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**CHALLENGES ON THE EXISTING MODE OF COOPERATION
INVOLVING THE UN, AU AND IGAD IN PEACE OPERATIONS
FOR THE MAINTENANCE OF PEACE AND SECURITY IN EAST
AFRICA**

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Acknowledgment

Acronyms

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Acronyms

APSA	Africa Peace and Security Architecture
AU	Africa Union
AMIB	Africa Union Mission in Burundi (AMIB)
AMIS	Africa Union Mission in Sudan
ASF	Africa Stand by Force
CCR	Center for Conflict Resolution
CENTO	Central Treaty Organization
CEWRM	Early Warning and Early Response Mechanisms Secretariat
CEWS	Continental Early Warning System
CPMR	Conflict Prevention, Management and Resolution
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of Congo
EAPSM	East Africa Peace and Security Mechanism
EASBRIG	East Africa Standby Brigade
ECCAS	Economic Community of East African States
ECCASBRIG	ECCAS Standby Brigade
ECOBRIG	ECOWAS Standby Brigade
ECOWAS	Economic Community of Western African States
GoS	Government of Sudan
HoM	Head of Mission
HQ	Headquarters
ICC	International Criminal Court
ICPAT	IGAD Capacity Building Programme Against Terrorism

IGAD	Inter governmental Authority on Development
IGADD	Intergovernmental Authority on Drought and Development
IGASOM	IGAD Peace Support Mission to Somalia
IPTF	International Police Task Force
JEM	Justice and Equality Movement
MoU	Memorandum of Understanding
MSC	AU Military Staff Committee
NARC	North Africa Standby Brigade
NASBRIG	NARC Standby Brigade
NATO	Northern Atlantic Treaty Organizations
OAU	Organization of Africa Unity
OPLAN	Operational Plan
PLANELM	Planning Element
PSC	Peace and Security Council (AU)
PSO	Peace Support Operations
PW	Panel of the Wise
REC	Regional Economic Community
RM	Regional Mechanism
SEATO	South East Asian Treaty Organization
SLM/A	Sudan Liberation Movement/Army (SLM/A)
SADC	Southern African Development Community
SADCBRIG	SADC Standby Brigade
SHIRBRIG	Multinational Stand-by High-Readiness Brigade for UN Operations
TFG	Transitional Federal Government Somalia
BINUB	United Nations Integrated Office in Burundi
ONUB	UN Peace operation in Burundi
UN Charter	Charter of the United Nations
UDI	Unilateral Declaration of Independence
UNHCR	United Nations High Commissioner for Refugees
UNMAID	United Nations-African Union Mission in Darfur
UNMIBH	United Nations Mission in Bosnia and Herzegovina

UNMIS	United Nations Mission in Sudan
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UNSG	United Nations Secretary General
UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force

CHAPTER ONE

Introduction

Background

debate over the relationship between the United Nations and regional organizations goes back to W.W.II.¹ In the late stages of the War, when the United States, United Kingdom and Soviet Union were debating the structure of a future global organization, several proposals for a regional approach to international peace and security were made.² The most notable was a proposal made by Sir Stafford Cripps, a senior policy advisor in the British Foreign Office. In a memorandum to Winston Churchill, Cripps formulated a plan based around the creation of regional commissions for Asia, Europe and the Americas.³ These regional commissions would in turn report to a world council made up of the Great Powers.⁴ A critical factor in the Cripps plan was the presence of at least one Great Power in each commission. Churchill was committed above all else to keep the United States involved in Europe beyond the length of the War and US participation in the Council of Europe was essential.⁵

Roosevelt was, however, in favor of a universal organization and was opposed to the Cripps plan, claiming that the League of Nations was in effect a regional organization. Roosevelt feared that the Senate would reject regionalism out of fear that it would lead to further conflict.⁶ In addition, Roosevelt believed that a regional commission for the Americas was not needed.⁷ Beyond this, the decline of the stability of the alliance between the Great Powers led Roosevelt to conclude that a universal organization was the

David Quayat, *The United and Regional Organization: A New Paradigm for Peace?* (Nov. 1999) pp 3-4
Center for Military and Strategic Studies, University of Calgary available at www.cda-cca/symposia/1999/quayat99.htm visited on 4 April 2008

only way to ensure global stability.⁸ Roosevelt, Stalin and Churchill eventually agreed to the more centralized Security Council, recognizing that each of the Great Powers would have the ability to block actions by using their veto.⁹

The result of the Dumbarton Oaks process was largely reflected in the final UN Charter.¹⁰ The Security Council, under Article 24 of the UN Charter, has the “responsibility for the maintenance of international peace and security.” However, Chapter VIII of the Charter was created as compromise and gave a broad and some what ambiguous role to regional organizations.¹¹ Article 52 of the Charter prescribes that regional organizations may be called upon by the Security Council to maintain peace and security” as appropriate for regional actions. “The Charter also places regional organizations at the disposal of the Security Council for use in enforcement actions. However, any enforcement action made by regional organization is subject to the prior consent of the Security Council the mandate of the Security Council except in instance of self-defense.

Generally, as per article 1 the Charter, one of the primary objective of the United Nations is maintenance of international peace and security. As is provided under article 24 of the charter, the Security Council is one of the six UN organs and it is the one which is empowered to accomplish the prime objectives of the UN. Article 24, paragraph one of the Charter provides as follows.

“In order to ensure promote and effective action by the United Nations, its members confer on the Security Council primary responsibility fort the maintenance of international peace, and security, and agree, that is carrying out its duties under this responsibility the security council acts on their behalf”.

In order to address their duties, the Security Council is empowered to employ different mechanisms by the Charter. Among the means which are provided under chapter VIII

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

(dealing with regional arrangements) is one of the specific powers granted to the Security Council for the discharge of their duties. In this connection regional organizations, apart from the UN as an international organization, have a great role in maintenance of international peace and security. Regional arrangements, in this sense, are grouping of states established by treaty on the basis of geographical convenience, provided with common organs and aiming at cooperation and mutual assistance, in particular, in the political sphere.¹² For instance, the Organization of American States established by a series of instruments, of which the most important is the Bogota Charter of April 30, 1948, and providing expressly that it is a regional agency within the United Nations that one of its purposes is to fulfill its regional obligations under the Charter of the United Nations.¹³

Regional arrangements in history, the experience of the Cold War did little to clarify the role of regional organizations in the maintenance of international peace and security within the UN context, with the onset of the cold war, the United Nation security became paralyzed¹⁴ with the exception of Korea and the Belgian Congo, the council authorized no enforcement missions.¹⁵ Instead, the Security Council was limited to deploying small observers' missions and other lighted armed peacekeepers'. This paralysis sparked a remarkable increase in the number of regional organizations devoted to promoting peace and security including NATO, the Warsaw Pact, SEATO, and CENTO.¹⁶

Further more, as the Cold War ended, it was hoped that the relevant parts of the UN Charter concerning the role of regional organizations and arrangements of international peace and security, could be invoked effectively.¹⁷ In an Agenda for Peace, issued on 31 January 1992, the UN Secretary-General recommended a greater role for regional

¹² L. Oppenheim, International law a treatise edited by H. Louterpacht (1952) 7th ed. p 117, by Longmans Canada LTD.

¹³ Ibid

¹⁴ See Quayat Supra note 1 at 3-4

¹⁵ Ibid

¹⁶ Ibid

¹⁷ United Nation department of peace keening operations, suggested principles and mechanisms (March 1999), p.6 available at <http://www.globalpolicy.org/security/peacekeeping/region/0399+0-1cooperation> visited on April 13 2008

organizations in peace related activities.¹⁸ In recent years, some regional, sub-regional organizations and arrangements have taken major steps towards international peace and security.

Since United Nations Security Council began to champion Chapter VIII of the United Nations Charter, some ten year ago, African countries acting through numerous regional and sub-regional organizations have shown themselves willing to take the lead in peace operation on their continent.¹⁹ *The OAU and its successor, the AU, are together responsible for more than half of all the missions that Africa regional organizations have sponsored.*²⁰ The OAU particularly in east Africa, undertook three in Rwanda (1990-1993), one in Burundi (1993-1996), and one in Eritrea and Ethiopia (2000 to data). Besides extending the mandate of the OAU initiated mission in Eritrea and Ethiopia, the AU has authorized two new operations since it replaced the OAU in 2002: in Burundi (2003-04) and in the Sudan (2004 to data).²⁵ In addition as far as IGAD as a sub-regional organization currently fielding a peace operation known as the Verification of Monitoring Team (VMT) in the Sudan.²⁶

Moreover, the New Partnership for Africa's Development (NEPAD) is another avenue for UN-AU collaboration on building of AU peace building capacity. Though NEPAD, its peace and security initiatives, African leaders have pledged to support the growth of good governance, transparency and peace as necessary foundation of sustainable developments.²¹

In general, the UN Charter refers to potential relationships with regional organizations in Chapter VIII, which encourages " pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states

¹⁸ Ibid

¹⁹ Eric Berman, African Regional organizations peace keeping experience and capabilities p. 27 available at [http:// www.trainingforpeace.Org/pubs/accord/ctrends2004/CT2-2004%20vested](http://www.trainingforpeace.Org/pubs/accord/ctrends2004/CT2-2004%20vested) on April 13, 2008

²⁰ Ibid

²¹ Ibid p.28

concerned or by reference from the Security Council.²² However, debate over how the United Nations could better work with regional groups and sub-regional organizations have lead to explore much.

