



## **From AMIB to AMISOM**

### The need for institutional and mandate clarity in APSA

#### **INTRODUCTION**

Since its inception, the African Union (AU) has engaged with several crisis situations on the continent. The African Mission in Burundi (AMIB), initiated by the Organisation of African Unity (OAU), was the icebreaker of the AU's peacekeeping initiatives, followed by its missions in Sudan, the Comoros, and Somalia. There is no doubt that the African Peace and Security Architecture (APSA) is both a highly complex and evolving legal and institutional framework. How has APSA engaged in peacekeeping/peace-building operations? What institutional and mandate challenges has it had to face?

This paper seeks to assess some of the future institutional and mandate constraints that APSA may deal with as it continues to provide a framework for engaging in conflict situations on the continent. It attempts to do this through an in-depth examination of the implementation as well as the operationalisation of certain African peacekeeping and peace-building missions. By analysing these missions, from AMIB to the African Union Mission in Somalia (AMISOM), the paper does not pretend to reach inviolable conclusions. Rather, its objective is to stimulate debate on the importance, for APSA, of achieving mandate and institutional clarity as it engages in Africa's evolving security threats. In order to achieve this, the author not only analyses the normative framework but also examines the practices and processes within APSA's framework in a manner that poses questions relevant to its mandate and institutional clarity in the light of the AU's engagement in peacekeeping/peace-building operations. In this way, the paper hopes to find an appropriate method that sheds light on the precise requirements essential for APSA's mandate and institutional clarity. It contends that despite the

existence of a clear and robust normative and institutional framework, the practices and processes within the framework of APSA are still characterised by ad-hocism, which is one of the obstacles delaying the early completion of its various components.

The paper is therefore structured into four sections and begins with an overview of the normative framework of APSA's institutions. The first two sections highlight APSA as an institutional expression of the African peace and security agenda, and then briefly poses some questions as to whether the institutional arrangements currently set up for APSA adequately reflect the continent's security challenges. The next two sections provide an analysis of problems such as the lack of institutional clarity and mandate murkiness respectively in light of various practices in AU-led peace missions. The paper concludes that, in the face of delays in fully operationalising APSA, ad-hocism can lead to negative, unintended results as well as engender significant constraints to APSA's institutional future.

#### **APSA'S INSTITUTIONS WITHIN A NORMATIVE FRAMEWORK**

*... The [Peace and Security Council] PSC shall be a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa. [It] shall be supported by the Commission, a Panel of the Wise, a Continental Early Warning System, an African Standby Force and a Special Fund ... (PSC Protocol, Article 2)*

The relevant provisions of the Protocol Relating to the Establishment of the Peace and Security Council

(henceforth referred to as the PSC Protocol) and the Constitutive Act (CA) provide the benchmark for APSA's institutions within a normative framework. The principles and objectives enshrined in Articles 3 and 4 of the CA remain the constitutional basis for the framework of APSA, with the Assembly (being the supreme political organ of the Union)<sup>1</sup> placed as the major institution that plays a key role in APSA, with the power to decide on the AU's right to intervene in crises. Moreover, the Assembly is the body that decides on overall policy issues;<sup>2</sup> enacts legal instruments; and creates any organ it deems necessary;<sup>3</sup> and supervises the implementation of its decisions by other organs and the Member States.<sup>4</sup> Furthermore, the Assembly has, in cases of unconstitutional changes of government, the duty to 'impose sanctions on any member state that is proved to have instigated or supported [such an act] in another state in conformity with Article 23 of the Constitutive Act'.<sup>5</sup>

The PSC is another important decision-making organ for the prevention, management and resolution of conflicts.<sup>6</sup> Guided by the principles enshrined in the AU Constitutive Act, the Charter of the UN and the Universal Declaration of Human Rights, the PSC is the leading organ for a collective security and early-warning arrangement, with the functions of promoting peace and security in Africa, peacemaking, peace-building and intervention,<sup>7</sup> as well as instituting sanctions whenever an unconstitutional change of government takes place in a Member State.<sup>8</sup>

The AU Commission and four other bodies that are considered to be the driving elements and pillars of APSA – the Panel of the Wise (PoW), the Continental Early Warning System (CEWS), the African Standby Force (ASF), and the Special Peace Fund – support the PSC in discharging its responsibilities under the Protocol. The PSC Protocol provides that the PSC and the Commission have to employ these four pillars, listed under Article 2(2) of the PSC Protocol, as the skeletal framework of APSA's institutions, which need to be fleshed out further to achieve more effective functioning. The Commission is always at the centre of APSA's implementation mechanisms, the Chairperson being at the head with a commissioner in charge of peace and security, the PSC Secretariat, and a directorate of peace and security.<sup>9</sup> It is the fully-fledged institutions of APSA that provide insight both as to how it appears on paper and how it functions in reality.

It is obvious from the AU normative framework that APSA is an institutional expression of the African peace and security agenda, which has devised a permanent institutional set-up instead of an ad hoc arrangement in all areas of its activities. As the African peace and security agenda is to pacify the continent and free it from the scourge of violent conflicts and any instability expressed in structural and socio-political problems, it ideally puts the

AU Assembly, the PSC and the Chairperson of the Commission at the forefront of APSA's implementation. Most of the other institutions provided for in the normative framework (PoW, CEWS, ASF, and the Peace Fund) are basically the tools available for them. For preventive diplomacy, the Panel of the Wise is at their disposal; for an informed decision and action, the CEWS is ready with the information they need; and for military actions, the ASF and the Military Staff Committee (MSC) are available; while the Peace Fund responds to the resource requirements of their activities. However, it is still arguable whether the institutional arrangements set by APSA are adequate for the security challenges of the continent and the urgency that may be required. The potential problem concerns the way in which these critically important tools are structured, including their dependence on the already troublesome institutional relations that exist between the institutions at AU level and those at regional economic community (REC) level. While strong relations between these levels are critically important to facilitate the achieving of APSA's goals and purposes, they are complicated by the inherent problems of African regional organisations. These complications are already experienced in the structures of the CEWS and the ASF. The institutional efficacy of the CEWS is critical to the effective functioning of all elements of APSA, but its dependence on information collected and processed at REC level is challenging such institutional efficacy. Without efficient CEWS, the AU Commission and the PSC cannot make well-informed decisions, as there is the possibility that their actions may be based on incorrect assumptions. This has already happened in the AU Mission in Sudan (AMIS) when the PSC failed to realise the importance of the early deployment of 'a fully fledged peace support operation in Darfur'.<sup>10</sup> Although it is a little premature to define the CEWS' role in the operationalisation of AMIS, there can be no denying the effect of its absence on the measures that were taken by the relevant bodies of the AU.

