handled, that is, there are success and failure stories from the African Union peacekeeping missions. The AU has supported use of military force and peace keeping forces to restore international peace and security.

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[141]OAS Peace Fund, 'OAS Peace Missions Map' at <http://www.oas.org/sap/peacefund/PeaceMissions/PeaceMissionsMap.html accessed on 26/10/2019.
[142] The Helsinki Final Act, 1975, Preamble.
[143] Ibid.
[144]Charter for European Security, Istanbul, November 1999, Article 37.
[145]Ibid., Article 42.

From the establishment of the Peace and Security Council, there have been challenges on peace and security in Africa, with no effective intervention by the Peace and Security Council. There has been an increase in unconstitutional change of governments, intrastate conflicts, sham elections, continued poor governance, and abuse of rule of law.

This shows that there is need to strengthen the regional arrangements in Africa. Even with the mixed results of both success and failure, there is still hope that partnering in peace keeping and maintenance is proving to be the right model. This is primarily because the regional arrangements, like OAU/AU, have a better understanding of the political and cultural dynamics of the conflict-ridden countries of the African states that have had to bear the scourge of conflicts.

CHAPTER FOUR:

THE UNITED NATIONS SECURITY COUNCIL AND THE AFRICAN UNION PEACE AND SECURITY COUNCIL

4.1 Introduction

This Chapter focuses on the extent to which the United Nations Security Council has collaborated and co-operated with the African Union in the maintenance of peace and security in Africa. It begins with a quick discussion on the establishment of the United Nations Security Council and the African Union Peace and Security Council and their mandate in the maintenance of international peace and security. The Chapter then contextualizes the discussion to the situation in South Sudan and concludes by highlighting some of the challenges faced by both security agencies in maintaining peace and security in Africa. Although the Chapter notes other African countries, such as Libya and Rwanda, where the roles of the global and regional security agencies have been questioned, the conflict in South Sudan is more relevant to the present discussion due to its genesis and continuance at a time when the African Union Peace and Security Council and the United Nations Security Council have learnt from past mistakes and would be expected to intensify collaboration and response measures.

4.2 Establishment of the United Nations Security Council (UNSC)

Under the Charter of the United Nations, the United Nations Security Council (UNSC) is one of the six principal organs of the United Nations, with the primary responsibility for the maintenance of international peace and security.[1] The correlated functions of the United Nations Security Council include to develop friendly relations among nations; to cooperate in solving international problems and in promoting respect for human rights; and to be a centre for harmonizing the actions of nations.[2]

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[1] Charter of the United Nations, 24 October 1945, Articles 23 & 24.
[2] Charter of the United Nations, 24 October 1945, Article 1.

The Security Council consists of five permanent members (China, France, the Russian Federation, the United Kingdom and the United States) and ten non-permanent members who are elected from among the Member States of the United Nations for a two-year term.[3] The United Nations Security Council is intended to have a small enough membership to facilitate the necessary rapid decision-making for the maintenance and restoration of international peace and security, with, in theory, the veto power of its Permanent Members serving to ensure the political support of the major powers for its decisions.[4]

Article 24(1) of the Charter explicitly provides that:

> In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Under Article 25, 'The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.'

While the mandatory language of Article 39 of the Charter states that 'the Security Council shall determine the existence of any threat to the peace, breach of peace, or act of aggression.' The political, rather than legal, nature of the United Nations Security Council clearly presupposes an ability to exercise political and strategic judgment in making such a determination.[5] This has occasioned divergent goals and conflicting interests of the permanent members of the Security Council's stand in the way of taking urgent measures to remedy grave security situations across the world.

Once the United Nations Security Council makes a determination in accordance with Article 39 of the Charter, it may make recommendations with a view of restoration of international peace and security or call upon the parties involved to comply with provisional measures to prevent escalation of the problem.[6]

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[3] Charter of the United Nations, 24 October 1945, Article 23.
[4] Hilaire McCoubrey & Justin Morris, *Regional Peacekeeping in the Post-Cold War Era* (Kluwer Law International, The Hague, The Netherlands, 2000) 24.
[5] ibid, 15.
[6] Charter of the United Nations, 24 October 1945, Article 40.

If the situation so requires, the Security Council may impose sanctions, including complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic radio and other means of communication, and the severance of diplomatic relations.[7] The ultimate intervention by the Security Council involves the use of force if measures contemplated under Articles 40 and 41 of the Charter prove inadequate.[8]

4.3 The Position of Regional Security Arrangements within the UN System

Article 33(1) of the Charter of the United Nations places a mandatory requirement on Member states who are parties to a dispute to seek pacific settlement of disputes through, inter alia, recourse to regional arrangements or agencies. Chapter VIII of the Charter of the United Nations further makes provision for regional security arrangements under Articles 52-54. Article 52 (1) provides as follows:

> Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

Although the Charter does not define what constitutes a regional arrangement or agency, in practice, the United Nations has considered such organizations that meet given regional needs to fall within Article 52.[9] Based on its objectives and context, the African Union Peace and Security Council satisfies classification as a regional security arrangement in Africa. While the African Union Peace and Security Council was intended to serve as the primary organization for early warning, conflict prevention and crisis management in the African continent, its substance and character does not emphasize its intended role as a regional security organization.

In comparison to other regional security arrangements like the North Atlantic Treaty Organization (NATO) that command vast military and defense resources, the African Union Peace and Security Council has conspicuously taken the backstage in maintaining peace and security in Africa.

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[7] Charter of the United Nations, 24 October 1945, Article 41.
[8] Charter of the United Nations, 24 October 1945, Article 42.
[9] McCoubrey & Morris, *Regional Peacekeeping in the Post-Cold War Era*, 35.

With the examples of Libya, Rwanda, and South Sudan, this Chapter highlights the fundamental issues in the ongoing debate on whether the Peace and Security Council fits the description of a regional security arrangement contemplated in the Charter of the United Nations.

The United Nations Security Council is, additionally, expected to 'utilize regional arrangements and agencies for enforcement action'.[10] Article 53 of the Charter further emphasizes that 'no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the United Nations Security Council.'

This implies that the Security Council, and not the regional bodies, retains the primary responsibility for the maintenance of international peace and security. The requirement of the Security Council authorization further enhances its primacy in global security.