1.2 Statement of the problem

Currently in the African continent, the AU and other sub-regional organizations are playing significant role in maintenance of international peace and security. Particularly in East Africa, the UN-AU-IGAD have participated in a number of peace settlement process. Here, as such despite the lack of clear reference on the modes of cooperation/coordination under Chapter VIII of the UN Charter, the UN and AU have tried to cooperate in peace operation missions. In this connection, it important to pin point and further explore the challenges of the most prominent types of cooperation, that have seen in practice between the UN and AU. In this relation, as in the 50th anniversary of the United Nations, the former Secretary General Dr. Boutros Gail in the Supplement to an Agenda for Peace, issued on January 3 1995, the enumerated areas of cooperation between the UN and regional organizations are: *Operational Support, Co-deployment and Joint operations*.²³

In this connection the UN-AU mission in East African conflict may be taken as one good example to show the implementation and challenges on the types of cooperation of among international, regional and sub-regional organizations in the peace and security sectors. For instance, the OAU/AU has actively been engaged in an effort to resolve the conflict in Burundi since 1993.²⁴ Without the authorization of the UN, the AU regional leaders and the Burundian parties agreed to the deployment of the Africa Mission in Burundi (AMIB) to operate under the auspices of the Africa Union.²⁵ AMIB was deployed based on the understanding that the UN would take over peacekeeping

²² Ibid p 1

²³ An Agenda for Peace See also Quayat Supra note at 1

²⁴ Kristina Powell (2005), The Africa Union's Emerging peace and security regime: opportunities and challenges for delivering on the responsibility to protect, the north south institute. PP 25

²⁵ Ibid

responsibility in Burundi after twelve months.²⁶ AMIB was specifically mandated, including others, coordinate mission activities with the UN presence in Burundi.²⁷ Later in may 2004, the UN Security Council passed resolution 1545 authorizing the deployment of the UN peacekeeping operation in Burundi, one month later, after 14 months on the ground, AMIB as officially take over into the United Nations Operation in Burundi (French acronym ONUB).²⁸ Here in such 14 months stay the coordination b/n the AU and UN move from a regionally – led to a UN operated alongside in the Burundi which create the division of labor b/n the UN and AU. According to the former Secretary General Dr. Boutros Gail classification, the modes of cooperation b/n the UN (ONUB) and AU (AMIB) were equivalent with operational support and co deployment (transition or sequential). In this connection, though it argued that the actions of the modalities were effective, they were subject to several problems. Accordingly, this thesis will explore such challenges in line with the gaps in legal provisions and the existing modes of cooperation.

Moreover, AU involvement in Somalia and Darfur conflicts evolved into a challenging and dominant test case for the UN-AU partnership, highlighting both the need for inter-organizational collaboration and underscoring the relationship's shortcomings.²⁹ Most importantly, the UN-AU relationship is also reviewed in the context of current mission (AMIS), particularly their joint efforts to find a solution to the crisis in Darfur.³⁰ In 2004, the Africa Union Mission in Sudan (AMIS) deployed in Darfur.³¹ While in August 2006, the Security Council approved resolution 1706, calling for a timetable for “rehatting” AMIS forces and authorizing the expansion into Darfur of the United Nations Mission in Sudan UNMIS in the south part of Sudan.³² Finally, after gaining Khartoum’s agreement,

²⁶ Ibid p 26

²⁷ Ibid

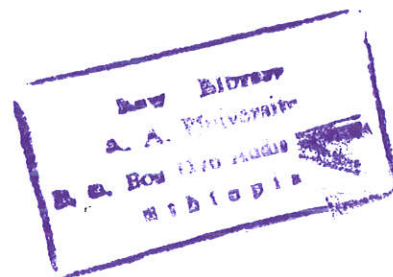
²⁸ Ibid P 27

²⁹ See Berman, Supra note 19 at 6

³⁰ Ibid p 1

³¹ Ibid p 7

³² Ibid p 8



the Security Council approved resolution 1769 on 31 July 2007, authorizing the deployment of UNAMID to replace the beleaguered AMIS.³³

However, the formations of partnerships between the organizations are as such with different problems. The first problem is in relation to the whole team of Chapter VIII of the UN Charter. Unlike recognitions of some explicit terms of partnership under Chapter VIII, the issues here are raised in relation to the types or modes of cooperation with their manners, terms of reference and the scope of area of respective duties. Here, the problem is so crucial because as one read the components of the Chapter VIII, it is usual to find the term arrangement rather than the terms, concepts and elements of cooperation/coordination. Generally, as a result of the existence of blurred affirmation of reference of cooperation between the UN and regional organizations, Chapter VIII of the UN Charter is one set of the area of this research.

Furthermore, assessing the problems of the existing modes of cooperation is the main team of this research. In this connection, as far as the three types of cooperation is concerned, (*Operational Support, Co-deployment and Joint operations*), several issues are confronted. In the first place, what is important here is that, regardless of the role played by the regional organization, the UN under all the three of the typologies listed plays a role in the deployment of forces Boutros-Ghali's definition of possible cooperation is vague.³⁴ Some commentator grouped them under the basket of the term "hybrid" operation and others put in different manner. Besides the vagueness the typologies have, what duties require in practice are blurred. For instance, his definition fail to determine, for instance, who will be responsible for absorbing the costs of mission or which organization will act as the fulcrum in which type of operation are some of it.³⁵

Moreover, given the still existing mutual efforts of the United Nations and the Africa Union to conduct peace operation in East Africa, an institutional collaboration or

³³ Ibid p

³⁴ See Quayat Supra note 1 at 6

³⁵ Ibid

cooperation (in fact chapter VIII does not state cooperation) b/n the organizations would appear natural but how do they and should they work together to address peace and security on the continent, are vital issues. For in stance, in Darfur mission deployment of joint force will lead the complexity of control and structure? In other words, it is not clear how these types of coordination might work in practice or it is not clear how AU and the UN might cooperate in Darfur given that the two organizations have charted out very distinct course of action. Hence, in the absence of clear cut framework for cooperation and coordination b/n the UN and regional or sub regional organizations or a coalition of state would be lead to difficulties for the coordination to be effective. Similarly, coordination b/n such regional organizations without legal authority would result unattainable objectives.

Generally, cooperation but not expressly provided, b/n the UN and regional organizations is premised in Chapter VIII of the UN charter, which addresses regional arrangements for international peace and security. However, while the current modes of cooperation's, (*Operational Support, Co-deployment and Joint operations*), have significant role in maintaining and restoring peace and security, the way out to cooperate is not to emanate from formal or legal framework. The area of sharing responsibility, the organs that empowered determination of terms of cooperation's, and whether or not current experience on cooperation is consistent with the UN fundamental principal, (this is to mean that currently AU's activities in the area of peace security are subject of several issues. In this connection, AU acknowledges the right of intervention into the member states of the African continent out of the Chapter VIII and other provisions of the UN Charter.), are mainly the issue that need to be addressed.

1.3 Objectives of the Study

The objective of the research is to examine the modes of cooperation b/n UN-AU-IGAD in peace operation for maintenance of peace and security in East Africa. For this purpose the research aims to analyze the existing institutional and legal basis of mode of

cooperation among such multilateral organizations by examining the relevant sections of respective charters of the organizations.

Moreover, above of all, the research paper is aimed to expose the legal lacuna and the major challenges facing the existing mode of cooperation b/n the multilateral organizations in peace operation for peace and security in east Africa.

Further more, by exploring operational experience of such organizations, solution for the existing gaps and challenges encountered in the area of mode of cooperation in the maintenance of peace in east Africa will be explored and analyzed

1.4 Scope of the Study

The research focus in examining the intuitional and legal framework which are essential to build up formal mode of cooperation between UN-AU-IGAD in peace mission for maintenance of peace and security in ease Africa.

It is not in the interest of this research to go out to explore the whole structure of each organization but rather to the peace and security part only. Moreover, the scope of this research confines in exploring the legal lacuna under Chapter VIII of the UN Charter and challenges on the existing proposed modalities of cooperation.