The challenge is not the absence of the CEWS or any other key APSA tools, but the slow progress in their development and the complication of problems at the REC level, as a two-tier structure in all aspects of APSA seems to be the favoured approach. As indicated in the PSC Protocol, RECs serve as the building blocks and part of the overall security architecture of the AU.<sup>11</sup> It expressly adopts a two-tier structure for the CEWS while giving strong indications that the ASF, the PoW and the Peace Fund are to be organised at continental level. Yet, institutional evolution since 2004 has indicated the adoption of a two-tier structure for all aspects of APSA, thereby contributing to the painfully slow progress of APSA's institutional development. In the case of the ASF, this only became apparent with the 2004 ASF Policy Framework,

while indications for a similar structure for the PoW are reflected in the 2009 Memorandum of Understanding (MoU). Even as such a move can arguably be justified by the provision of Article 16(1) of the PSC Protocol, the inherent problems in the RECs, which are unlikely to be rectified in the near future, could raise serious concerns over the efficacy of APSA's tools. As early as 2004, the Chairperson of the AU Commission identified a trinity of REC problems that constituted an obstacle to ongoing efforts: the high number of regional and sub-regional groupings; the overlapping of their competencies; and states' multiple memberships.<sup>12</sup> Although the two-tier structure approach attempts to place each member state in a specific REC, multiple memberships remain a serious challenge. For instance, the African Chiefs of Defence Staff in 2009 found multiple memberships to be a key challenge for the ASF, but left the solution to the discretion of the member state.<sup>13</sup> This contributes not only to the painfully slow progress of APSA's institutional development but also to the confusion manifest in the practices of AU-led peace operations. The lack of institutional clarity and mandate confusions that emanate from the AU's practices and their implications for APSA's institutional future are the focus of the following two sections.

## **APSA AND PEACE SUPPORT OPERATIONS: INSTITUTIONAL ISSUES**

Since the adoption of the PSC Protocol in 2002, there have been several African peace missions deployed on the basis of the new and evolving APSA. The PSC Protocol came into force on 26 December 2003, and the first members of the Council were elected in March 2004.<sup>14</sup> By the time its first members were elected, more than six cases were on the table, and before its official launch on 25 May 2004 it had authorised the deployment of the African Mission in Comoros and the Sudan, renewed the mandate of AMIB, and deliberated on several other conflicts, such as those in Côte d'Ivoire, Liberia and the Great Lakes Region.<sup>15</sup> Consequently, before APSA could even take off, the AU was already heavily involved in a number of theatres of African conflict. The 2003–2004 peace mission in Burundi (AMIB); the 2004–2007 peace operation in Sudan (AMIS);<sup>16</sup> the 2007–2008 African peace operations in the Comoros (MAES and 'Operation Democracy'); and the 2007 and onwards peace mission in Somalia (AMISOM) are among the early and current AU peace operations. Given the fact that APSA's institutionalisation process has now been ongoing for nearly a decade, the question must be whether APSA, in terms of its practices since its inception, is really operating within its institutional framework. Although the institutionalisation of APSA is still a work in progress, some – such as the Peace and Security Department (PSD) in the

AU Commission, the Situation Rooms of the CEWS, the ASF, and the PoW – are already in place despite the fact that they are not fully completed. The question remains whether the AU is effectively using and actively engaging APSA's tools in its practices and peace operations.

While answering this question requires a proper examination of AU peace operations, detailed analysis of all AU peace operations is not within the ambit of this paper. Thus, the paper examines some aspects of AU peace operations and the practices related to them that cause confusion within APSA's institutional set-up, and analyses the possible implications of the AU's practices. The cases in the Comoros and the Sudan are the focus of this section as they effectively demonstrate the need for APSA to achieve institutional clarity.

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### *AU peace operations in the Comoros: MAES and 'Operation Democracy'*

The AU has undertaken several peace operations since 2004 as a continuation of the OAU efforts that had begun as early as 1999/2000, which had led to a comprehensive peace agreement and the adoption of a new constitution in 2001.<sup>17</sup> The deployment of the AU peace operations between 2004 and 2007 was aimed at supporting free and fair elections. In 2004, the PSC authorised and deployed the Military Observers Mission (MIOC) to observe the parliamentary election in the country for a period of four months;<sup>18</sup> in March 2006 the AU again sent a mission to support the country's presidential election (AMISEC);<sup>19</sup> and in May 2007, the AU Electoral and Security Assistance Mission (MAES in French) was deployed for the islands' presidential election. MAES was deployed in Anjouan Island following the election crisis there and, as the crisis worsened, a 'Ministerial Committee of Countries of the Region on The Comoros' (MCCRC) became actively involved in the management of the crisis, playing a critical role. In its 2008 military intervention called 'Operation Democracy', following the failure to find a peaceful solution, the AU adopted an entirely different approach. The role played by the MCCRC and the way 'Operation Democracy' was authorised and conducted are analysed in light of APSA's institutional set-up.

The MCCRC was historically rooted in a group of African countries, composed of South Africa, Tanzania, Mozambique, Mauritius, Seychelles, Kenya and Madagascar, authorised by the OAU in 2000 to determine the modalities of possible military measures that might be needed to address the crisis in the Comoros.<sup>20</sup> Since the operationalisation of the new AU peace and security system, the MCCRC (composed of these seven ‘countries of the region’ and led by South Africa) remained central to the management of the Comorian crisis. The PSC and the Chairperson of the Commission accepted the MCCRC’s conclusions, endorsed its recommendations, and generally expressed full support for its efforts. It urged the parties to the conflict to comply fully and unconditionally with the MCCRC’s demands; approved the sanctions the MCCRC recommended; and set up a follow-up mechanism for the enforcement of the sanctions.<sup>21</sup> Yet no one questions the institutional status of the MCCRC. The PSC never officially endorsed this group, nor was the MCCRC affiliated with any of the structures of the regional security mechanisms such as the Southern African Development Community (SADC) or the Common Market for Eastern and Southern Africa (COMESA). How valid is the role of the MCCRC within APSA’s institutional framework? One may argue that the 2000 OAU Decision provides legal grounds for the PSC to use the MCCRC; or that the PSC has the power to form ad hoc committees such as the MCCRC and, hence, there is nothing wrong with it. But it is debatable whether the 2000 Decision that authorised the ‘countries of the region’ to ‘determine the modalities of military measures’ can continue to provide legal grounds for the then-MCCRC. Firstly, the mandate in the 2000 Decision was limited to determining the modalities of military measures, and did not include all the tasks that the MCCRC was undertaking. Secondly, even if there were no problems with the scope of the 2000 OAU Decision, the role of the MCCRC since 2007 can hardly be justified by the same structural and institutional realities that necessitated such an arrangement in 2000. By 2007, at least APSA had a fully-fledged normative framework – the PSC, the AUC and some aspects of APSA’s tools were in place.