Given its expansive mandate under the Charter, the Security Council is, quite simply, the only forum of its kind, that is, a forum able to address, if not resolve, security challenges of international concern and, crucially, to confer near-universal legitimacy on the actions of states or groups of states in a way that no alternative candidate or agency, real or proposed, has been able to do.[11] Despite its clear mandate, the Security Council has been under sustained criticism for inexcusable failures to offer timely interventions in critical security situations across the globe. With respect to Africa, the UN Mission in DRC Congo, the UN Organization Stabilization Mission (MONUSCO), have been widely accused of failing to protect civilians, calling into question the effectiveness of foreign interventions in African conflicts.[12]

Similar criticism has been levelled against the UN Mission in South Sudan. According to an Amnesty International Report 2017/18, the situation in South Sudan declined steadily with parties to the conflict continuing to commit crimes under international law and human rights violations and abuses continuing with impunity.[13]

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[10] Charter of the United Nations, 24 October 1945, Article 53.

[11] Mats Berdal, 'The UN Security Council: Ineffective but Indispensable' (June 2003) 45 (2) Survival, 10.

[12] Jessica Hatcher, Goma and Alex Perry, 'Defining Peacekeeping Downward: The U.N. Debacle in Eastern Congo" *The Times* (London, Nov. 26, 2012) at <http://world.time.com/2012/11/26/defining-peacekeeping-downward-the-u-n-debacle-in-eastern-congo/> accessed on 12/10/2018.

[13] Amnesty International, Amnesty International Report 2017/18 at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF > accessed on 15/10/2018.

Despite the presence of the United Nations Mission in South Sudan (UNMISS), the Report noted there was increased fighting between government and opposition forces and, consequently, a devastating humanitarian impact on the civilian population.[14] The immediate implication of such lapse in regional security is that the Security Council has consistently failed to coordinate timely responses to serious conflicts in Africa, despite having the ability to mobilize and implement immediate corrective measures.

In general, from its failures, both in Africa and elsewhere, the discharge of the mandate of the Security Council can be best summed up as having been 'limited and selective.'[15] Profound divisions continue to manifest among the Permanent Five (P5) veto-wielding members of the Security Council over grave security situations such as Iraq in 2001.[16] When it comes to most issues on the Security Council agenda, where strategic national interests of the permanent five members are not at stake, the resulting inaction or, at most, selective and limited involvement are more pronounced.[17] Thus, with seventy-one UN peacekeeping operations having been deployed since 1948 and 15 current peacekeeping operations,[18] the Security Council's responses to conflicts in Africa has not been adequate. This may be deduced from the lethargic reaction of the Security Council to conflict situations in Africa, such as Ethiopia-Eritrea, Somalia, and Rwanda, all which are examples of neglect of African conflicts by the Council.[19]

In recognition that not every international security problem can be tackled at the global level, the Security Council has escalated its collaborative efforts with regional security organizations. Although regional organizations have the advantage of greater knowledge of local societies, they have been characterized by fear of local hegemonic powers.[20] A vital step towards buffering the Security Council's involvement in regional peace and security efforts was witnessed by the adoption of Resolution 2320 of 2016 that welcomed proposals on cost-sharing and stronger

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[14] Amnesty International Report 2017/18, 23.

[15] Vaughan Lowe, Adam Roberts & Jennifer Welsh, *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945*, (Oxford University Press, Oxford, 2010) 2.

[16] ibid, 7.

[17] ibid, 26.

[18] Vanessa Manhire (ed).*, United Nations Handbook 2017–18* (Ministry of Foreign Affairs and Trade/Manatū Aorere, Wellington, New Zealand, 2017) 110.

[19] David Malone, *The UN Security Council: From the Cold War to the 21st Century* (Lynne Rienner Publishers, Colorado, 2004) 585.

[20] Ibid (n14), 4.

cooperation between United Nations and the African Union.[21] The main objectives of the Resolution are discussed below.

4.4 Security Council Resolution 2320 of 2016

This Resolution was adopted by the Security Council at its 7816th meeting, on 18th November 2016.[22] The resolution highlights the importance of Chapter VIII of the Charter as the focal point for cooperation between the United Nations Security Council and regional security arrangements and, in particular, the African Union (AU).

Importantly, the Resolution stresses the utility of developing effective partnerships between the United Nations and regional and sub-regional organizations, in order to enable timely responses to disputes and emerging crises. The Resolution further seeks to strengthen the role of the United Nations in the prevention of conflict. It stresses that coordination of efforts at the regional level may contribute to the development of a comprehensive strategy to ensure that peacekeeping is effective in addressing threats to international peace and security.[23]

The Resolution additionally recognizes the key role the African Union plays in regional peacekeeping in Africa. It underscores the need to support African Union's efforts to develop policy, guidance and training, especially in the areas of security sector reform, post-conflict reconstruction, women, peace and security and the protection of civilians, including child protection and the prevention of and response to sexual and gender-based violence in armed conflicts and post-conflict situations.[24] The Resolution contemplates a multifaceted approach to regional security that not only focuses on the conflict situation, but identifies the vulnerable groups during conflict and suggests follow-up measures beyond the conflict.

According to the report of the Secretary General submitted to the Security Council in July 2018 (S/2018/678), the United Nations Security Council and the African Union Peace and Security Council made commendable progress in enhancing collaboration on peace and security issues in

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[21] SC/12595.
[22] S/RES/2320 (2016).
[23] S/RES/2320 (2016), Preamble.
[24] S/RES/2320 (2016), Preamble.

Africa as a result of the Resolution 2320 of 2016.[25] Accordingly, the Report recommended that the Secretariat will continue to engage with the African Union Commission to refine options for further cooperation on relevant African Union proposals, including joint planning and the process for mandating African Union peace support operations, as well as the finalization of its human rights and conduct and discipline compliance frameworks for such operations.[26]

In its *Decision on the Report of Alternative Sources of Financing the African Union*,[27] the African Union's General Assembly called on its member states to increase funding to the Peace and Security Council's operations budget at 25% to be phased incrementally over five years.

Additionally, the African Union reiterated the urgent need for mobilization of increased resources at the continental level, commensurate with the challenges, to help finance the African Union Peace and Security Agenda, and stressed the need for ownership and leadership of the peace efforts within the continent.[28]

Behind the African Union's call was the desire for freedom from international financial support to peace operations within Africa and the need to retain authority over peace efforts, which is made impossible by immense financial support to the PSC from outside the continent.

Despite such commitment to financial independence at the continental level, the African Union proceeded to seek help of the United Nations Security Council in negotiating United Nations Assessed Contributions for African Union Peace Support Operations.[29] This reveals a disconnect between the principles sought by the African Union in establishing autonomy, on the one hand, and the reality that requires it to seek financial muscle beyond its membership, on the other.

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[25] S/2018/678, Report of the Secretary-General, 'Strengthening the partnership between the United Nations and the African Union on issues of peace and security in Africa, including on the work of the United Nations Office to the African Union' 6 July 2018 at < https://undocs.org/en/S/2018/678> accessed on 24/10/2019.

[26] Ibid.

[27] Doc. Assembly/AU/6(XXIV).