1.5 Justification

This research is found relevant and timely because of its importance in addressing one major challenge concerning the enforcement of international law in Africa. As is known, their have been frequent and widely spread conflict in the African continent especially since the end of Cold War. Both the UN and OAU/AU repeatedly declare their preparedness to cooperate in order to prevent conflict and maintain peace and security. Indeed both organizations have been actively engaged in different parts of Africa that have been to be conflict scenario over the last few years. Among others the relevant crisis in Darfur, of the Sudan, is typical examples where the two organizations aspire to work

together by way of restoring peace and order and conflict ridden countries of the continent.

Meanwhile the modes of cooperation between the two multilateral organizations have never been very clear for a long time. The UN Charter refers to regional organizations as a whole, without due regard to the specific challenges obtaining in some parts of the world. For examples, given its inexperience in international peace engagement and operations, both the OAU/AU has evidently encountered extraordinary difficulties in coordinating its activities with the UN mission (a proposal of the former Secretary General Dr. Boutros Gail). Even when the OAU/AU-UN happens to engaged itself in a joint peace mission, it dose so just following the traditional mode of cooperation without being sure whether that approach is in line with international law.

Thus, this research aims to address these long standing problems at a time when UN/AU cooperation has become extremely necessary. I have taken the East Africa sub-region due to the fact that it has been affected by internationally recognized conflict cases that demanded UN intervention in a number of times. As compare to other parts of Africa, East Africa has been a focus of international attention for the last two decades. As such the facts on the grounds are so ripe and readily available that my endeavor to explore the best ways of enforcing international law will be practically feasible. This to say, that this research proposal is relevant, timely and practicably feasible.

1.6 Significance of the study

The out come of the research will help

- Students to have a rudimentary knowledge on the conceptual framework for maintenance of peace and security through multilateral organizations.
- Researchers as a spring board for further studies by giving them information as the current or the existing cooperation of multilateral organizations for the purpose of maintenance of peace and security in East Africa.

- Above all, to provide a practical perspective and helpful recommendation for policymakers to explore and render legal framework or formal mode of cooperation within and between multilateral organizations in carrying out peace operation's for the purpose of maintenances of peace and security in east Africa.

1.7 Methodology

This research paper draws extensive relevant literatures, laws, regulatory instruments from academic, Africa Union, Untied Nations and other sub-regional organizations. The authors, of course, will conducts interview, where necessary senior AU and sub regional organizations and representatives of international organizations.

1.8 Organization of the paper

This research paper contains four chapters. The first chapter deals with the general introduction that it informs to the reader the organization of the study and gives highlight of, statement of the problems, objectives, scope and methodology of the research. The Second chapter of the research will be devoted to discuss, in particular, the nature, organizational structural and the scope of the multilateral organizations concerned mandates in peace and security. The third chapter dwells on addressing some important aspects of conflicts threatening and endangering international peace and security, thereby demanding legitimate intervention with the scope of responsibility of the UN and AU, in East Africa. The fourth chapter discusses about the major challenges on the legal lacuna of Chapter VIII of the UN Charter and the existed mode of cooperation's between such multilateral organizations concerning peace and security in East Africa. Finally after detail discussion on challenges, the paper makes conclusion on the points that have been discussed in the body of the paper and gives solution to the challenges enumerated as parts of the findings. Foot note citation is used for detail information and bibliography is maintained at the end of the paper.

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CHAPTER TWO

2. UN, AU and IGAD Institutional Framework for Peace Operation in Eastern Africa

The UN as a global organization is the only organ with a prime function on the maintenance of peace and security through out the world. Similarly, the UN Charter recognized the role of regional and sub-regional organizations in the maintenance of peace and security in its Charter under Chapter VIII by affirming; “the existence of regional arrangements or agencies for dealing with matter relating to the maintenance of peace and security as are appropriated for regional action.

Besides the affirmation of the role of global and regional organizations for maintenance of peace and security, the UN Charter set out the powers and functions those organizations for their respective role to be played in the world and in their respective particular region. The AU (Africa Union) and IGAD (Inter governmental Development Authority), in addition to their power and role given by the UN Charter, their constitutional documents provide the framework for the purpose of maintenance of peace and security to the Easter Africa. The UN Charter for all global, regional and sub-regional organizations and those particular constitutional documents to some regional and sub-regional organizations serve as a guide for the mechanisms of how to conducting peace operations.

Accordingly, in order to explore the problems and challenges of the existing cooperation among those global, regional and sub-regional organizations in the maintenance of peace and security in East Africa, it has paramount importance to set out their respective structural framework. Hence, under this chapter, the researcher will try to pin point the

structural framework of UN, AU-IGAD for the purpose of conducting peace operation in East Africa.

2.1 Institutional Framework of a Global Organization: The UN

Basically, various organs of the UN have played a great role for the maintenance of peace and security. Nevertheless, since the purpose of this paper is to explore their mode of cooperation in the activities of peace operation in East Africa, the analysis of institutional framework mainly focuses on the organs which have main role in the conducting of peace operation. Generally, the scheme of the maintenance of international peace and security under Charter is characterize by the role assigned to the Security Council and the General Assembly, respectively.³⁶

2.1.1 The Security Council: Nature and scope

An examination of several provisions of the UN Charter in their context is in position to demonstrate that dangers and threats to international security may be of various degree and kind, requiring equally responses of various degrees and kind. The Charter, having taken this assumption as a starting-point, provides for distribution of respective powers and competences among its principal organs. The principal point in this regard is that United Nations Security Council is vested with the primary responsibility for the maintenance of international peace and security. Article 24 of the Charter, containing this rule, clearly emphasizes that the reason and basis of such an allocation of responsibilities is the need "to ensure prompt and effective action by the United Nations". The relevance of such reasoning is more than obvious; prompt and effective action may not be guaranteed when deliberations are lengthy because of the large number of States involved. The limited membership of the Security Council, however, makes this body the most suitable one for fulfilling this task. Generally the prime functions of the Security Council have been done on the basis of the following legal grounds.

³⁶ Pemmaraju Sreenivasa Rao(1995), "The United Nations and International Peace and Security-an Indian Perspective". In: Christina Tomuschat (ed.)The United Nations at the age of fifty A legal perspective Kluwer Law International, The Hague, The Netherlands. p144

2.1.1.1 Legal Competences of Security Council

The primary responsibility of the Security Council for maintenance of peace and security obviously has an impact on essence and limits of its competence. The competence of the Security Council on the basis of the Charter shall examine in relation with the functional nature, the domestic jurisdiction and the nature of the act to be adopted. The Council may under the Charter deal with disputes and situations; not with each and every one, but exclusively with those threatening international peace and security. Chapter VI of the UN Charter empowers the Council to deal with disputes and situations which are likely to endanger international peace. Chapter VII empowers the Council to deal with actual threats to the peace. The competencies set out in both Chapters make in their unity clear that the Council's role in international legal system is strictly functional. On the other hand, in cases where the Council is seized of the matter, there should be a presumption that the dispute or situation in question is threatening international peace. The other competence of the Security Council relates to the nature of acts it is empowered to adopt. The Council has mainly recommendatory and enforcement powers. Recommendations by the Council may be adopted in context of preventing a given situation from endangering international peace and security – articles 36, 37 and 38 of the Charter – or in context of restoration of international peace – article 39 of the Charter. Under Chapter VII the Council may adopt military and non-military enforcement measures in accordance with Articles 41 and 42. Having the relevance to the whole team of this paper, these competences (particularly the power of determination of the situation) will be explored in detail in the following chapter.

With regard to the domestic jurisdiction of the competences of the Council, Article 2(7) of the Charter shall authorize the United Nations to intervene in matter which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matter to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII. However, Article 2(7) has given rise to more controversy than any other provision in the Charter, but in

practice its interpretation is still as uncertain as ever.³⁷ It has been argued that the limitation was intended to exclude all the Security Council review, whether discussion or resolution, either under Chapter VI or by its recommendatory powers under Chapter VII when the situation it is faced with essentially internal.³⁸ Nevertheless, different arguments are forwarded against this line of assumption. In the first place, the practice, the Security Council has developed its own interpretation as to what constitutes intervention and domestic jurisdiction.³⁹ Of course a finding under Article 39 accompanied by the application of enforcement measures under Article 42 is exempt by the terms of Article 2(7) itself. The Council has taken the next logical step by adopting the practice that any finding under Article 39, whether or not combined with enforcement measures, is sufficient to internationalize the situation and to escape the grasp of Article 2(7).⁴⁰

The last competences of the Council apart from those two principal groups of powers of the Council, there is also third one. That is the group of powers "to call upon". As far as article 25 of the UN Charter makes acts of the Council binding on States unless the acts themselves are designed as recommendations, States shall be considered bound by what the Council has called upon them. The Charter envisages two kinds of such powers. Under article 33, the Council may call upon States to settle dispute through pacific means. Under article 40, the Council may order States to comply with provisional measures in order to prevent aggravation of a situation.