This does not, in any way, mean that the PSC cannot create the MCCRC and task it with some responsibilities, as Article 8(5) of the Protocol authorises the PSC to form subsidiary bodies and ad hoc committees. However, there was never any PSC decision made about the MCCRC, nor any definition as to the role it was to play, which differs significantly from the mandates given to ‘countries of the region’ by the OAU in 2000. When evaluated within the legal and institutional framework of APSA, the AU’s intervention in the Comoros seems questionable in many respects. Magliveras criticises the role the MCCRC took as the formulator of recommendations, which were in the form

of ultimatums, as opposed to limiting its role to that of intermediary.<sup>22</sup> Although there was no formal delegation, the MCCRC was, according to Magliveras, ‘seen to act as the “agent” and the PSC as the “principal”’. He concludes by commenting on the PSC’s willingness to let the MCCRC ‘take the initiative’ and ‘work out solutions’ while the crisis on Anjouan Island escalated. Generally, there is no doubt that, at the time, the MCCRC’s experience and familiarity with the Comorian crisis gave it a comparative advantage over APSA’s institutions. It can also be argued that the PSC granted its tacit endorsement to the MCCRC because of this fact. Seen through the lens of APSA’s institutional set-up, however, the AU shouldn’t simply rubberstamp the decisions and actions of the MCCRC. It could be argued that the AU seems to have forgotten its new institutional set-up within APSA, and has become trapped in the history of the crisis by using the same institutional approach employed by the OAU to manage the Comorian crisis in 2000.<sup>23</sup>

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## **While the disappearance of the MCCRC reflects the lack of a clear institutional approach in the AU’s practices, the 2008 military intervention itself raised several institutional and mandate issues**

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Yet the MCCRC was no longer in the picture when the AU resorted to military intervention in 2008 with an entirely new group of states – Libya, Senegal, Sudan and Tanzania – at the helm as a coalition of the willing. Tanzania was the only country from the MCCRC involved in the military intervention; and instead of the MCCRC, the ‘Ministerial Meeting’ of this coalition played a central role in the military intervention. But the 2008 ‘Operation Democracy’ exhibited similar mandate and institutional problems as seen in the MCCRC. While the disappearance of the MCCRC reflects the lack of a clear institutional approach in the AU’s practices, the 2008 military intervention itself raised several institutional and mandate issues. According to Article 7(1.f) of the PSC Protocol, ‘intervention’ under Article 4(j) of the African Union Constitutive Act (AUCA) has to be authorised by the AU Assembly, after which it is undertaken in accordance with the modalities determined by the PSC. It provides that ‘the PSC shall approve the

modalities for intervention by the Union in a Member State, following a decision by the Assembly, pursuant to Article 4(j) of the Constitutive Act'. The question that should then be posed is: was the 2008 military intervention in the Comoros taken in accordance with this APSA framework?

Before examining this question, the chronological events of the military intervention must be assessed. On 20 February 2008, the ministers of foreign affairs and defence from Tanzania, Libya, Senegal and the Sudan met in Addis Ababa to assess the situation on the Comorian island of Anjouan and decided 'to dispatch immediately a military and security assessment and planning team to the Comoros to finalize the planning process' for military intervention.<sup>24</sup> The meeting made technical decisions regarding the military intervention in the Comoros crisis. The coalition sent a team of military planning experts to the Comoros; approved the team's report; and adopted its recommendations on the military measures required to re-establish the Comorian authority in Anjouan. This happened in Dar-es-Salaam on 9 March 2008, and the only thing that came to the PSC was the report of the Chairperson of the Commission, which said:

The meeting approved the report of the team of military and security experts, including the team's recommendations on the practical measures needed to assist the Government of the Comoros in re-establishing its authority in Anjouan. The meeting further emphasized that any attempt on the part of the illegal authorities in Anjouan to resist the military intervention in the Island would be regarded as a criminal act and would be dealt with as such.<sup>25</sup>

When the military intervention, named 'Operation Democracy', commenced, the AU Special Envoy to the Comoros, Francisco Madeira, was apparently vocal in reminding the rebels that the time for negotiation had long gone.<sup>26</sup> After the rebels were defeated, the PSC expressed its satisfaction with the successful operation that had been carried out by 'the Comorian forces backed by Tanzania, the Sudan, and Libya' in 'restoring the authority of the Union of the Comoros in the Anjouan'.<sup>27</sup> How should these actions be evaluated within APSA's legal and institutional framework? Did the coalition get an AU mandate to undertake the military intervention? The coalition and its Ministerial Meeting was neither part of the formal institutional framework of APSA nor part of the MCCRC. Yet it took technical decisions on the military intervention; sent a team of military and security experts; approved the team's report; and adopted its recommendation – all without formal submission to and approval of the PSC. This was apparently in accordance with Decision 186(x) of the AU

Assembly and with the tacit approval of the PSC, as well as on the request of the Comorian Government.

It is important to realise that 'Operation Democracy' was a measure taken in accordance with Article 4(j) of the CA – that is, the Comorian government was seeking AU military intervention. There is also no doubt that both the AU Assembly and the PSC can form subsidiary bodies and ad hoc committees in their efforts to prevent, resolve, and manage conflicts in Africa. The legal frameworks and Rules of Procedures set for these two organs even allow them to delegate their powers to bodies they deem competent to act on their behalf. This can in no way be disputed. Nevertheless, there is a very clear rule as to how the measures under Article 4(j) of the CA should be taken. The AU Assembly is the only organ mandated to authorise such measures, which then must be followed by the PSC's approval of the modalities of intervention in accordance with Article 7(1.f) of the PSC Protocol. When examining the military intervention in the Comoros in light of this legal framework, it is clear that there were certain flaws in the manner in which the measures were taken. The coalition for 'Operation Democracy' primarily claimed Decision 186(X) of the Assembly as providing the legal grounds for their action, though this remains controversial. Decision 186(x) did not expressly authorise military action, nor did the PSC adopt the modalities for such an intervention as provided under Article 7(2.f) of the Protocol. However, assuming their claim is valid, it is debatable whether the PSC discharged its responsibilities as specified under Article 7(1.f) of the Protocol. Firstly, there was never any indication that the PSC had actually constituted the so-called 'Ministerial Meeting' and delegated its power; rather, the PSC simply accepted their decisions and measures. Secondly, military interventions, under Articles 4(h) and (j) of the CA, are among the very sensitive measures that have been carefully crafted in the AU legal framework. It is therefore debatable whether the PSC should or could allow the Ministerial Meeting the freedom to form a team, determine its mandate, and approve the report of the team on its own – which looks like the modalities of the intervention – all without any involvement of the PSC. In fact, the PSC's approval of all these measures only came after the operation had ended when it adopted the report of the Chairperson of the Commission.<sup>28</sup> Thus, there had been no clear authorisation of the AU Assembly accompanied by the modalities of intervention approved by the PSC.<sup>29</sup>

### *AU peace operations in Sudan: AMIS*

Similar circumstances surrounded the AU's Mission in Sudan (AMIS), and this sub-section focuses on two major issues. The first issue is the introduction of the Darfur Integrated Task Force (DITF) within the Department of

Peace and Security of the AU Commission; the second is the establishment of the High-Level Panel on Darfur (AUPD) following the International Criminal Court's (ICC) indictment of Sudanese President Omar al-Bashir.