[28] Decision on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa Doc. Assembly/AU/7(XXIV) at <https://au.int/sites/default/files/decisions/9665-assembly_au_dec_546_-_568_xxiv_e.pdf> accessed on 16/10/2018.

[29] S/RES/2320 (2016), Para 4.

4.5 Extent to which the Security Council has collaborated with the African Union in the Maintenance of Peace and Security in Africa

While the framework for cooperation between the Security Council and the African Union is clearly set out under Chapter VII of the Charter and Article 17 of the Protocol establishing the African Union Peace and Security Council, there have been considerable lapses in security in Africa.[30] The responses to conflict situations in Africa by both the Security Council and the African Union Peace and Security Council have attracted diverse views on how the two institutions complement each other in their roles. This section interrogates the effectiveness of such collaboration with the examples of Libya and Rwanda, before discussing in detail the conflict situation in South Sudan under similar context.

4.5.1 Rwanda

The Rwanda genocide is a classic example of the Security Council's lacklustre response to a grave security situation in Africa. Fully aware of the fragile security situation in Rwanda, the Security Council, by its Resolution 846 (1993)[31], on 22nd June 1993, authorized the establishment of the United Nations Observer Mission Uganda-Rwanda (UNOMUR) on the Uganda side of the common border, for an initial period of six months, subject to review every six months.[32]

The Security Council scaled up the mission by the establishment of a United Nations Assistance Mission for Rwanda (UNAMIR), with the mandate of "contributing to the establishment and maintenance of a climate conducive to the secure installation and subsequent operation of the transitional Government".[33] However, the UNAMIR was criticized for not coming to the aid of civilians when genocide began in April 1994, because two of the three main contingents were

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[30] Tim Murithi, 'Between Paternalism and Hybrid Partnership: The Emerging UN and Africa Relationship in Peace Operations' Friedrich Ebert Stiftung Briefing Paper (Friedrich Ebert Stiftung, New York, 2007) at < http://library.fes.de/pdf-files/iez/global/04676.pdf> accessed on 18/6/2019.
[31] S/RES/846 (1993).
[32] United Nations Security Council, 'List of Past Peace-keeping Operations: Rwanda- UNAMIR' at < https://peacekeeping.un.org/mission/past/unamirFT.htm> (accessed on 18th November 2018).
[33] UNAMIR was established on 5 October by Security Council resolution 872 (1993) for an initial period of six months with the proviso that it would be extended beyond the initial 90 days only upon a review by the Council.

withdrawn by their governments and the force lacked appropriate mandate and capacity to stop the killings.[34]

A subsequent inquiry by the OAU into the Rwanda genocide singled out France and the United States for particular blame in failing to prevent the genocide, in addition to the Security Council as a whole.[35] The Report by the OAU notes that several actors have apologized for not intervening during the genocide.[36] However, the Report further stated that 'apologies alone were not adequate,' and demanded reparations for Rwanda by actors in the international community for their roles before, during, and since the genocide. [37]

While the Report was a welcome evaluation of the failures of the various actors in the Rwanda genocide, the OAU failed, again, to re-examine its role in internal conflicts. As noted by some scholars, if the AU does not develop its own formula for dealing with internal conflicts, unilateral intervention by member states will become the new norm and, slowly but surely, the AU will be pushed to political limbo.[38]

4.5.2 Libya

Scholars are divided over the African Union's unity on Libya conflict in 2011.[39] They, however, agree that the United Nations-backed North Atlantic Treaty Organization's (NATO) intervention in Libya was successful because the African Union was divided and lacking in leadership.[40]

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[34]Ekpotuatin Charles Ariye, 'A Bystander to Genocide: Revisiting UN Failure in the Balkans and Rwanda' (April 2015)11 (11) European Scientific Journal, 328.

[35]BBC News, 'OAU seeks Rwanda compensation' Friday, *BBC* (London, 7 July 2000) at < http://news.bbc.co.uk/2/hi/africa/823355.stm> accessed on 18/11/2018.

[36]International Panel of Eminent Personalities, "Rwanda, the Preventable Genocide" at < http://www.refworld.org/pdfid/4d1da8752.pdf> accessed on 18/11/2018. On Wednesday, April 16, 2014, Colin Keating, the diplomat who was President of the U.N. Security Council in April 1994, apologized for the Council's refusal to recognize that genocide was taking place in Rwanda and for doing nothing to halt the slaughter of more than one million people – see Associated Press, "Apology for UN refusal to stop Rwanda genocide" *Daily Mail*, UK at<https://www.dailymail.co.uk/wires/ap/article-2606171/Apology-UN-refusal-stop-Rwanda-genocide.html> accessed on 18/11/2018.

[37] Ibid.

[38] P. Mweti Munya, 'The Organization of African Unity and Its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation' (1999) 19 B.C. Third World L.J., 586.

[39] Christopher Zambakari, 'The misguided and mismanaged intervention in Libya: Consequences for peace' (2016) 25 (1) African Security Review, 44-62.

[40] Chinedu Thomas Ekwealor, 'The African Union Interventions in African Conflicts: Unity and Leadership Conundrum on Libya' (2016) 5 (1) Journal of African Union Studies, 63. At

Some scholars contend that the Security Council's intervention in Libya was a dishonest act which was politically and economically motivated in pursuit of the national interests of some Security Council's permanent five states.[41] It is well documented that the three African countries on the Security Council (Gabon, Nigeria and South Africa) all voted for Resolution 1973 (2011) which authorised military intervention in Libya, despite separately lobbying for diplomatic resolution mechanisms.[42]According to some scholars, the divisions over Libya revealed persisting and new disagreements within the international community on the role of the use of force to protect populations.[43]

Despite having a clear initial plan for resolving the Libyan crisis peacefully by facilitating a negotiated solution and rallying the international community behind its efforts, the AU was unable to offer any impactful response.[44] Instead, the African Union was side-lined by the United Nations and the Permanent Members of the United Nations Security Council. The United Nations Support Mission in Libya (UNSMIL), whose mandate was recently extended until 15 September 2019, instead, oversaw the peace process in Libya.[45]

The African Union has further been criticized by some scholars for being unable to take follow-up measures to maintain the peace in Libya.[46] Divisions also emerged in the African Union, with some countries, such as Egypt, taking sides in the conflict.[47] At the 29th African Union Summit,

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<https://www.researchgate.net/publication/304782040_The_African_Union_Interventions_in_African_Conflicts_Unity_and_Leadership_Conundrum_on_Libya> accessed 18/11/2018.