2.1.1.2 Power of the Security Council

A. Recommendation

After having made determination of the situation as per competences provided in the Charter, the Council may resort to the option of making recommendation with a view to restore or maintain peace and security. Unlike certain provisions of the Chapter VI of the

³⁷ Akehurst (1997), *Modern Introduction To International Law* (7th Ed.) Routledge, London and New York pp 360

³⁸ N.D. WHITE (1993), *Keeping the Peace; The United Nation and international peace and security* Manchester university press, UK p58

³⁹ Ibid

⁴⁰ Ibid

Charter dealing with recommendatory powers of the Council, article 39 does not impose any subject-matter limitation on the Council's recommendatory powers under Chapter VII. It is thus clear that under articles 33, 36 and 37, the Council's recommendations should have certain functional limitations and shall consist of recommending means of settlement of disputes by peaceful means, procedures of adjustment situations or of terms of settlements, respectively. Moreover, there is certain sequence in making recommendations, by which the Council is bound under Chapter VI. For instance, recommendations under article 37 may be made only after option under article 33 has been unsuccessfully used. Recommendations under article 39, however, are free of all limitations concerning means of adjustment or terms of settlement possibly covered by them. But there are arguments to which Council having mandatory power rather than recommendation. In other words Article 36 and 37 are firmly premised on the Security Council simply having the ability to recommend terms of settlement. As it stated in the first part of this paper, there has been little suggestion that the Council has the power to impose a mandatory settlement by combinations of Article 25 and Chapter VI.

B. Provisional Measures

According to article 40 of the Charter, the Security Council, while dealing with a situation under Chapter VII, may indicate provisional measures in order to avoid aggravation of a situation. Article 40 requires that such provisional measures should be without prejudice to the rights, claims and positions of parties concerned. No further limitations or qualifications of the Council's power may be inferred from the text of the Charter. The Council may therefore decide to indicate provisional in sense of demanding from parties to follow a certain course of action or it may itself take an action as a provisional measure.

However, as per the words of 'call up', used in Article 40, cause some problem of interpretation.⁴¹ The word 'call upon' is often used in United Nations resolution as a

⁴¹ See Akehurst's Super note 37 at 388

synonym for 'recommend', but member states to agree that the words, when Article 40 is read, mean 'order', this interpretation is reinforced when Article 40 is read in conjunction with Article 25.⁴² For instance, on 15 July 1948 the Security Council passed a cease-fire resolution calling upon the Arabs and Israelis to stop fighting, and the resolution was clearly understood to be mandatory- that is, it was an order which created a legal obligation to obey.⁴³ Moreover, by placing this provision in Chapter VII which deals mainly with mandatory measures, there has been a tendency to view recommendation of provisional measures (usually for a cease-fire and withdrawal) as coming within Chapter VI, usually Article 36, with Article 40 measures being exclusively mandatory following a finding under Article 39 or by the invocation of Article 25.⁴⁴

C. Military and Non Military Measures: Article 41 and 42

Some conceptual observations shall be made about the power of the Security Council to adoption-military coercive measures for maintenance and restoration of peace and security under Chapter VII. Article 41 UN Charter empowers the UN Security Council to "decide what measures not involving armed force are to be employed to give effect to its decisions ... These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication and severance of diplomatic relations".

Here again whether the power is mandatory or not is also another issue for the Council. The powers contained in Article 41 were intended to allow for the imposition of mandatory enforcement measures following a finding of a threat to or breach of the peace under Article 39. However, on many occasions, the Council has been unwilling to take mandatory action with the consequence that it has settled for a call for voluntary measures or sanctions. Such action can be viewed as a reinterpretation of Article 41 to allow for

⁴² Ibid

⁴³ Ibid

⁴⁴ See White Paper note 38 at 90

recommendation or as merely recommendation under Chapter VI, or a recommendation of enforcement action under Article 39.

Article 42 of the UN Charter empowers the Security Council in case the non-military measures are inadequate or would be inadequate, to take military actions for maintenance or restoration of international peace and security. According to original Charter scheme, the Security Council should have been provided with military units for taking military enforcement actions on the basis of agreements concluded on the basis of article 43 of the Charter. Such agreements have never been concluded. That means members states have never made any of the special agreement in Article 43 and the Military Staff Committee established under Article 47 has remained a dead body which only holds regular ritual meetings.⁴⁵ As Akehurst's stated, the absence special agreements with the Security Council in the sense of Art.43 does not preclude member states from placing troops *ad hoc* at the disposal of the Council. Hence from this all statements one may conclude that the alternative to article 43 agreements in the field of enforcement measures is the authorization by the Council of members of the United Nations. The Security Council may therefore authorize member States or their groups, in case of finding the threat to or breach of peace under article 39, to undertake military action with a view to maintaining or restoring peace and security in given situation. Nevertheless, as far as the use of force is authorized by the Security Council, it is the collective use of force on behalf of the United Nations. According to Akehurst's the Security Council has the power to authorize a state to use force but here the question may arise what the legal background may be for authorization of member States to carry out an UN-mandated operation. Moreover, there are other arguments to relate Article 42 military measures with the concept of collective security. They suggested " if the world at last is to implement the peaceful order promised by the UN Charter, the concept of collective security must be made real and also legitimate – by legitimate is mean that it must be evident that decisions to deploy UN forces are taken in a manner widely perceived to be in accordance with the processes of

⁴⁵ See Akehurst's super note 37 at 389

the international system.⁴⁶ Article 42 of the Charter provides the legitimate basis for such a permanent, integrated, volunteer force-----and they further added, it is the Security Council, applying Article 39, has occurred that warrants deployment of collective security forces.⁴⁷

2.1.2 *The General Assembly: power and function*

2.1.2.1 The legal competence of the General Assembly

Although the primary responsibility with regards to the maintenance of international peace and security lies with the Security Council, this should not be taken as meaning that the General Assembly is denied the role altogether. The scheme of the maintenance of international peace and security under the Charter is characterized by the roles assigned to the Security Council and the General Assembly.⁴⁸ In this connection, proponents of a wide view of the competence of the General Assembly would point out to Articles 10 and 14 of the Charter.⁴⁹ According to Article 10 :

The General Assembly may discuss any questions or any matters with the scope of the present Charter or relating to the powers of functions of any organs provide for in the present Charter, and except as provided in Article, may make recommendations to the members of the United Nations or the Security Council or to both on any such questions or matters.

Article 10 establishes a general competence for the Assembly to discuss any matter within the jurisdiction of the United Nations as determined by the Charter. Its power to make recommendation on any such matter must also cover the same area as the more

⁴⁶ Thomas M. Franck (1995), *the United Nations as Guarantor of International Peace and Security: Past, Present and Future*. In: Christina Tomuschat (ed.) *The United Nations at the age of fifty A legal perspective*, Kluwer Law International, The Hague, The Netherlands. p35

⁴⁷ Ibid

⁴⁸ Ibid p. 143-144

⁴⁹ See White super note 38 at 127

concert recommendatory powers of the Security Council under Chapter VI and VII as regards the maintenance of international peace and security.⁵⁰ Hence Article 10 is subject to Article 12 which attempts to delineate between the functions of the Assembly and those of the Security Council.⁵¹

As far as the competence of the General Assembly there are different suggestions with regards to the wider power given to the Assembly. For instance, as some argued Article 14 with its jurisdictional threshold of a situation deemed 'likely to impair the general welfare or friendly relations among nations' appears to give the assembly access to a much wider range of situation in the field of international peace and security than the Security Council which technically requires a danger to international peace and security, a threat to or breach of the peace or act of aggression to act under Chapter VI and VII.⁵² The test under Article 14 covers the whole spectrum of situations which might impair peace, whereas the provisions contained in Articles 34 and 39 deal with the more important, global and potentially explosive situations.⁵³ The Assembly can, under Articles 10 and 14, discuss situations contained in Articles 34 and 39, but to prevent any clash between the work of the Security Council, which is primarily concerned with such situations, and the General Assembly, Article 14, as well as Article 10, is subject to the limitation contained Article.⁵⁴ If this could be the case as to the scope of the power of the General Assembly, unlike the Security Council that is endowed with wide range of powers which vary from recommendatory to enforcement, as per Article 10 of the Charter the General Assembly is endowed to the making of recommendation subject to Article 12 Of the Charter. Some conclude that regardless of the ineffectiveness of the scheme can only partly be ascribed to the lack of consensus among the permanent members to the practical difficulties in promoting such consensus on the basis of the General Assembly recommendatory powers, the Assembly's practice in the field of the

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid p. 128

⁵³ Ibid

⁵⁴ Ibid

maintenance of international peace and security, and in other matters, lead to several conclusion:

1. Under Article 10 the General Assembly has the power and authority to make necessary recommendations which are applicable to specific situations regardless of their origin if they are to impair the general welfare and the friendly relation among nation. The situations in question include those resulting from a violation of the provisions of the UN Charter.⁵⁵
2. The limitations contained in Articles 11 and 12 do not prevent the Assembly from considering any matter, and from making necessary recommendation thereon, if the Security Council is unable to act in a given situation due to a veto.⁵⁶

Lastly, United Nations General Assembly is often considered to be in position to undertake the responsibility for maintenance of international peace and security. While this is true, the Charter is clear in drawing frontiers of competence of the General Assembly. Its powers are mainly recommendatory (Articles 10, 11 13 and 14), although it is also not prevented from adoption of operative decisions.⁵⁷ Nevertheless, the General Assembly does not possess the power to undertake enforcement actions against States. However, in early years of work of the United Nations, the General Assembly has made an attempt to use its recommendatory powers for initiating enforcement actions. This attempt is known as a resolution "Uniting for Peace"⁵⁸ adopted in 1950. The principal argument in motivation in favor of Uniting for Peace resolution is that 'article 24 of the Charter gave the Security Council primary responsibility for the maintenance of international peace and security, and it was argued that this did not preclude the General Assembly from exercising a secondary or residual responsibility__ an argument which was approved by the International Court of Justice in the *Expense case*.⁵⁹ In Uniting for Peace the General Assembly noted the responsibilities of the Security Council with

⁵⁵ See Rao super note 36 at 155

⁵⁶ Ibid

⁵⁷ Namibia, Advisory Opinion, ICJ Reports, 1971

⁵⁸ General Assembly 377 (V) Uniting for Peace. 302nd Plenary meeting 3 November 1950

⁵⁹ International Court of Justice in the Expense Case see Akehurst's super note 37 at 392

regard to international peace and security. It also noted in the event that the Security Council failed to discharge those responsibilities, the General Assembly maintained its rights and responsibilities with regard to international peace and security. The General Assembly then resolved that, in the event of a threat to peace, breach of the peace or act of aggression that it would consider the matter and make recommendations to Member States, including recommendations for the use of armed force.

However, the legality of adopting Uniting for Peace to which that was authorize the General Assembly to make recommendation for taking enforcement actions became questionable. This mainly because of Article 11(2) of the Charter which has stated: 'any.....question on which action is necessary shall be referred to the Security Council by the general Assembly, hence if the General Assembly wish to take enforcement action , it necessary to refer back to the Security Council. Nevertheless, arguments were forwarded on supporting the legality of such competences of the General Assembly by citing Advisory Opinion of International court of justice. In this connection, they continued to argued as the World Court in the *Expense* case stated that 'action' in Article 11(2) refers to coercive action but it failed to state whether this exclude the Assembly from recommending coercive measures.⁶⁰ At some points the Court suggested that 'action' is restricted to mandatory, coercive action 'ordered' by the Security Council. In other words the Assembly may not be barred from recommending enforcement action as part of its significant responsibility for the maintenance of peace as recognized by the Court.⁶¹ If one accepts this line of argument, and it is by no means settled, then the Assembly can recommend that members take economic and military measures when there is breach of the peace or act of aggression.⁶² Generally, from the legal point of view the Charter of the United Nations is the source of its jurisdiction. Admittedly, as far as the provisions conferring powers on the General Assembly are concerned, Article 12, 2(7) and 11(2) represent relatively defined limitations on its competence and it can be suggested that any violations of these provisions are totally unconstitutional.

⁶⁰ See White super note 37 at 153

⁶¹ Ibid

⁶² Ibid

2.2 Institutional Framework of AU-IGAD

Although Article 24 in Chapter V of the Charter clearly vests the primary responsibility for maintenance of international peace and security with the Security Council, the Charter provides a role for regional organizations and arrangements in the maintenance of peace and security in their respective regions. In other words, unlike global organization (the UN), regional and sub-regional organizations have paramount contribution in the maintenance of international peace and security individually, jointly or deployment of forces with the UN in the form of peace operation into that particular regions. Here in fact, though Article 52 of the UN Charter provides that ‘nothing contained in the Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to international peace and security-----’, as per with the same Article under sub (2) and (3) regional organizations are endowed to frame any means of mechanisms for peace full settlement of disputes before resort is had to the Security Council. For instance, resort to regional or sub-regional peacekeeping operations for maintenance of peace and security in the region do not need the authorization of the Security Council except enforcement action.

Among the regional and sub-regional organizations, the Africa Union (AU) and IGAD are at the forefront of leading peace operation in Easter Africa through different mechanisms in collaboration with the UN. Hence, in order to analyze the mode cooperation among those organizations in the area of maintenance of peace and security in that particular region, this sub section looks at AU and IGAD institutional structure for peace and security for conducting peace operation in Eastern Africa.

2.2.1 Institutional Framework of the AU

2.2.1.1 Background

In July 2002, in Durban South Africa, leaders and representatives from African nations launched the Africa Union (AU), a continental organization to replace the Organization of Africa Unity (OAU). As one compared to its predecessor, it may easily conclude that the current AU is well structured and better designed to respond conflict on the continents. There were a number of reasons why the OAU was 'ineffective in peace and security across the continents', particularly a matter with internal conflicts. One of the main reasons was, the OAU, like the UN itself, has been bedeviled by the requirements in its Charter that the organization must refrain from interfering in the internal affairs of member states.⁶³In other words, according to its Charter, the OAU, which emphasized the principles of national sovereignty and non-interference, lacked both the legal and capacity to interfere in matters related to peace and security.

Yet, the AU's approach to peace and security diverges significantly from the OAU's peace and security mechanisms. For instance, Article 4(h⁶⁴) of the Constitutive Act declares that the Union has "the right to intervene in a Member State pursuant to the decision of the Assembly in respect of grave circumstance: namely war crimes, genocide and crimes against humanity."Moreover, as an amendment to Article 4 (h) that extends the right to intervene to situation that pose " a serious threat to legitimate order to restore peace and stability in the Member State of the Union upon the recommendation of the peace and security Council.⁶⁵ Here, in contrast to OAU, the AU does not require the consent of a state to intervene in the internal affairs in a situation where populations are at risk.

⁶³ Yassin El-Ayouty (1994)The organization of Africa Unity after thirty years, Praeger Publisher, Westport

⁶⁴ Constitutive Act of the Africa Union, Article 4(h)

⁶⁵ Article 4 of Protocol on amendments to the Constitutive Act of the Africa Union, 11 July 2000, Lome, Togo

As one vigorously explores the Constitutive Act of the Africa Union and other protocols, among the seven organs, The Assembly, the Peace and Security Council (PSC) and the AU Commission are the three main organs having primary responsibility for the AU peace and security agenda. Here below will discuss the role that is assigned to them.

2.2.1.2 Main Organs of AU for Peace and Security

I. The AU Assembly

As per Art. 6 of the Constitutive Act, The Assembly of the Union, which composed of Heads of state and Government or their duly accredited representatives, is the supreme organ of the AU. It is the organ that decides on intervention as provided for in Art. 4 (h) of the Constitutive Act in respect of war crimes, genocide and crimes against humanity. As it included in the Protocol on the Amendments to the Constitutive Act, this list also include the notion of “serious threat to legitimate order or to restore peace and security to the Member State of the Union up on the recommendation of the Peace and Security Council.” Generally, in accordance with the provision of the Constitutive Act, the Assembly will decide on intervention at two levels: on its own initiative (Article 4(h)) and at the request of a member State (Article 4 (j)).

The Assembly’s rules of procedure stipulate what form the decisions may take: if it is issued as a regulation or directive, it will be binding to the member states and all measures will be taken to ensure it is implemented within 30 days. One of the gray areas in the Assembly’s decision-making process relates the making decisions on intervention under Articles 4(J) and (h). If the Assembly has to decide on intervention, it will need to do so in an extraordinary session, which require approval “by 2/3 majority of the member states” and 15 days notice. The meeting will take place only if at least 36 member states respond to the request for an extraordinary summit. It is, however, notable that the Assembly’s rules of procedure go extremes to define, in Rule 37, the process for imposing “Sanctions for unconstitutional Changes of Government,” but it is silent on how decisions will be taken in response to “grave circumstances”.