As noted earlier, the AU Commission and its Chairperson have been at the centre of APSA and form the hub of all other pillars of the system. The provisions of the PSC Protocol reveal what a critical role the Commission plays in terms of the efficiency of APSA. The AU Commission has, in its Peace and Security Department, a Peace Support Operations Division (PSOD) that is designed to give multiple assistance to the peace support and intervention missions of the AU. It is through this department and division that most of the tasks of the Commission and its Chairperson are discharged, as provided for under the PSC Protocol. When the Darfur crisis began and the AU sent its mission there – the largest peace mission it has yet operated – the Darfur Integrated Task Force (DITF) was established separately from the PSOD. It was created separately; it operates outside the PSOD; its staff are not PSOD staff; and the resources earmarked for the DITF is not the PSOD's resources. The DITF has a relatively well-staffed administration with the comparative advantage of better resources than the PSOD. Thus, the DITF (the temporary arrangement for the Darfur crisis) is undertaking the tasks meant for the PSOD in the institutional set-up of the AU Commission. The PSOD must provide multiple assistances to AU peace support and intervention missions, including AMIS. As such, can creating and operating DITF benefit the institutional development of APSA? Although the Commission's institutional capacity to fully discharge its responsibilities may arguably not be adequate (given the complex nature of the Darfur crisis), disregarding or marginalising the established institutions of the Commission will further erode its capacity and inevitably deliver a blow to APSA's institutional future.

As Williams pointed out: '[T]he decision to create the DITF as a separate body operating outside of the Peace Support Operations division may retard the prospects for second-level organizational "learning" in the framework of APSA.<sup>30</sup> Such functional separation could prevent the PSC from developing, in the words of Williams, 'a coherent approach across its operations' as well as the organisational learning that can be useful for its institutional development. Williams concludes that: 'The Council [the PSC] is clearly developing a more consistent and organized approach to conflict situations on the continent but it is hard to see strong evidence of such learning in its peace operations, which remain largely ad hoc measures to particular problems.'<sup>31</sup> Engel and Porto take the same position, arguing that the 'effectiveness and durability' of APSA is dependent on 'the promotion of learning and the

transmission of knowledge'<sup>32</sup> to its institutions, which, as Williams suggests, would help APSA's secondary-level institutional development. According to Engel and Porto, such learning and knowledge are critical for the development of institutionalised behaviours based on the norms agreed upon (which APSA is currently missing); '[i]f [APSA's] norms are systematically disregarded' this cannot be achieved.<sup>33</sup> This is not to say that the AU Commission cannot employ such implementing mechanisms as it deems appropriate, but should the DITF have been part and parcel of the PSOD, without functional separation, it may have better benefited APSA's institutional development.

The handling of the Darfur crisis also raised another issue of institutional clarity in July 2008 when the AU Commission (AUC) announced the establishment of a High-Level Panel on Darfur (AUPD), with the mandate to 'examine the situation in depth and submit recommendations'.<sup>34</sup> The AUPD is composed of eight 'distinguished Africans of high integrity' and headed by former South African President Thabo Mbeki. Supported by a team of experts, the AUPD was expected to complete its assignment within four months of the day of its inaugural meeting.<sup>35</sup>

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APSA provided the PoW as one of its key pillars. Article 11 of the PSC Protocol established the Panel so that it could support the efforts of the PSC and those of the Chairperson of the Commission. The PSC Protocol mandated the PoW to support and 'advise the PSC and the Chairperson of the Commission on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa'.<sup>36</sup> Thus it advises the PSC and the Commission to facilitate the establishment of channels of communication between the AU and the parties to a particular conflict; to carry out fact-finding missions; to conduct shuttle diplomacy between parties to a conflict; to assist and advise mediation teams and parties to a conflict; and, most importantly, to 'develop and recommend ideas and proposals' for peace and stability in Africa.<sup>37</sup> Given its critical role in APSA, the PoW's members must have a proven record and reputation in peace and security issues in Africa; it must be supported by technically qualified

experts; and it must be equipped with contracted resource people who are experts in a particular conflict zone.

Yet the manner in which the PoW has been functioning and the strategies it has followed since its launch in 2007 need serious reconsideration. First, although the PoW has requested 'a technical Unit located in the Conflict Management Division in the form of a dedicated secretariat', it still has only a one-person secretariat in the AU Commission.<sup>38</sup> This shows that the PoW and its mandated roles are not yet taken seriously. Second, since its launch the PoW has adopted an approach of focusing on an annual thematic area. In 2008 it was 'the nexus between election and conflict management', and in 2009 'impunity, reconciliation and healing'. While such an approach may help to develop general recommendations useful for the continent's stability, disregarding the role it should play in specific crises has raised concern that the PoW is not effectively discharging its mandated responsibilities in APSA. Although there is no reason why the PSC should not seek in-depth information and a way forward in the highly complicated Darfur situation, unfortunately it again sidelined the institution that had been set up for this purpose by creating and tasking the AUPD. There is no doubt that the AU and the PSC face serious challenges in combating impunity in Africa in the process of conflict management, as well as in promoting peace and security. This will undoubtedly remain one of APSA's greatest challenges in its efforts to pacify the continent. Given the seriousness of the matter, the atrocities committed in Darfur have already been tabled in the ICC through its own procedures and structures, which is not related to the structure set up by APSA. As a result, there is nothing wrong in seeking effective support and advice from the ICC for its actions. But the PSC's decision not to seek such support and advice from APSA's permanent body (the PoW), which is mandated for this purpose, remains controversial.

The comparative advantage of opting for an ad hoc body rather than a permanent body is always open to debate, especially given the circumstances of this particular case. Yet the situation that compelled the PSC to seek effective advice in the Darfur crisis, leading to the formation of AUPD, could have been used to reinforce the PoW, which has a critical role to play in such matters, as this was in the long-term interests of APSA.