[41] Ibid.
[42] Security Council 6498th Meeting (Night), 'Security Council Approves 'No-Fly Zone' over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions' (C/10200, 17 March 2011) at < https://www.un.org/press/en/2011/sc10200.doc.htm>accessed on 25/10/2019.
[43] Sarah Brockmeier,Oliver Stuenkel &Marcos Tourinho, 'The Impact of the Libya Intervention Debates on Norms of Protection' (2015) 30 Global Society Journal, 113-133 at <https://www.tandfonline.com/doi/full/10.1080/13600826.2015.1094029> accessed on 25/10/2019.
[44] Alex Deewal, 'The African Union and the Libya Conflict of 2011' World Peace Foundation, December 19, 2012 at <https://sites.tufts.edu/reinventingpeace/2012/12/19/the-african-union-and-the-libya-conflict-of-2011/> accessed on 25/10/2019.
[45] On 13th September 2018, the United Nation Security Council unanimously adopted Resolution 2434 (2018) (SC/13501), to extend UNSMIL's mandate as an integrated special political mission to support an inclusive political process as well as a security and economic dialogue within the framework of the Libyan Political Agreement and the United Nations Action Plan.
[46] Phillip Apuuli Kasaija, 'The African Union (AU), the Libya Crisis and the notion of 'African solutions to African problems' (2013) 31 (1) Journal of Contemporary African Studies, 117-138 at < https://tandfonline.com/doi/abs/10.1080/02589001.2012.761463?src=recsys&journalCode=cjca20> accessed on 24/10/2019.
[47] Ibid.

the African Union Assembly reaffirmed its intention to convene a Libyan national reconciliation dialogue in Addis Ababa, at a date yet to be determined.[48]

Since the July 2016 Summit in Kigali, the African Union has conveyed its interest in initiating such a dialogue, but it has not been able to do so.[49] This manifests the apparent divisions in the African Union and the likely partisan interests in the conflict. In contrast, a number of other talks have, meanwhile, taken place, including the recent mediations led by Italy and France with much success.[50]

The African Union's intervention in Libya has been described in some academic circles as 'a demonstration that beyond rhetoric the African Union does not have the capacity to respond effectively to the crises facing Africa, rendering the notion of 'African solutions to African problems' moot.[51]

By operating without the necessary financial capacity, and by depending on hand-outs for operational activities, the AU has effectively compromised its functioning autonomy and ability to challenge the parochial interests of would-be external allies and supporters which, in turn, places continental issues, interests, and preferences in jeopardy.[52] These, coupled with divisions from members, have crippled the execution of AU Peace and Security Council resolutions in emergency situations.

The fact that the UN-led mission and the Western countries readily ignored the AU's input or plan to resolve the Libyan crisis peacefully are more reflective of the international community's confidence in AU's ability than is in reality. The Peace and Security Council of the African Union (AU), at its 265th meeting on 10th March 2011, established an ad hoc committee of heads of state to seek a negotiated settlement in Libya.[53]

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[48] Institute for Security Studies, "Where is the AU in Libya's Peace Process?" 15 August 2017, at < https://issafrica.org/pscreport/on-the-agenda/where-is-the-au-in-libyas-peace-process> accessed on 18/11/2018.
[49] Ibid.
[50] Karim Mezran & Elissa Miller, 'France, Italy and Libya's Crisis' the Atlantic Council (25th July 2017) < https://www.atlanticcouncil.org/?view=article&id=36802:france-italy-and-libya-s-crisis> accessed on 22/11/2018.
[51] Phillip Apuuli Kasaija, "The African Union (AU), the Libya Crisis and the notion of 'African solutions to African problems'," (2013) 31 Journal of Contemporary African Studies 1, 117.
[52] Ibid.
[53] African Union Peace and Security Council, COMMUNIQUE OF THE 265th MEETING OF THE PEACE AND SECURITY COUNCIL, PSC/PR/COMM.2(CCLXV) at < http://www.peaceau.org/uploads/communique-libya-eng.pdf accessed on 18/8/2019.

On the other hand, the Security Council, through its Resolution 1973 of 2011, urged member states to 'to take all necessary measures…to protect civilians' and expressly recognized the role of the League of Arab States in matters relating to the maintenance of international peace and security in the region, but not the African Union. [54]

4.6 The Powers and Functions of the African Union Peace and Security Council and its Cooperation with the United Nations Security Council

The Peace and Security Council (PSC) is the standing organ of the AU for the prevention, management and resolution of conflicts. It was established to be a collective security and 'early warning' arrangement, with the ability to facilitate timely and efficient responses to conflict and crisis situations.[55] The Protocol Relating to the Establishment of the Peace and Security Council was adopted on 9 July 2002 in Durban, South Africa, and entered into force in December 2003.[56] The Protocol, together with the Rules of Procedure, the AU Constitutive Act and the conclusions of various retreats, provide operational guidance to PSC activities.

Under Article 7 of the PSC Protocol, the powers of the PSC, in conjunction with the Chairperson of the Commission, include to:

a) anticipate and prevent disputes and conflicts, as well as policies, which may lead to genocide and crimes against humanity;
b) undertake peace-making and peace building functions to resolve conflicts where they have occurred;
c) authorise the mounting and deployment of peace support missions, and lay down general guidelines for the conduct of such missions including the mandate;
d) recommend to the Assembly, pursuant to article 4(h) of the AU Constitutive Act, intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely, war crimes, genocide and crimes against humanity as defined in relevant international instruments;
e) institute sanctions whenever an unconstitutional change of government takes place in a Member State;
f) implement the AU's common defence policy;
g) ensure implementation of key conventions and instruments to combat international terrorism;

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[54] S/RES/1973 (2011) adopted by the Security Council at its 6498th meeting, on 17 March 2011.
[55] African Union Commission, *African Union Handbook 2018* (African Union Commission and New Zealand Ministry of Foreign Affairs and Trade, Addis Ababa, 2018), 64.
[56] Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted by the 1st Ordinary Session of the Assembly of the African Union on 9th June, 2002 at Durban, South Africa; AU Doc. 9.7.2002.

h) promote harmonisation and coordination of efforts between the regional mechanisms and the AU in the promotion of peace, security and stability in Africa;

i) follow-up promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, and respect for the sanctity of human life and international humanitarian law;

j) promote and encourage the implementation of conventions and treaties on arms control and disarmament;

k) examine and take action in situations where the national independence and sovereignty of a Member State is threatened by acts of aggression, including by mercenaries; and

l) Support and facilitate humanitarian action in situations of armed conflict or major natural disasters.

From its outlined mandate, the Peace and Security Council is primarily an organization designed to coordinate regional security in Africa in collaboration with sub-regional organizations, as well as the United Nations. However, like any other regional organization, the Peace and Security Council is inevitably shaped by the political, economic, and cultural dynamics peculiar to Africa.[57]

Given the continent's colonial past, the desire to rid itself of extra-continental interference remains a key factor in shaping the Peace and Security Council's success. While this complicates its working relationship with a predominantly western United Nations Security Council, the Peace and Security Council stands to be judged by its own successes or failures in security realization for the African continent.