II. The AU Commission

The Constitutive Act of the AU, as stipulates in its Article 20(1), the Commission is the secretariat of the Africa Union and its executive organ. This aforementioned Article does not state any other detailed duties to the Commission just similar to peace and security. However, there is an overwhelming concern within the entire Union that the Commission is doing everything and wants to run the AU system.⁶⁶ Here, since the Commission has been providing secretarial support for the PSC, one may argue that the role of the Commission on the area of peace and security. The Commission has been setting the PSC timetable, proposing its agenda, preparing its draft report, and drafting communiqués, which are usually provided only minutes before the meeting for consideration and adoption.⁶⁷

On the other hand, taking the PSC is designed as the main decision-making body, much like the UN Security Council, as a result of the weaknesses of the PSC members, the Commission has assumed the lead role of implementing the AU's peace and security agenda⁶⁸, including the management of funds donated for its implementation. There have also been cases when the Commission has taken decision which should have taken by the PSC. For instance, during the 50th PSC session, members felt that they were being presented with a *fait accompli* to send an AU military force to eastern to disarm groups operating in the region with impunity.⁶⁹ While the Commission argued that PSC member states ought to have acted quickly in view of the deteriorating security situation, the latter felt that such an important operation requiring the use of force should have a clear mandate and should be taken after consultation with their government.⁷⁰ On another occasion, the Commission did not seek an endorsement of the PSC before asking South

⁶⁶ Samuel M. Makinda and F. Wafula Okumu, (2008), *The Africa Union : Challenges of globalization, security, and governance*, by Routledge, London and New York, pp50

⁶⁷ Ibid

⁶⁸ Ibid p. 51

⁶⁹ Ibid

⁷⁰ Ibid

Africa to send extra troops to the AU Mission for the Support in the Comoros in April 2006.⁷¹

To conclude, here in fact it could not be totally denied the Commission's roles in peace and security unlike main part is played DRC by the PSC. However, the above is an indication of serious flaws in the organizational structure.⁷² Ideally the Commission is supposed to be the administrative arm of the Union and not a decision-making body.⁷³ It should only implement decisions made other bodies.⁷⁴ By acting as the custodian of the AU documents, as well as the maker and interpreter of rules, procedures and regulations, it has acquired unlimited and overwhelming power, and in this connection bodies such as the PSC are further held at the commission's mercy, as the latter controls the purse.⁷⁵

III. The Peace and Security Council (PSC)

The PSC was not part of the AU Constitutive Act; rather it grew out later date. Article 3(f) of the AU Constitutive Act stipulates that the promotion of peace and security, and stability on the continent would be one of the main objectives of the AU, but it did not establish the structure for achieving such objective. Later, using Article 5(2) of the Constitutive Act, the AU Assembly adopted a protocol that created the PSC and adoption Protocol Relating to the establishment of the Peace and Security Council of the Africa Union held in Durban on 9 July 2002⁷⁶, and come into in force on 26 December 2003 and the Council officially begins its work on 16 March 2004.

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Protocol Relating to the establishment of the Peace and Security Council of the Africa Union

1. The Institutional Design of the PSC

A. Norms and Mandate

Article 4 of the PSC Protocol sets out the institution's guiding principles, which are enshrined in the AU Constitutive Acts, the Charter of the United Nations, and the Universal Declaration of Human Rights. In particular, it emphasizes eleven principles. Principles (a) through (i) cover the usual bases of pluralist international society and much the same ground as its predecessor, the OAU. These relate to the peaceful and early settlement of disputes, non-interference, and the recognition of the territorial integrity of its members. Principle (j) and (k), however, give new ground in recognizing the right of the Union to intervene 'in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with Article 4(h) of the Constitutive Act' and 'the right of Member States to request intervention from the Union in order to restore peace and security, in accordance with Article 4(j) of the Constitutive Act.'

As far as the mandates of the PSC are concerned, Article 3 of the PSC Protocol outlines six objectives for the institution. These are to promote peace, security and stability in Africa; anticipate and prevent conflicts; promote and implement peace-building and post-conflict reconstruction activities; coordinate and harmonize continental efforts in the prevention and combating of international terrorism in all its aspects; develop a common defense policy for the Union; and encourage democratic practice, good governance and the rule of law, as well as protect human rights and fundamental freedoms. In order to achieve these objectives the PSC Protocol sets out eighteen "powers" ranging from assisting in the provision of humanitarian assistance to military intervention.

To sum up, the PSC is the standing decision-making body for prevention, management and resolution of conflicts, and is the sole authority for mandating and terminating AU peace and operations.



B. Membership and Scope

As the Protocol stipulates, the PSC comprises fifteen members elected by the AU executive Council: five elected for terms of three years and ten elected for terms of two years, and the Council's membership is to be dived according to several criteria set out in Article 5(2).

The Protocol sets the role of the PSC within the context of the primary role of the United Nations the UN's own recognition arrangements in this area: Article 2 of the protocol of the PSC stipulates

Mindful of the provision of the Charter of the United Nations, conferring the Security Council primary responsibility for the maintenance of international peace and security, as well as the provision of the Charter on the role of regional arrangements or agencies in the maintenance of international peace and security, and the need to forge closer cooperation and partnership between the UN, other international organizations and the Africa Union, in the promotion and maintenance of peace, security and stability in Africa.

In terms of conflict management, unlike the OAU's Mechanism, which had rejected the option of conducting peace enforcement action, the PSC is, in principle, able to authorize the entire spectrum of peace operation: from small peacekeeping mission to large-scale intervention envisaged in Articles 4(h) and 4(j) of the AU Constitutive Act.

Here there is controversy related to the AU's relationship with the UN Security Council, specifically over which body had the primary legal authority to sanction the use of military force. The issue initially arose because Articles 16 and 17 of the PSC Protocol adopted a somewhat contradictory stance on the issue: while Article 16(1) stated the AU had 'the primary responsibility for promoting peace, security and stability in Africa',

Article 17(1) acknowledged that the UN Security Council 'has the primary responsibility fro the maintenance of international peace and security.

C. Procedure for Organization, Voting, Meeting and modalities of action

The rules of procedures are set out in Article 8 of the PSC Protocol. According to protocol Article 8(12), each member of the Council shall have one vote. According to Article 8(13), generally decision of the PSC be guided by the principle of consensus but in absence of consensus, decision of the Council 'shall adopt its decisions on procedural mattes by simple majority, while decisions on all matters shall be made by a two-third vote of its Members voting.'

As per Article 8 of the Protocol, the PSC is required to meet a minimum of two times a month at the ambassador level, once a month at the ministerial level, and once a year at Head of state level. Most meeting is conducted at the AU headquarters in Addis Ababa. Meeting is led by the PSC Chairperson, a position which rotates on monthly bases in alphabetical order according to the state's name in the English language. The Agenda for a meeting may be determined by the Chairperson of the PSC in light of ongoing conflict and crisis situation, proposal from a PSC member (usually in consultation with the chair), or via a proposal from Commissioner fro Peace and security.

As it stipulates under Article 8(9), (10) and (11)of the Protocol of PSC, the meeting is hold in closed session. In such meeting, unlike member of the PSC to which is allowed only to present the case if such state is a party to the conflict, any other non member who is a party to the conflict is invited to present its case as appropriate and has the right to participate on the discussion with the right to veto. Moreover, as from the aforementioned article, any other Regional Mechanism, international or civic society organizations involved and/or interested in conflict may be invited to the discussion with out the right to vote.

As far as the modalities and entry point of the PSC is concerned, Article 9 of the Protocol stipulates such action. According to such article, the PSC takes initiatives and action it deems appropriate with regards to situation of potential conflict, as well as to those that have already developed into full-blown conflicts. To that end, the PSC can use its discretion to effect entry, whether through the collective intervention of the Council itself, or through its Chairperson and /or the Chairperson of the Commission, the Panel of the wise, and /or in collaboration with Regional Mechanisms.

2. Entities Designed for support of PSC

It goes without saying that, the PSC is the main body charged with the responsibility of promoting peace, security, and stability in the African continent. For these duties several entities are designed to support the PSC. The protocol calls for the establishment of mechanisms and structure to assist the PSC in its work. Such organs of mechanisms are:

A. Continental Early Warning System (CEWS)

The CEWS is the first mechanism, which is designed to anticipate and make recommendations for the measures to prevent conflicts. When fully operational, the CEWS will consist of an observation and monitoring center (situation norms) directly linked to observation and monitoring units of Regional Mechanisms (RM). This system will collaborate with “the UN, its agencies, relevant international organizations research centers, academic institutions and NGOs” in collecting information to be fed into “an early warning module based on clearly defined and accepted political, economic, social, military and humanitarian indicators..The analyzed information will be transmitted to the Chairperson of the Commission who, in turn, will use it “to advise the Peace and Security Council on potential conflicts and threats to peace and security in Africa and recommend the best course of action.

Once the Chairperson of the Commission receives the information, he/she shall consult with all parties to the conflict and take appropriate measures to prevent, manage or

resolve the situation. He/she may bring the matter before the PSC, inform the Panel of the Wise take personal initiatives or use special envoys to respond oversee the deployment of the Africa Stand by Force, and ensure the implementation of decisions taken by the Assembly.