It might be argued (in justifying the PSC's preference for the ad hoc AUDP over the permanent PoW) that the PoW has no competence on matters of conflict management; and that its competence is basically limited to conflict prevention. This justification has, however, a very weak legal and institutional base in APSA's framework. Of course the phrase 'in the area of conflict prevention' under Article 11(1) of the PSC Protocol could wrongly be understood to

limit the PoW's role and competence only to conflict prevention. However, this provision does not in any way indicate conflict prevention as the only competence of the PoW. '[P]articularly in the area of conflict prevention' simply suggests an area of focus and therefore does not deny the PoW its competence in other areas such as conflict management. In fact, the third clause of Article 11 of the Protocol, as well as the detailed functions and roles provided under the Modalities for the Functioning of the PoW, reaffirms this assertion. Thus, although the AU's engagement in the Darfur conflict is more conflict management than conflict prevention, the task of the High-Level Panel is completely within the mandate of the PoW. The irony is that the PSC launched the AUDP at the same time that the PoW adopted 'impunity, reconciliation and healing' as its 2009 annual thematic area of focus. While the AU can constitute such an ad hoc Panel and entrust it with tasks it find appropriate, this resulted in a lost opportunity that, handled differently, could have contributed to APSA's institutional development. Thus, as the AU devotes substantial effort to and resources on its activities of early warning and peace support, conflict prevention and its PoW are yet to be taken seriously. Without effective conflict prevention, as set by APSA, both the early warning and peace support activities of the AU cannot be fruitful. Instead of spending a lot of resources on creating an ad hoc body such as the AUPD, the PoW could have been strengthened towards more effective functioning. Generally, relying on an ad hoc system by introducing functionally separate bodies, such as DITF and AUPD, can never be in the interest of the long-term institutional development of APSA.

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## **There is no doubt that the AU and the PSC face serious challenges in combating impunity in Africa in the process of conflict management, as well as in promoting peace and security**

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### **MANDATE-RELATED CHALLENGES OF APSA IN AFRICAN PEACE MISSIONS**

Mandates are important tools upon which the success of any peace support or peace enforcement missions depends. They are a source of legitimacy for the mission. By defining the purposes of its deployment, mandates help the mission to maintain a clear idea of what is expected

from it, and what is not. Therefore, clear mandates for the AU peace missions are critical for the efficient use of APSA as a continental conflict-management and resolution tool. It is important that the major mandate-related instruments – the PSC Communiqué and the Rules of Engagement – be coherent and consistent, especially regarding the functions of a mission and how the mandates have to be discharged. However, APSA is challenged by some lingering issues concerning mandate clarity and related problems in the area of peace operations. The AU peace operations in the Comoros, the Sudan and Somalia provide the best examples of these challenges, which are the focus of this section of the paper.

The AU peace operations in the Comoros became increasingly active after 2007, with the MAES deployment followed by the 2008 military intervention. These peace operations, however, triggered two mandate-related questions: was the 2008 military intervention force part of MAES; and did it conform to APSA's legal framework? The Ministerial Meeting of 'the countries of the willing', held on 20 February 2008 at the headquarters of the AU, justified the military intervention on various grounds, claiming that their actions were based on 'several decisions of the AU, including the decision of the Assembly on 2 February 2008, the PSC Communiqué of 25 [10] October 2007, and the request of the Comorian Government.'<sup>39</sup> Yet, this provides little clarity as to whether or not the intervention was undertaken as part of the MAES operation. First, the Assembly Decision 186(x) simply calls on member states to help in ending the Comorian stalemate without explicit and clearly authorised military intervention. Second, the PSC decisions and communiqués also did not provide such a military intervention. The procedure for the authorisation of military interventions of this kind is very clear from the legal framework of APSA.<sup>40</sup> The PSC must submit detailed recommendations and the Assembly must authorise the intervention based on these recommendations. Then detailed modalities of the PSC must be adopted before the military intervention starts. The PSC may have expressed its disappointment with the unfruitful diplomatic efforts made thus far in the process, but it did not submit clear recommendations to the AU Assembly demanding such an intervention. It therefore remains open to debate as to whether AU Assembly Decision 186(X) really authorised this military intervention.

The murkiness of the AMIS mandate and the confusion it created provides another illustration of mandate-related challenges. With the April 2004 creation of the Ceasefire Commission (CFC), the PSC sent an observer mission to Darfur but later, in July of the same year, it declared its intention to transform the AU mission from an observer to a peacekeeping mission with a robust mandate to ensure the effective implementation of the ceasefire agreement and

protection of civilians.<sup>41</sup> The PSC declared its intention to disarm and neutralise the Janjaweed militia, protect the civilian population, and facilitate the delivery of humanitarian assistance. It is important to note that this declared intention of the PSC came after the AU Assembly decided, in its 3<sup>rd</sup> Ordinary Session held from 6–8 July 2004, that the number of observers be increased and the protection force be deployed immediately.<sup>42</sup> The Assembly, however, had simply intended an increased number of observers and the deployment of a protection force, not the kind of peacekeeping force that the PSC was talking about.

Thus, the disparity between the intentions of the Assembly and that of the PSC created confusion in the mission's mandate. In October 2004, the PSC adopted a communiqué<sup>43</sup> for a reinforced AU mission, increasing the number of personnel to 3 320, with a limited and ambiguous civilian protection mandate providing for the protection of civilians and humanitarian operations under imminent danger and in the immediate vicinity.<sup>44</sup> As violence against civilians, humanitarian workers and even AMIS personnel steadily increased, the PSC again increased the number of personnel, this time to 6 171.<sup>45</sup> But even this twice-reinforced AU peace operation failed to stop the atrocities committed by both sides of the conflict, prompting the AU to send an assessment team that reviewed the situation. While mandate clarity and adequacy were among the issues addressed in the assessment, the team concluded that:

AMIS' current mandate is adequate but is not clearly understood by commanders at all levels. It must be interpreted flexibly and robustly in order to maintain the force credibility, and to provide the necessary degree of protection to civilians within capabilities.<sup>46</sup>

Yet, the PSC had revised the mission's mandate concerning civilian protection, removing for the first time the reference to the primary responsibility of the Sudan government to protect civilians.<sup>47</sup> It therefore sought not only the inclusion of civilian protection in the mandate of AMIS, but also requested the immediate actions of the Commission towards a 'consistent, flexible, broad, and robust interpretation'. It had, however, taken a long time for the PSC to reach this point.

This shift in the PSC approach only came after receiving frustrating reports from the AU Commission Chairperson and other sources about the deteriorating security situation in Darfur. In 2005 the AU Special Representative in Darfur, Baba Kingibe, said that the GoS forces 'resorted to violent, destructive and overwhelming use of force ... on innocent civilian villages and IDP [internally displaced persons] camps'.<sup>48</sup> In the helpless words of the Chairperson of the AU Commission:



The situation is complicated by extreme distrust between the warring parties and between the general population and the warring parties, the militias and other armed groups. Due to the intertwined support structures linking the militias with the warring parties, especially the Arab militias with the GoS, there is a general loss of confidence in government security institutions, especially the GoS police, in the most affected areas in Darfur.<sup>49</sup>

From the assessment of the mandates given to AMIS since 2004, one important observation has been the arguably deliberate doubt cast upon the AMIS mandate to protect civilians. While it is very clear that the Government of Sudan (GoS), as one of the key actors in the conflict, was in no position to provide security to its civilians, the AU nevertheless kept to the primary responsibility of the GoS, which remained relevant up until the end of AMIS in December 2007. While the PSC knew that such a mandate could be clearly stated in the communiqué in a way that would not necessitate any interpretation, it sought the immediate action of the Commission for such an interpretation because it was in fact constrained by the 'principle of sovereign independence' of Sudan as a member of the AU. As an indication of the AU's caution regarding issues of sovereignty, some PSD officials, when asked in 2006 why the AU did not invoke Article 4(h) of the CA in the Darfur case, stated that 'Sudan is a member of the AU' and therefore it could not do this 'without its consent'.<sup>50</sup> This reflects the fact that the mandate of a peace mission may sometimes be a mere political exercise, dependent on both the political will and capacity of the issuing organisation to engage in the crisis.