In order to support the peace efforts of the Peace and Security Council in the context of conflict prevention, the African Union and its sub-regional organizations have developed significant institutional capacity over the past decade to undertake early warning analysis and conflict prevention.[58]

In this regard, the African Union has established the Continental Early Warning System, the Panel of the Wise, Special Envoys, and ad hoc mediation panels, often comprised of sitting and former heads of state.[59]

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[57]Ibid (n14), 1.

[58] African Union Press Release, "Main successes of the AU in Peace and Security, challenges and mitigation measures in place" (January 27, 2017) at < https://au.int/en/pressreleases/20170127/main-successes-au-peace-and-security-challenges-and-mitigation-measures-place> accessed on 13/10/2018.

[59] Ibid.

The conflicts in many parts of Africa, such as Somalia, South Sudan, and the Democratic Republic of Congo, demonstrate that the United Nations Security Council has failed to effectively mobilize resources to meet the enhanced security demands placed upon it. While the key patron states and transnational corporations of the Cold War have stimulated, manipulated, exacerbated, and exploited African conflict for geopolitical and economic gain, African elites generally lacked the political will to adopt concrete measures to prevent and resolve long-standing conflict.[60] The idea that regional organizations and arrangements might fill the gap and the establishment of the Peace and Security Council has, thus, been the most prominent response to the security shortfalls in Africa.

4.7 The Conflict in South Sudan

The South Sudan conflict highlights some of the shortcomings of peace efforts by both the Security Council and the African Union Peace and Security Council.

Importantly, it calls for a re-examination of the collaborative roles of both institutions in the maintenance of regional peace and security. On 9th July 2011, South Sudan became the newest state in the world, being the culmination of a six-year peace process that began with the signing of the Comprehensive Peace Agreement (CPA) on 9th January 2005 between the Government of Sudan and the Sudan People's Liberation Movement (SPLM), which ended more than 20 years of war.[61] However, the period of stability was short-lived, as on 15th December 2013, violence broke out in South Sudan's capital, Juba, and quickly spread to other locations in the country, resulting in a deep nation-wide political and security crisis.

4.7.1 Responses to the South Sudan Crisis by the African Union

The African Union High-Level Implementation Panel (AUHIP) for Sudan and South Sudan can be considered as the first formal effort of the AU to intervene in the security situation in South Sudan. It was established by the Peace and Security Council on 29 October 2009 at its 207th Heads of State and Government meeting with the mandate to facilitate negotiations relating to South

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[60] Jeremy Levitt, 'The Peace and Security Council of the African Union: The Known Unknowns,' (2003) 13 Transnational Law & Contemporary Problems, 109.
[61] United Nations Mission in South Sudan (UNMISS), "Background to the UNMISS" at < https://unmiss.unmissions.org/background> (accessed on 19/10/2018).

Sudan's independence from Sudan, including issues, such as oil, security, citizenship, assets and the common border. [62]

Following successful negotiations, the independence of South Sudan and the ensuing post-independence conflict, the mandate of AUHIP became largely irrelevant and there was subsequent need to craft new strategies for approaching the conflict.[63]

At its 768th meeting held on 26 April 2018, the Peace and Security Council adopted a decision on the situation in the Republic of South Sudan, as well as on the report of its field mission to South Sudan.[64] It encouraged the Transitional Government of National Unity (TGoNU) of South Sudan and the various armed movements to work towards an improved security situation in the country and urged them to commit towards finding a lasting political solution in their country.[65] The Peace and Security Council further called on the parties to respect their commitments as outlined in the Ceasefire Agreement of December 2017.

The Peace and Security Council also expressed its readiness, in line with its previous decisions on South Sudan, to consider taking the necessary steps, including sanctions, measures that could ensure effective and efficient implementation of the Ceasefire Agreement.[66] This illustrates the slow response by the Council where urgent measures would have been more appropriate. Despite expressing grave concern on the deteriorating humanitarian situation in South Sudan, the Peace and Security Council did not take concrete steps to address the out-of-hand conflict. The Council merely adopted the report of its field mission to South Sudan during the period from 4 -9 April 2018, with its recommendations. It requested the Africa Union Commission to dispatch it to all stakeholders for the implementation of the recommendations with a view to putting an end to the suffering of the people of South Sudan.[67]

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[62] Communique of the 207th African Union Peace and Security Council meeting held at the level of Heads of State and Government, in Abuja, Federal Republic of Nigeria, on 29 October 2009, PSC/AHG/COMM.1(CCVII).
[63]Ibid.
[64]Communique of the 768th African Union Peace and Security Council meeting on South Sudan, PSC/PR/COMM.(DCCLXVIII).
[65]Communique of the 768th African Union Peace and Security Council meeting on South Sudan, PSC/PR/COMM.(DCCLXVIII).
[66] Communique PSC/MIN/COMM. (DCCXX) of 720th meeting held on 20 September 2017.
[67]Communique of the 768th African Union Peace and Security Council meeting on South Sudan, PSC/PR/COMM; DCCLXVIII, paragraph 15.

4.7.2   United Nations Security Council's Involvement in the South Sudan Conflict

Aside from the efforts by the Peace and Security Council, the United Nations Security Council has demonstrated its willingness to support regional security efforts in relation to South Sudan. The earliest responses by the United Nations Security Council to the deteriorating security situation in South Sudan was through establishing the United Nations Mission in South Sudan (UNMISS) for an initial period of one year, from 9 July 2011, with the intention to renew for further periods as might be required.[68]

On 27th May 2014, the United Nations Security Council, by unanimously adopting its Resolution 2155 (2014), reprioritized the mandate of UNMISS towards the protection of civilians, human rights monitoring and support for the delivery of humanitarian assistance.[69] It also authorized the deployment, within UNMISS, of an Intergovernmental Authority on Development (IGAD) task force to support protection of civilians and the Monitoring and Verification Mechanism (MVM) established pursuant to the 23 January 2014 Cessation of Hostilities Agreement.

The other major response by the United Nations Security Council to the conflict was the adoption of Resolution 2206 (2015)[70]which imposed a number of sanctions on parties to the conflict, such as travel bans, freeze of funds, other financial assets and economic resources, and an arms embargo in relation to South Sudan.

These sanctions were targeted at parties responsible for or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security or stability of South Sudan, and those guilty of obstruction of the activities of international peacekeeping, diplomatic, or humanitarian missions in South Sudan.