B. The Panel of Wise



The Panel of the Wise is truly intended to be an African solution to an African problem. The Panel of the Wise has been established to support the efforts of the PSC and the AU Commission. As per Article 11(2) of the Protocol, the Panel of the Wise comprising of five "highly respected African personalities" that have made "outstanding contributions to the cause of peace, security and development on the Continent" and the Panel of the Wise is selected based on regional representation and appointed for three year of terms. Members were appointed at the AU Summit in January 2007, and steps have been taken to finalize the modalities for the functioning of the Panel, which shall be endorsed by the PSC.⁷⁷ The stated aims for the Panel are preventative diplomacy, the facilitation of dialogue, mediation, and assistance to official agencies in resolving disputes about the implementation of agreements. The Panel of the Wise has a very real opportunity if properly utilized to stand as the beacon of all that is 'African' about the new Peace and Security Architecture. There are concerns though that it will be used more as an empty political 'dog and pony show' rather than a substantive force for the settlement of disputes. With the selection of current Panelists, some of whom have checkered pasts and no experience in mediation, the fears that the Panel of the Wise may be unable to overcome the inherent dilemma of power and be able to influence conflicting actors to change their actions *and* minds, unfortunately may prove accurate.

⁷⁷ Africa Partnership Forum, Peace and Security in Africa , available on <http://www.oecd.org/dataoecd/57/52/38666711.pdf> visited on 29 October 2008

C. The Africa Stand by Force

The ASF concept was approved, in 2004, to enable the PSC to rapidly deploy troops in Africa for a range mission- from small military observation missions to robust peace enforcement interventions. For the first time, Africa had a common position and an action plan for development of its peace operation capacity.

As per Article 13(1) of the PSC protocol, based on standby multidisciplinary contingents, the ASF is envisioned with civilian and military components stationed in their home countries and ready for call-up and deployment. Similarly Article 13(3) stipulates, the ASF peace and security responsibility are broad, with the force expected to serve multiple, diverse purpose, include monitoring and observation mission, prevent deployments, peace building efforts and post-conflict missions, and peace support operations and interventions. The same article reads as the ASF will be directed by the Peace and Security Council, in coordination with the UN and other regional and international institutions.

Meeting the ASF goals depends on member states establishing standby contingents for participation in peace operation under AU gridlines and leadership. Each of the five Africa sub- regions is expected to organize an operational standby brigade, with the more advanced sub-regions having a rapid deployment capacity and planning elements embedded with the AU Commission headquarters. Six scenarios are identified for action under the initial ASF framework: provision of advice to a political mission; observer mission co-deployed with a UN mission; stand-alone AU observer mission; AU peacekeeping force for Chapter VI and prevent deployment missions; AU peacekeeping force for complex multidimensional peacekeeping mission with low-level spoilers, and AU intervention (e.g., to intervene against genocide).⁷⁸The ASF is normally composed of five regional standby brigade: SADC (SADCBRIG); EAPSM (EASBIGD); ECOWAS (ECOBIRIG); NARC (NASBRIG); AND ECCAS (ECCASBRIG), or (FOMAC).

⁷⁸ Policy Framework for the Establishment fro the Africa Standby Force and the Military Staff Committee (2003)Part 1, adopted by the African Chiefs of Defense Staff,

According to Art. 13 of the Protocol Establishing the PSC, all five brigades are supposed to be operational by 2010.

D. The Military Staff Committee

According to Article 13(8-12), the MSC's function is to "advise and assist in all questions relating to military and security requirements for the promotion and maintenance of peace and security in Africa". It composed of Senior Military Officers of the member states of the PSC.

2.2.2 Institutional Framework of the IGAD

2.2.2.1 Background

Originally, the Intergovernmental Authority on Drought and Development (IGADD) was formed in 1986, by then drought affected six countries of Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda (the state of Eritrea was admitted on September 1993)⁷⁹, with the view narrow mandate around the issues of drought and desertification.⁸⁰ Since then, and especially in the 1990s, IGADD become the accepted vehicle for regional security and political dialogue.⁸¹

The founding member of IGADD decided in the mid-1990s to revitalize the organization into a fully-fledged regional political, economic, development, trade and security entity similar to SADC and ECOWAS and finally on 21 March 1996, Heads of states and Government at the Second Extraordinary Summit in Nairobi approved and adopt an Agreement Establishing the Intergovernmental Authority on Development.⁸² Under the Agreement Establishing the IGDA, Article 7 provides the objectives of such sub-regional organization. It contains almost eleven specific objectives. For instance, as per the agreement Establishing IGAD, Article 7(g) of the treaty, one of the objectives

⁷⁹ Agreement Establishing IGAD, available on <http://www.igad.org/index.php> vested at April, 15 2008

⁸⁰ Profile: Intergovernmental Authority on Development (IGAD)P. 1 available at <http://www.afirca-union.org/Recs/IGAD-profile.pdf> available at 19 November 2008

⁸¹ Ibid

⁸² Ibid p. 2

reads: promote peace and stability in the sub-region and create mechanisms within the sub-region for the prevention, management and resolution of inter-and intra-state conflicts through dialogue.

2.2.2.2 Operational Structure of IGAD ^{organ} _{by reac.}

Generally, according to the 1996 Agreement Establishing IGAD, the IGAD is comprised of four hierarchical policy organs. The first organ is the Assembly of Heads of State and Government. This organ is the supreme policy making organ of the Authority. It determines the objectives, guidelines and programs for IGAD and meets once a year. A Chairman is elected from among the member states in rotation.

The second organ is the Council of Minister which is composed of the Minister of Foreign Affairs and one other focal Minister designated by each member state. The Council formulates policy; approve the work programme and annual budget of the Secretariat during the biannual session. The third organ is the Committee of Ambassadors. Such organ is composed of IGAD member state 'Ambassadors or plenipotentiaries accredited to the country of IGAD Headquarters. It conveys as often as need arises to advise and guide the Executive Secretariat.

The fourth organ is the Secretariat. It is headed by an executive Secretary appointed by the Assembly of Heads of State and Government for a term of four years renewable once. The Secretariat assists member states in formulating regional projects in the priority areas. Generally, the Secretariat is responsible for implementation of project in food security and environmental protection, infrastructure development, transport and communications, conflict prevention, management and resolution and humanitarian affairs.⁸³

⁸³ Ibid p. 4

2.2.2.3 The Peace and Security Division: structural frame work

According to the 1996 Agreement Establishing IGAD, Article 7(g) of the treaty, the aims and objectives reads: promote peace and stability in the sub-region and create mechanisms within the sub-region for the prevention, management and resolution of inter-and intra-state conflicts through dialogue. For this new objectives on the same year had created an organizational arm or of a department for conflict management. The Peace and Security Division is mandated to deal with issues related to peace and security and humanitarian affairs and the division has main programme components, namely: Conflict Prevention, Management and Resolution (CPMR); Political affairs; and Humanitarian Affairs.⁸⁴ The Division also coordinate the activities of two IGAD institutions based in Addis Ababa, Ethiopia, IGAD Capacity Building Programme Against Terrorism (ICPAT) and Early Warning and Early Response Mechanisms secretariat (CEWARN)⁸⁵

A) Conflict Prevention, Management and Resolution (CPMR)

Conflict Prevention, Management and Resolution (CPMR) related work is at the core of IGAD. This mechanism is created in line with the objective stated under Article 7(g) of constitutional documents of IGAD which reads as; promote peace and stability in the sub-region and create mechanisms within the sub-region for the prevention, management and resolution of inter-and intra-state conflicts through dialogue. Similarly Art. 18 also another grounds which read as : “take effective collective measures to eliminate threats to regional cooperation peace and stability; “establish an effective mechanisms of consultation and cooperation for the pacific settlement of disputes; and “ accept to deal with disputes between member states within this sub-region before they are referred to other regional or international organizations.

⁸⁴ IGAD-Peace and Security. 1 available at http://www.igad.org/index2.php?option=com_content&task=view&id=46&pop= visited on 4/15/2008

⁸⁵ Ibid

IGAD's present programme Conflict Prevention, Management and Resolution with its various objectives, outputs and activities is based on a policy, as part of IGAD's expanded Charter, whose goal is CPMR.⁸⁶ Based on the mandate, since 1996 the Peace and Security Division has been carrying out several programmes, projects and activities in the CPMR and Humanitarian Affairs.