Another important factor to consider is the absence of coherence between three inter-related and yet very important concepts in peace operation: mandate, tasks and rules of engagement. According to Articles 13(3f), 14(3e) and 15(3) of the PSC Protocol, civilian protection must always be part of the African peace support mission whenever such protection is required. Although this is not clear in the mandate part, it was among the tasks listed in the mandating instrument for AMIS; nevertheless, it was this lack of clarity in the actual mandate that allowed the GoS to question the AMIS mandate and successfully ignore it in the Rules of Engagement, which is an important tool for any mission to secure its mandate on the ground. As Muganga argues:

AMIS rules of engagement ... need change [...] it is not so much a question of what can or cannot be done within the mandate, but rather that commanders at the lowest levels and their troops do not have clear instructions as to what they are

authorized to do. In particular, the rules of engagement need to be amended to clarify their applicability to the protection of civilians and humanitarian operations under imminent threat as stated in the mandate and to specifically permit the use of deadly force in the execution of these tasks.<sup>51</sup>

Muganga mentions exactly what has been missing and why AMIS was left stranded. His comments also reflect the serious mandate-related challenges facing almost all AU missions. Tim Murithi reaffirms these notions when he rightly concludes that 'the AU has a better chance of success when it undertakes a concise and focused operation with a clear mandate'.<sup>52</sup> The issue of AMIS mandate clarity has for a long time been creating confusion among the mission leaders, its personnel and the AU.

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## **The AU's missions are most often deployed to crisis situations where there is no peace to keep; then, whenever they attempt to remedy this situation after their deployment, the first challenge comes from their own mandate**

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The other issue of mandate clarity relates to the PSC's habit of issuing peacekeeping mandates in situations where there can be no doubt that only enforcement mandates will work. In light of the evolving trend in which the division of labour between the AU and the UN means that the AU has to be the first to respond to a crisis situation by deploying its stabilisation force, African peace missions need to have a robust mandate that is commensurate with the situation on the ground.<sup>53</sup> It is difficult for a traditional peacekeeping mandate to work; and the AU's Mission in Somalia (AMISOM) provides the best example. Is it really possible to achieve APSA's objectives by deploying a mission with a traditional peacekeeping mandate in the type of crisis faced in Somalia or Darfur? The AU's missions are most often deployed to crisis situations where there is no peace to keep; then, whenever they attempt to remedy this situation after their deployment, the first challenge comes from their own mandate. Peacekeeping mandates cannot work in peacemaking/peace-enforcement circumstances.

Moreover, institutional relations can play a part in mandate issues within APSA's framework, especially in the area of authorising the deployment and operation of peace missions. We have already seen that RECs are among the building blocks of APSA, but there are many issues of institutional relations that still need clarification. For example, each REC has its own organ authorised by its own sub-regional treaty to deploy and operate peace missions. Then the UNSC has the primary responsibility for the maintenance of international peace and security. The institutional relations between the RECs, the AU and the UN in deploying and operating peace missions (seen in the light of evolving practices) can trigger mandate-related issues. For instance, AMISOM was historically initiated as a mission of IGAD named IGASOM, which had been authorised by the IGAD, the AU and the UNSC. Although IGAD has no treaty mandate for the deployment of its own mission, in 2005 it decided to deploy a mission to address the desperate situation in Somalia. The IGAD requested AU authorisation for the deployment of its mission (IGASOM) and successfully obtained it.<sup>54</sup> This was followed by the UNSC resolution authorising the deployment of IGASOM; and thus, three mandating instruments by three different organisations were adopted for a single mission. The authorisation of IGASOM by the AU is the only case that triggers further discussion on AU-RECs relations. The draft 2004 ASF Policy Framework indicated that 'African Regions will seek AU authorization of their interventions'.<sup>55</sup> This has been corroborated by the statement of the Chairperson of the AU Commission saying '[i]f the AU and the RECs are to form a single security architecture, as envisioned in the PSC Protocol, decisions taken at continental level should be upheld by the Regional Mechanisms'.<sup>56</sup> The 2008 MoU adopted to guide AU-RECs relationships has failed to clarify this matter.<sup>57</sup>

However, it has become an established practice, since the case of IGASOM, that immediately following the AUPSC authorisation the UNSC adopts a resolution under Chapter VII of the UN Charter for the deployment of the same AU mission. AMIS and AMISOM are the best examples in this regard. Yet such multiple mandating authorities producing several mandating instruments exacerbate the mandate-related confusion. There is an obvious problem related to the content and legal status of these separate instruments issued by different bodies for the deployment and operation of a single mission. The UNSC resolutions authorising AU-led peace operations create mandate-related confusions in two aspects. First, the fact that the UNSC gives authorisation under Chapter VII of the UN Charter makes the mission, legally speaking, an enforcement mission rather than a peacekeeping mission. There are those who consider what the UNSC is doing here to be 'endorsement' rather than 'authorisation',

but there is no provision in the UN Charter to such effect. Second, it is not clear whether the UNSC is authorising a regional force, as stipulated under Chapter VIII of the UN Charter, or a coalition force under Chapter VII. If the UNSC considers the AU force to be a regional organisation force, this authorisation should be in accordance with Chapter VIII of the UN Charter, and not Chapter VII. All the UNSC resolutions in this case say '[a]cting under Chapter VII of the Charter of the UN ... [d]ecides to authorize Member States of the AU' – not the AU itself.<sup>58</sup> Clarity is needed as to whether this authorises the AU as a regional organisation or its member states. If the UNSC gives authorisation to the member states, then legally it cannot be a Chapter VIII exercise.