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[68] S/RES/1996 (2011): UN Security Council Resolution 1996 (2011) adopted by the Security Council at its 6576th meeting, on 8 July 2011.
[69] SC/11414: UN Security Council Resolution 2155 (2014) adopted by the Security Council at its 7182nd meeting, on 27 May 2014.
[70] S/RES/2206 (2015): UN Security Council Resolution 2206 (2015) Adopted by the Security Council at its 7396th meeting, on 3 March 2015, at < http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2206(2015)> (accessed on 19/10/2018).

The sanctions also applied to parties obstructing the Ceasefire and Transitional Security Arrangements Monitoring Mechanism or of the delivery or distribution of, or access to, humanitarian assistance.[71] The sanctions regime was renewed to 31st May 2019, vide Resolution 2428 (2018)[72] and further extended to 31st May 2020 through Resolution 2471 (2019). These measures were intended to ease tensions and to preserve the peace as negotiations were pursued between Riek Machar and President Salva Kiir.

Further, between 6 -8th September 2017 the United Nations Security Council sent a mission to the African Union headquarters in Addis Ababa, Ethiopia, with the general objective to strengthen partnership and enhance cooperation between the Peace and Security Council of the African Union and the United Nations Security Council.[73]

The specific objective of the joint consultative meeting was for the two Councils to exchange views on the situation in Somalia, the situation in South Sudan, and the situation in the Lake Chad Basin.[74]

The United Nations Security Council and the Peace and Security Council emphasized the importance of close collaboration between the African Union, the United Nations and the Intergovernmental Authority on Development (IGAD). The need for unconditional, inclusive and genuine political dialogue and for full support to the IGAD-led revitalization process towards full implementation of the 2015 peace agreement in South Sudan was also recognized.[75]

There were further calls for unity of peace efforts between the United Nations Security Council and the African Union Peace and Security Council and the development of working modalities for joint activities, the conduct of joint missions to conflict areas.

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[71]S/RES/2206 (2015) Security Council Committee Established Pursuant to Resolution 2206 (2015) Concerning South Sudan, Sanctions Criteria at < https://www.un.org/sc/suborg/en/sanctions/2206> (accessed on 19/10/2018).
[72] S/RES/2428(2018): Resolution 2428 (2018) Adopted by the Security Council at its 8310th meeting on 13 July 2018.
[73] United Nations Security Council, "Report of the Security Council mission to Ethiopia,6–8 September 2017" (30 November 2017) S/2017/1002 at <http://undocs.org/S/2017/1002> (accessed on 12/10/2018).
[74] ibid, Para 4.
[75] Intergovernmental Authority on Development (IGAD),Agreement on the Resolution of the Conflict in the Republic of South Sudan, Addis Ababa, Ethiopia, 17 August 2015, available at < https://peacemaker.un.org/sites/peacemaker.un.org/files/Agreement%20on%20the%20Resolution%20of%20the%20 Conflict%20in%20the%20Republic%20of%20South%20Sudan.pdf> accessed on 10/1/2019..

These measures would assist in the formulation of common positions and recommendations, and to further integration of African perspectives into the Security Council deliberations through, for example, more frequent briefings from African Union envoys.[76] Such measures by the Security Council significantly facilitated the signing of the Peace Deal between Riek Machar and President Salva Kiir in September 2018 to ease conflict in South Sudan.

In a recent review visit to South Sudan in October 2019, a delegation of the United Nations Security Council acknowledged that progress has been made since the signing of the Peace Deal between Riek Machar and President Salva Kiir in September 2018, with a ceasefire significantly improving the security situation.[77] The Security Council also urged both leaders to expedite the implementation of the Revitalized Agreement to the November 12 2019 deadline for forming a unified transitional government.[78]

Sustained calls for funding of the Peace and Security Council by the United Nations have also been voiced by the African Union over time.[79] Applying the principle of universality, the Peace and Security Council argues that security crises in Africa are not the preserve of the AU but need collective response from the United Nations through the Security Council.[80]

The primary role of maintaining international peace and security rests with the United Nations Security Council and not the African Union Peace and Security Council.[81]

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[76] Ibid, at para 20.

[77] United Nations, 'UN Security Council calls for South Sudan leaders to speed up action on peace deal' UN News, 21 October 2019, at <https://news.un.org/en/story/2019/10/1049681 accessed on 26/10/2019.

[78] Ibid.

[79] According to the 2018 Report by the UN secretary General on 'Strengthening the partnership between the United Nations and the African Union on issues of peace and security in Africa, including on the work of the United Nations Office to the African Union', as of June 2018, States members of the African Union had contributed $45.7 million to the Peace Fund, the highest level of contributions since the establishment of the Fund in 1993. The AU have made calls to the UN for peace operations to be partly financed through United Nations assessed contributions, on a case-by-case basis.

[80] SC/13952, 'Delegates in Security Council Call for Using United Nations Assessed Contributions as Means to Strengthen Peacekeeping Operations in Africa' 20 November 2018 at <https://www.un.org/press/en/2018/sc13952.doc.htm accessed on 22/10/2019.

[81] Ibid, at Para 24, Recalling Chapter VIII of the Charter of the United Nations which provides for a role for regional organizations, the Peace and Security Council strongly advocated in favour of predictable funding for African Union peace operations, including through United Nations assessed contributions.

From the foregoing examples of collaborative efforts between the United Nations Security Council and the Peace and Security Council, it emerges that there is a lack of harmony in the kind of responses adopted in respect to South Sudan. The respective agencies have demonstrated preference for unilateral decision-making and minimal consultation before implementing decisions aimed at the common problem.

The efforts by the Peace and Security Council reflect the rudimentary level of resource mobilization, strategic response and collective action by the African Union. On the other hand, the responses by the United Nations Security Council, although of greater intensity, have proved to be ineffective in the South Sudan conflict, hence the delay in finding lasting solutions to the problem. The lacklustre response by the Peace and Security Council to the situation in South Sudan could be attributable to some of the challenges highlighted below.

4.8 Challenges faced by the Peace and Security Council in Discharging its Mandate

The Peace and Security Council does not represent a panacea for Africa's security problems. The organization's interventions in the face of inter and intra-state conflicts in Africa have been limited due to a number of reasons. Some of these challenges are discussed below.

4.8.1   External Influence in African Affairs

It has proved to be difficult to mobilize collective action as the states that make up the African Union are territorially constituted along colonially determined lines.

Most member states of the African Union still maintain close ties with their former colonial masters for economic and development assistance and, hence, they are not technically 'free' actors. External influence in African affairs in the form of deeply entrenched underlying interests of mostly Western countries has remained powerful.[82] An example is the Central African Republic (CR) where it has been reported that successive presidents and armed groups have relied on military backing from France or neighbouring countries to either stay in power or successfully

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[82] Margaret Cornell (ed), *Europe & Africa: Issues in Post-colonial Relations* (Overseas Development Institute, London, 1981)

launch a rebellion.[83] Fuelled and combined with common problems in the African continent, such as high levels of poverty, debt, and endemic corruption, the realization of the objectives of the Peace and Security Council are relegated to the side-lines.