## CONCLUSION

APSA is a holistic framework that has existing, permanent bodies set up to deal with every area of its peace and security activities. This paper has analysed some of the practices in the AU-led peace missions in light of the normative framework of APSA in a way that informs the challenges of APSA's institutional future. Ad-hocism is the major challenge that has been observed in the practices of APSA and African peace operations. The way the MCCRC and 'Operation Democracy' had been created and operated raised many questions when evaluated within APSA's institutional framework. These ad hoc arrangements put in place during the Comorian crisis assumed several responsibilities given to the bodies under APSA's institutional set-up, including the tasks of the AU Commission – passing decisions, taking actions, and imposing sanctions. The PSC was simply approving these measures of the ad hoc bodies, sometimes after implementation. The AU High-Level Panel on Darfur (AUPD) as well as the Darfur Integrated Task Force (DITF) had assumed the functions of the PoW and the PSOD respectively – APSA's permanent institutions. Such ad hoc bodies are not needed while there are standing ones that have been established for the same purposes. Thus, the AU preference for ad hoc arrangements over its permanent institutions, as analysed in this paper, is contributing to the challenges of APSA's institutional development. These challenges are related not only to the lack of institutional clarity, but also to mandate murkiness in the practices of AU peace operations. The confusion surrounding the AMIS mandate illustrates how important mandate clarity is for the efficiency of APSA. Related to this issue is the confusion emanating from the institutional relations between the RECs, the AU and the UN as regards authorising and operationalising peace operations in Africa. The practice of issuing multiple mandating instruments for the deployment of an AU-led or REC-led peace operation can potentially cause confusion.

The institutional and mandate murkiness is an impediment to an effective and efficient APSA, which ultimately contributes to the problem of its limited capacity. APSA cannot be effective without the enhanced capacity of its institutions, which is not simply dependent on the adoption of explicit and agreed-upon rules and norms but also requires behaviour and practices that complement such rules. An ad hoc approach (as seen in the case of the DITF and the AUPD) cannot in any way provide a lasting solution for the capacity deficits of APSA's institutions. The AU's ability to take concrete action or even to adopt a clear position on some critical issues is taken hostage by its member states' preference for 'the principle of non-interference' over 'the principle of non-indifference', as was the case in the Darfur crisis. Thus, while the AU continues to face stiff challenges in the process of translating into practice the norms set in APSA, it must stick to its institutional framework if it is really determined to establish 'an operational structure for the effective implementation of' its peace and security decisions (as mentioned in the PSC Protocol).

Therefore, unless things change, the institutional murkiness and mandate confusion inherent in AU peace efforts will continue to contribute to future security threats on the continent. In order to avert this there are several measures that the AU, its members, the RECs and its partners need to take. Firstly, the AU must work relentlessly to ensure that practices are in line with the norms set out by APSA. It is very important that APSA has institutionalised behaviour and practices among all its institutions and actors. Secondly, the AU Commission, as the hub for APSA, needs to guide the process of the institutional development of its pillars and, in the words of Engel and Porto, work towards achieving 'the required support from member states and other partners'. Finally, apart from strengthening its institutions, the AU must complete, as soon as possible, the evolutionary phase of APSA's different pillars, if future security threats on the continent are to be effectively addressed. Generally the AU has to cope with the double task of building its institutions, on the one hand, and responding to crises on the continent in a way that does not undermine APSA's long-term institutional efficiency, on the other. The likelihood of APSA achieving the dream of the continent's people will depend on the AU's efforts to balance immediate demands with the long-term interests of institutional development.

## NOTES

- 1 This article reads as follows: 'The Assembly shall be the Supreme Organ of the Union'. See *The Constitutive Act of the African Union*, Art. 6 (2), Lome, 2000.
- 2 Article 9(1)(a) also provides that the Assembly shall determine the common policies of the Union. See *The Constitutive Act of the African Union*, Art. 9 (1), Lome, 2000.

- 3 *The Constitutive Act of the African Union*, Art. 5 (2) & 9 (1d), Lome, 2000.
- 4 By invoking Article 5(2), the Assembly has, therefore, established the Peace and Security Council (PSC) through the adoption of the 2002 Protocol. See also *The Constitutive Act of the African Union*, Art. 9 (1e), Lome, 2000.
- 5 In the case of exercising the AU's right to collective intervention, as well as intervention by invitation, the Assembly is the body that authorises such intervention, upon recommendation by the PSC. See *The African Charter on Democracy Election and Governance*, Art. 25 (6–7), Addis Ababa, 2007.
- 6 *The Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Art. 2 (1), Durban, 2002.
- 7 *The Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Art. 2 & 4, Durban, 2002.
- 8 *The Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Art. 7 (1g), Durban, 2002.
- 9 *The Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Art. 10 (4), Durban, 2002.
- 10 'It is worth recalling that when the AU launched its efforts in Darfur, it operated on the assumption that ... Sudanese parties [would] successfully carry on the peace and reconciliation process, without need to deploy a fully fledged peace support operation in Darfur. However, that assumption has been proven wrong.' AUC Chairperson Report, 18 September 2006, par. 87.
- 11 *The Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Art. 16 (1), Durban, 2002.
- 12 AUC Report on APSA, May 2004, par. 22.
- 13 Declaration of the 6<sup>th</sup> Meeting of African Chiefs of Defence Staff and Heads of Safety and Security, and the 3<sup>rd</sup> Ordinary Meeting of the Specialized Technical Committee on Defence, Safety and Security, 11– 15 May 2009, Addis Ababa, Ethiopia. Para. 7(j) of the Declaration provides: 'On the issue of some member states belonging to more than one regional brigades, we are of the view that such a decision is a matter of national sovereignty, choice, and capacity to fulfil their obligations to both brigades at the same time.'
- 14 PSC/AHG/3(IX):8, *PSC Report of the Chairperson of the Commission*, 9th Session, 25 May 2004.
- 15 PSC/AHG/3(IX):8, *PSC Report of the Chairperson of the Commission*, 9th Session, 25 May 2004.
- 16 AMIS was a mission that faced enormous challenges and tests – both legal and institutional – under the infant AU institutions that existed during the mission's four years in Sudan.
- 17 Chrysantus Ayangafac, *Situation Critical: the Anjouan Political Crisis*, ISS Situation Report, Institute of Security Studies, 2008, 3; Emma Svensson, *The AU's Operation in Comoros, MAES and Operation Democracy*, FOI Swedish Defence Research Agency, 2008, 13.
- 18 PSC/PR/3(VI), PSC Communiqué, 29 April 2004; see also AUC Report, 25 May 2004.

- 19 PSC/PR/Comm.1 (XLVII), PSC Communiqué, 21 March 2006.
- 20 OAU Doc. AHG/Dec 149(xxxvi), Assembly Decision on the Comoros, 12 July 2000.
- 21 PSC/PR/Comm. (XCV), PSC Communiqué, 95<sup>th</sup> Session, 10 October 2007.
- 22 D. Magliveras, *Report on International Organizations: The African Union (AU)*, American Society of International Law, <http://www.asil.org/rio/africanunion.html> (accessed 17 June 2009).
- 23 See OAU Doc. CM/Dec. 523 (LXXII) Rev.1 (8 July 2000) and OAU Doc. AHG/Dec. 149(XXXVI) (12 July 2000). This kind of Ministerial Committee was used by the OAU for the mediation and resolution of the crisis in the Comoros during that time.
- 24 A Ministerial Meeting on the Comoros, par 2–5 & par 8, Addis Ababa, 20 February 2008,.
- 25 PSC/PR/2(CXXIV):10, PSC Report of the Chairperson of the Commission on the Situation in the Comoros since the 10<sup>th</sup> Ordinary Session of the Assembly of the AU held in Addis Ababa from 31 January to 2 February 2008, 124<sup>th</sup> Meeting, 30 April 2008.
- 26 BBC News, 11 March 2008, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/7289318.stm> (accessed 20 May 2009).
- 27 PSC/PR/BR (CXVII), PSC Press Conference, 117<sup>th</sup> Meeting, 28 March 2008.
- 28 See the Chairperson's Report of 30 April 2008, PSC/PR/2(CXXIV), par 10, outlining the measures taken and the steps followed. There is no indication in the report of the role played by the PSC in the coalition and the Ministerial Meeting.
- 29 *The Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, Art. 9, Durban, 2002. The institutions listed here are the PSC, its chairperson and/or AUC chairperson, the Panel of the Wise, and Regional Mechanisms.
- 30 P. Williams, *The Peace and Security Council of the African Union: Evaluating an Embryonic International Institution*, Paper presented at ISA annual convention, San Francisco, 26–30 March 2008, 15.
- 31 Williams, *The Peace and Security Council of the African Union*, 16–17.
- 32 U. Engel and G. Porto, *The African Union's New Peace and Security Architecture: Towards an evolving security regime?* 3rd European Conference on African Studies: Towards an African Peace and Security Regime, Leipzig, 4–7 June 2009, 13, [http://www.uni-leipzig.de/~ecas2009/index.php?option=com\\_docman&task=cat\\_view&gid=127&Itemid=24](http://www.uni-leipzig.de/~ecas2009/index.php?option=com_docman&task=cat_view&gid=127&Itemid=24) (accessed 18 October 2009).
- 33 Engel and Porto, *The African Union's New Peace and Security Architecture*, 10–14.
- 34 PSC/MIN/Comm. (CXLII), PSC Communiqué, par. 11 (ii), 142<sup>nd</sup> Meeting, 21 July 2008. Note that this decision of the PSC came after the ICC Prosecutor filed an application for an arrest warrant to be issued against President Omar al-Bashir of Sudan.
- 35 AU Press Statement. 'The AU High-Level Panel on Darfur concludes its inaugural meeting in Addis Ababa', 19 March 2009.
- 36 See Article 11(3) of the PSC Protocol.
- 37 See Article III(1) of the Modalities for the Functioning of the PoW.
- 38 Jamila El-Abdellaoui, The Panel of the Wise Working for Peace, *ISSToday*, 18 March 2009, [http://www.iss.co.za/iss\\_today.php?ID=721](http://www.iss.co.za/iss_today.php?ID=721) (accessed 5 April 2009).
- 39 A Ministerial Meeting on the Comoros, par. 2–5 and par. 8, 20 February 2008, Addis Ababa.
- 40 See the cumulative reading of provisions of the AUCA and the PSC Protocol.
- 41 PSC/PR/Comm. (XIII):2, PSC Communiqué, July 2004.
- 42 Assembly/AU/Dec.54 (III), AU Assembly Decision on Darfur, 3<sup>rd</sup> Ordinary Session, Addis Ababa, 6–8 July 2004.
- 43 PSC/PR/Comm. (XVII), PSC Communiqué, 20 October 2004.
- 44 PSC/PR/Comm. (XVII):6, PSC Communiqué, 20 October 2004.
- 45 PSC/PR/Comm. (XXVIII), PSC Communiqué, 28 April 2005, Addis Ababa,. It is important to note that there was some disagreement between the mission and the GoS regarding the mission s mandate of protecting civilians.
- 46 PSC/PR/2(XLV):27–28, *Peace and Security Report of the Chairperson of the Commission*, 12 January 2006.
- 47 PSC/MIN/Comm. (XLVI), PSC Communiqué, 10 March 2006. It is not clear whether Sudan was really opposed to this amendment to the AMIS mandate, as it had previously argued that the mandate of the mission was primarily a monitoring one.
- 48 Karl Maier, Sudan attacks Darfur Civilians: African Union says, *Bloomberg Online News*, 1 October 2005, [http://www.bloomberg.com/apps/news?pid=newsarchive&sid=76rDrwaubAQ&refer=top\\_world\\_news](http://www.bloomberg.com/apps/news?pid=newsarchive&sid=76rDrwaubAQ&refer=top_world_news)
- 49 PSC/PR/2:28, *PSC Report of the Chairperson of the Commission on the Situation of the Darfur Region of the Sudan*, 28 April 2005.
- 50 A. Abass, The United Nations, The African Union and the Darfur Crisis: Of Apology and Utopia, *Netherlands International Law Review* LIV (2007), 424.
- 51 Aloys Muganga, *AU Peace Support Operations: Insufficient for Success (Darfur Case Study)*, Army War College, Corrisle Barracks PA, Defence Technical Information Centre, 2007, 14, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA471313&Location=U2&doc=GetTRDoc.pdf> (accessed 16 June 2009).
- 52 Tim Murithi, The African Union's Foray into Peacekeeping: Lessons from the Hybrid Mission in Darfur, *Journal of Peace, Conflicts and Development* 14 (July 2009), 2, [www.peacestudiesjournal.org.uk](http://www.peacestudiesjournal.org.uk) (accessed 21 August 2010).
- 53 Jakkie Cilliers, The African Standby Force: an update on progress, ISS Paper no 160, 2008, 7. Cilliers said: 'Today, it is accepted that the AU will deploy first, opening up the possibility for a UN follow-on multidimensional peace support operation.'
- 54 See AU Assembly Decision 31 January 2005 and PSC Communiqué of 7 February 2005.
- 55 Exp/ASF-MS/2(I):4, *The Establishment of the African Standby Force & Military Staff Committee*, 3rd Meeting of the African Chiefs of Defence Staff, 15–16 May 2003.
- 56 AUC Chairperson, May 2004, par. 27.
- 57 The Memorandum of Understanding on Cooperation in the area of Peace and Security between the African Union, the

Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa, January 2008, Addis Ababa.

58 UN SC Resolution 1744(2007) and UNSC Resolution 1831(2008).



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## ABOUT THIS PAPER

APSA is a holistic framework that has permanent bodies set up to deal with every area of its peace and security activities. This paper analyses some of the practices in AU-led peace missions in light of the AU normative framework in a way that informs the challenges of APSA's institutional future. While APSA is both a highly complex and an evolving legal and institutional framework, there are some critical constraints that APSA faces as it continues to provide a framework for engaging in the continent's conflicts. By providing an in-depth examination of some AU peace operations (from AMIB in Burundi to AMISOM in Somalia), the paper is aimed at stimulating debate on the importance, for APSA, of achieving mandate and institutional clarity.

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