4.8.2 Difficulty in Cooperation with Global and Sub-Regional Actors

There has been recognizable difficulty in coordination of peace activities between the Peace and Security Council and other peace building contributors, including United Nations agencies, international financial institutions, regional and bilateral partners, and donors. The former UN Secretary General, Ban Ki-Moon, for instance, noted that although the United Nations was committed to strengthening a productive partnership with regional organizations, strategies might differ.[84] Despite the disparity between the United Nations Security Council and regional organizations, such as the Peace and Security Council, in terms of resources, capabilities and mandates, there is need to deepen strategic dialogue, forge common approaches to emerging crises, and strive to improve collective responses to peace and security threats.[85]

The Peace and Security Council faces a further difficulty in collaborating with sub-regional actors in coordinating strategic responses to security lapses in Africa. There are no clear strategies for cooperation between the Peace and Security Council and sub-regional actors such as the Southern African Development Community (SADC), the Economic Community of West African States, and the East African Community.

Although the foregoing sub-regional organizations are regional integration blocks and not peace and security arrangements, their economic and political input in regional security are critical. Such form of cooperation is essential in an emergency crisis management, where rapid deployment and regional monitoring may be necessary.

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[83] Lotje de Vries & Tim Glawion, 'Speculating on Crisis The Progressive Disintegration of the Central African Republic's Political Economy' (Clingendael - the Netherlands Institute of International Relations, October 2015) < https://www.clingendael.org/pub/2015/speculating_on_crisis/2_foreign_interference_in_security_politics_and_the_economy/> accessed on 18/8/2019.
[84] United Nations Security Council 7796th Meeting, "United Nations Committed to Cooperation with Regional Bodies, Secretary-General Affirms as Eurasian, Central Asian Entities Brief Security Council" (SC/12566, 28 October 2016) at https://www.un.org/press/en/2016/sc12566.doc.htm (accessed on 15/10/2018).
[85] Ibid.

4.9 Overlapping Mandates with the United Nations Security Council

The first stumbling blocks between the African Union and the United Nations arise within the Peace and Security Council Protocol. Under Article 16 of the Protocol, the African Union devolves to itself the primary responsibility for promoting peace, security and stability in Africa. On the other hand, under Article 17 of the Protocol, the African Union commits itself to cooperate and work closely with the United Nations Security Council. Further, when it comes to international peace and security, Article 24 (1) of the Charter of the United Nations, Members confer on the Security Council "primary responsibility for the maintenance of international peace and security," Additionally, the Preamble to the Protocol as well as Article 17(1) expressly recognize the primacy of the United Nations Security Council in maintaining international peace and security.[86] In essence, Article 16(1) of the Protocol subordinates the United Nations Security Council to the AU for the maintenance of peace and security in the African continent, a fact that is internally inconsistent with Article 17 and the Preamble to the Protocol. The text of the Protocol therefore needs to be aligned to the Charter to eliminate the apparent conflict of mandate between the Security Council and the Peace and Security Council.

4.10 Conclusion

Despite the apparent failure of the United Nations Security Council to forestall African conflict and the subsequent creation of the AU Peace and Security Council, glaring challenges exist that not only limit the operational capability of the latter, but also threaten the very ideal for its establishment.

The example of sustained conflict in South Sudan highlights the urgent need to re-examine the need for and the extent of engagement of the Peace and Security Council in African conflict situations. Further, it remains true that the United Nations Security Council is an indispensable actor in ensuring African peace and security.

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[86] Article 17 (1) to the Protocol Relating to the Establishment of the Peace and Security Council of the African Union provides as follows:

> In the fulfillment of its mandate in the promotion and maintenance of peace, security and stability in Africa, the Peace and Security Council shall cooperate and work closely with the United Nations Security Council, which has **the primary responsibility** for the maintenance of international peace and security.

However, there is need for clarity of roles, responsibilities, and collaboration between the United Nations Security Council and the Peace and Security Council to limit, if not eliminate, recurrent armed conflict Africa.

The shortcomings of the OAU/ AU in Rwanda, Libya and South Sudan further call for re-examination of the organization's capacity to spearhead conflict resolution in the continent. The initiatives taken by the OAU/African Union to avert conflict and maintain peace in Africa have at best been pushed to the periphery by the international actors and the United Nations Security Council, a fact that has not bolstered the credibility of the OAU/AU as a regional peace and security organization or arrangement.

Nonetheless, the role of the AU Peace and Security Council remains complementary to that of the UN Security Council. Increased cooperation with the UN Security Council expands the available resources, helps legitimize the actions of the AU Peace and Security Council and strengthens its enforcement power and credibility.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

In the foregoing chapters, the thesis has discussed the architectural structure and functionalities of both the United Nations Security Council and the African Union Peace and Security Council. In Chapter One, the background to the study as well as the problem that was the subject of this research were analysed. The literature reviewed and the theories that underlie this study and that try to explain the substratum of the study were addressed, and the research methodology outlined. Chapter One encompassed the conceptualization of the topic and the laying of the foundation. It entailed a summary of the primary objective of the ratification and adoption of the Charter of the United Nations, which is maintaining international peace and security, entrusted to its principal organ, the United Nations Security Council.

Chapter One also laid emphasis on the fact that maintenance of international peace and security is an onerous duty that cannot be left to the United Nations Security Council alone. Thus, the chapter recognized the role played by regional arrangements, in our case the Organization of African Unity/African Union in the maintenance of international peace and achievement of the principles of the United Nations. In particular, the chapter recognized the need for partnership and collaboration between United Nations Security Council and the regional agencies in order to ensure that the United Nations Security Council is not suffocated by the avalanche of disputes in the world today. The partnerships between the UNSC and regional agencies are vital in the maintenance of peace and security due, inter alia, to geographical proximity, expediency and burden-sharing.

In Chapter Two, the structure of the United Nations Security Council was detailed with particular regard to maintaining international peace pursuant to the provisions of Articles 24, 25, 39, 40, 41 and 42 of the Charter of the United Nations. The effectiveness of the United Nations Security Council in addressing matters of international peace and security was also analysed.

The Chapter concluded that the United Nations Security Council has had both positive and negative results in this endeavour; it has had successful interventions to maintain peace and security. The mixed results are partly due to the frustrations that the veto power presents. The conclusion, thus, was that the abolition of the veto power entrusted in the five permanent members would ensure more reforms and effectiveness to the United Nations Security Council.

Chapter Three discussed regional arrangements as envisaged in Chapter VIII of the Charter of the United Nations, with a particular focus on the Organization of African Unity/African Union. In this chapter, the study sought to find out whether the African Union can be considered as one of the regional arrangements envisaged in Articles 52, 53 and 54 of the Charter of the United Nations. In determining this, the study considered the structure for maintenance of international peace and security under the African Union. There were considerations of the instances where the African Union has intervened and the successes or lack thereof in those instances of intervention.

Finally, the study considered the challenges that the African Union has faced and/or continues to face in its endeavour to maintain peace and security in Africa. The study concluded that there have been mixed results in the conflicts that the African Union has handled. There have been successes and challenges in equal measure.

The challenges have majorly been attributed to the fact that from the outset, the main reason(s) for the establishment of the Organization of African Unity (OAU) and the African Union had little to do with maintenance of peace and security in African, with the OAU focusing on the decolonization of African territories and the AU focusing on economic development of the African states. Indeed, it can be said that maintenance of peace and security in Africa remains a peripheral priority to the organization tasked with the mandate. Nevertheless, there is hope that partnering in peacekeeping and maintenance of world peace and security is the right model for deterring the scourge of war from extinguishing humanity.

Chapter Four analysed the extent to which the United Nations Security Council has collaborated and cooperated with the African Union in the maintenance of peace and security in Africa. In this analysis, the study considered the powers and functions of the African Union Peace and Security Council as enumerated in its constitutive Protocol.

The study also considered the conflict in South Sudan, while putting into context the extent of collaboration and cooperation of the United Nations Security Council and the African Union Peace and Security Council in the maintenance of peace and security in Africa.

The chapter concluded that the African Union Peace and Security Council faces glaring challenges that have not only limited its operational capability, but also threatened the ideals that informed its establishment. This study concluded that the United Nations Security Council still retains its primary role of maintaining international peace and security, since it is apparent that African Union Peace and Security Council has not been able to contain the sustained conflict in South Sudan. The shortcomings of the OAU/African Union in Rwanda, Libya, and South Sudan are pointers to the inadequacies of this body in spearheading conflict resolution in Africa.

This chapter summarizes the findings of the study, draws conclusions based on the findings, and makes recommendations on the workings of the United Nations Security Council and regional arrangements, specifically the African Union, in the maintenance of international peace and security in Africa.

5.2. Conclusion

The African Union, and the Peace and Security Council, have been in existence for almost two decades now. There have been several missions and operations that the African Union has been involved in without much success, just like its predecessor the OAU. In the course of this study, one question lingers on, "Is the African Union a regional arrangement as envisaged under Articles 53 and 54 of Chapter VIII of the Charter of the United Nations?" "If yes, what is the nature of the collaboration between the United Nations Security Council and the African Union in the maintenance of international peace and security in Africa?"

With regard to the issue as to whether the African Union is a regional arrangement as envisaged in Articles 53 and 54 of the Charter of the United Nations for the maintenance of peace and security in Africa, this study can conclude that the African Union fits within the meaning of a regional arrangement for the maintenance of peace and security. The United Nations has recognized organizations that meet regional needs as those falling within the realms of Article 52 of the Charter of the United Nations.

If the objectives of the formation of Peace and Security Council are anything to go by, then it does meet the criteria and, thus, satisfy the classification as a regional security arrangement in Africa.

Furthermore, the United Nations Security Council Resolution 2320 of 2016, which underscored the importance of Chapter VIII and the focal point played by regional arrangements, recognized the African Union for its efforts in maintaining peace and security in the region. The resolution underscores the fact that African Union needs support so as to develop policy, guidance and training in the areas of post-conflict construction, women, peace and security and protection of civilians in armed conflicts. The text and spirit of the Resolution is such that it recognizes the African Union as a regional arrangement that plays a pivotal role in the maintenance of international peace and security within the African continent, even though it still faces a myriad shortcoming. Towards remedying this situation, the same Resolution underscores the fact that there is need for support to equip the AU if it is to manage conflicts during and maintain the peace after the conflicts.

With regards to the question of what kind of collaboration exists between the United Nations Security Council and the African Union in the maintenance of peace and security in Africa, this study posits that there exists cooperation between these important organs. However, there are recognizable difficulties in ensuring that this task runs smoothly. It is the recognition that saw the former UN Secretary General Ban Ki Moon, root for, inter alia, deepened strategic dialogue, coordinated resource mobilization, striving to improve collective responses to peace and security threats, as opposed to engaging in push and pull gimmicks and forging of common approaches to emerging crises.

The hypothesis and research questions that formed the substratum of this study were adequately tackled in the subsequent chapters. The hypothesis was that the African Union is not a regional arrangement for the maintenance of peace and security as envisaged in Chapter VIII of the United Nations Charter. The study, and more specifically Chapter 4, has disproved this hypothesis. The Constitutive Act of the AU has proved beyond peradventure that the AU satisfies the classification as a regional arrangement for the maintenance of peace and security in Africa.

The study concludes that despite the shortcomings bedevilling the African Union in its endeavour to maintain peace and security, its constant failures to permanently contain conflict in South Sudan, or even detect and deter the same, it is a regional arrangement as envisioned under Chapter VIII of the United Nations Charter.

5.3 Recommendations

The research makes the following recommendations;

1. There is need for partnership and collaboration between Security Council and the AU Peace and Security Council on a mutually respectful basis in order to ensure that the Security Council is not suffocated by the avalanche of disputes in the world today. This calls upon the parties to mutually recognize their respective roles and utilize their cooperation to promote these. Additionally, the unique advantages of each organization should be applied in efforts aimed at the peaceful settlement of disputes. The close cooperation with the UN Security Council will increase leverage of the AU Peace and Security Council in terms of legitimacy and resources and entrench its role as a regional security arrangement.

2. Regional arrangements will need to work out a workable memorandum of funding between them and the United Nations so as to ensure there is no resource suffocation which as clearly brought out in this study have led to failed peace-keeping operations. As the global body with the primary duty of maintaining collective security, the United Nations through the General Assembly should establish cost-sharing mechanisms for regional peace-keeping operations and develop modalities on how the same should be implemented. Due to resource constraints it faces and lack of enforcement power, the AU Peace and Security Council must seek a sustainable solution to the financing of its peace and security operations. One proposal by the Secretary-General Antonio Guterres, outlined different funding models, including the use of voluntary contributions, subvention mechanisms, and UN assessed contributions through joint financing models, joint operations, or UN support

offices.[87] These, however, remain mere proposals and there is need to generate global consensus on the way forward.

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[87] United Nations Security Council - S/2017/454, "Report of the Secretary-General on options for authorization and support for African Union peace support operations" (26th May 2017) at < https://undocs.org/S/2017/454> accessed on 26th June 2019.

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