Generally, Conflict Prevention, Management and Resolution programme deals with security and political issues in the peace and security division. The section is involved in activities and programmes in Post-Agreement follow up peace initiatives of both Sudan and Somalia conflicts, Coordination of the EASBRIG and with CEWARN.⁸⁷

B) Conflict Early Warning and Response Mechanism (CEWRM)

At its 9th summit meeting in Khartoum Sudan in January 2002, the heads of state government of the IGAD regional grouping signed the protocol on the establishment of a Conflict Early Warning and Response Mechanism (hereinafter called the Protocol).⁸⁸ The aim of the Protocol is to establish mechanism that would detect conflicts early so that they can be nipped in the bud, or if the conflicts have broken out strategies would be devised to respond or resolve them.⁸⁹ The structure of CEWRM consists of the Assembly, Council and Committee being its policy arm; the Secretariat of IGAD being the administrative arm; the CEWRM units and CEWERUS as a technical arm; Optional inter-state structures and optional sub-regional councils the co-operating arm; and the Committee of Permanent Secretaries and the Technical Committee on Early Warning the coordinating arm.⁹⁰

⁸⁶ Consensus Document in Conference to Launch the IGAD Strategy on Peace and Security Discourse(2007). In Towards the IGAD Peace and Security Strategy, the Kartoum Launching Conference 1-3 Oct. 2005, P 206 by IGAD, Djibouti.

⁸⁷ See IGAD super note 84

⁸⁸ Kasaija Phillip Apuuli (2004), IGAD's Conflict Early Warning and Response Mechanism (CEWRM). In Alfred G. Nhema ed.the Quest for Peace in Africa: transformations, Democracy and Public Policy Addis Ababa, Ethiopias,pp174

⁸⁹ Ibid

⁹⁰ Ibid p. 176-177

The functions of the CEWRM system, which cover both early warning and response, include the following: promoting the exchange of information and collaboration among member states on early warning and response on the basis of timeliness, transparency, cooperation and free flow of information gathering, verifying, processing and analyzing information about conflicts in the region.⁹¹

Moreover, some of the structures of CEWRM have the following functions;

The functions of the CEWRM unit at the IGAD Secretariat include:⁹²

assisting the Secretariat to administer IGAD'S Documentation Center; identifying users of the information processed by CEWRM and their needs; establishing network of cooperation in early warning and response among member states ; serving users by acting as a cleaning house for information, creating and managing database on information for early warning and response, providing a shared internet communication center for CEWERUS.

The CEWERU is composed of an optional steering committee, a focal point and local committee. The CEWERUS who are linked to the IGAD Secretariat through the CEWRM unit and the Ministry of Foreign Affairs in each member state have the functions of: collecting information relevant to early warning and response, liaising with civil society groups involved in collecting information at the grassroots and other levels, undertaking preliminary analysis of collected information, reviewing analysis received, formulating response strategies, preparing period conflict early warning reports, and communicating information and analyses gathered by the CEWRM unit.

⁹¹ Ibid p. 177

⁹² Ibid

CHAPTER THREE

3. Ingredients of the Factors for Peace Operation Actions; UN-AU-IGAD

This chapter is confined to deal with the issues in relation to the ingredients of the factors for peace operation action by UN-AU-IGAD. To this end, through out this discussion, the chapter employs the terms “ingredients” and “factors” consistently. For the purpose of this chapter, the term “factors” refer to grounds for triggering the action while “ingredients” indicates the tests or elements or components of each factor.

Accordingly, the objective of this chapter is generally focused on analyzing the ingredients of the factors for threatening and endangering international peace and security under the auspices of the UN Charter. In this connection, the factors are; threat to peace, breach of peace and an act of aggression. Furthermore, it tries to examine the ingredients of the factors that seems to justify AU’s intervention into member states of the African continent’s vis a vis the Constitutive Act of the AU. By the some token, Grave circumstances- genocide, war crimes and crimes against humanity, and a serious threat to legitimate order are the two major factors for triggering peace operation action. Indeed, analyzing the ingredients of these factors are the very purpose of this chapter

3.1. Ingredients constituting the factors Endangering and Threatening International Peace and Security: UN

The United Nations is the most important international organization functioning in the maintenance of peace and security which has been established in modern history. These functions can be classified into three broad categories of activities.⁹³ The first category concerns ‘the political role of UN organs in the peaceful settlements of disputes, a matter mainly addressed in chapter VI of the Charter “pacific settlement of disputes”.⁹⁴ The

⁹³See Aherurst’s super note 37 at 385

⁹⁴ Ibid

second category encompasses enforcement of action which can be taken under chapter VII dealing with 'Action with respect to threat to the peace, breach of the peace, and acts of aggression.'⁹⁵ The third category deals with the peculiar institution of UN peace keeping operations which have no explicit legal basis in the charter, but have developed in practice and are often described as being based upon 'chapter VI and half.'⁹⁶

Generally, from among the above sequential categorization of activities, one may conclude that the scheme of factors for causing threat to international peace and security that triggering peace operations in the Charter are found under Chapter VI as required under Article 33" *...likely to endanger international peace and security*" and chapter VII of the UN Charter as it entitled "actions with respect to *threats to the peace, breach of peace and acts of aggression*". Here below each will be discussed to find out the distinction between them in case where the Security Council exercise its power in the determine situation.

3.1.1 Ingredients of the Factors endangering international

Peace and security: Chapter VI

The UN Charter conferred the Security Council a primary responsibility for maintenance of peace and security. Such legal power of the Security Council is found under Chapter V of the UN Charter and Article 24(1) provides:

In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council the 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 its behalf.

This provision is to be read with Article 25 which reads:

⁹⁵ Ibid

⁹⁶ Ibid

All members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

From these two provisions one may conclude that, Article 25 confers the Security Council to act under Chapter VI (peaceful settlement of dispute) or Chapter VII (enforcement action). The International Court of Justice in the *Namibia case* drew the attention to the fact that the provision in Article 25 was not limited to enforcement action under Chapter VII of the Charter but applied to “decisions of the Security Council “adopted in accordance with the Charter.”⁹⁷ Accordingly a declaration of the Council taken under article 24 in the exercise of its primary responsibility for the maintenance of peace and security could constitute a decision under Article 25 so that member states ‘would be expected to act in consequence of the declaration made on their behalf’.⁹⁸

Here the issues are about the ingredients of the word “*endanger....*” that provided under Articles 33 and 34 of the UN Charter (Dispute or conflict which is likely to endanger the maintenance of international peace and security). The Charter of the UN does not try to define the terms..*Endanger....* But from the wording of the provision it seems as potential breach than an actual breach. Generally, to find of the elements of the word ‘..*Endanger..*’ it is quintessential to overview Council’s practice in relation of practical cases . In pursuance of its responsibility, the Security Council may, by article 34, ‘investigate any dispute, or any situation which might lead to international friction or give rise to dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of peace and security.’⁹⁹ From this statement the ingredients of ‘*endanger..*’ is depends up on the continuity or the non-continuity of the dispute or conflict and hence one may easily concluded that the existence of actual conflict or disputes in a short period of time would not likely to suffice to the term ..*Endanger.*

⁹⁷ Malcolm N. Shaw (1997), International law(4th ed.), Cambridge University press, UK PP 841

⁹⁸ Ibid

⁹⁹ Ibid p. 842

Generally the issues of the ingredients of the term...*endanger* ... will further explored in relation with finding the distinction with the term*a threat to peace*.. under Chapter VII of the UN Charter.

3.1.2 Ingredients of Factors Threatening International

Peace and security: Chapter VII

As has indicated here in above Article 25 confers the Security Council to act under Chapter VII (enforcement action). And similarly Article 39 of the UN Charter empowered the Council to determine ingredients of factors that are provided in such Article. However, the Charter does not try to define these terms(although it is fairly clear from the context that ‘ threats to the peace and breach of the peace ‘ were intended to refer to international peace), instead ,Article 39, the first Article in Chapter VII , provides:

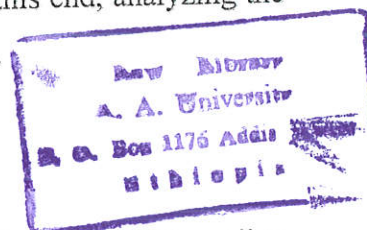
*The Security Council shall determine the existence of any threat to the peace , breach of the peace , or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore to the international peace and security.*¹⁰⁰

As can be learned from the wording of the above mentioned article, the Charter set out the grounds upon which the Security Council may make recommendations, or decide upon measures under Charter VII, without providing any guidance as to the meaning of ingredients of the terms.

In this connection, hammering out the working definition or basic ingredients to each ground is a crucial issue. As a matter of fact, there is no accepted definition of the threat to the peace, breach of the peace and an act of aggression. Hence, in light of the lack of a

¹⁰⁰ See Akehurst's super note 37 at 388

uniformly agreed upon definition with regard to the ingredients of threat to peace, breach of peace and an act of aggression, the writer opts to find a functional meaning of the ingredients of the said terms through pragmatic consideration. To this end, analyzing the practice of the Security Council is seemed worth while in the study.



3.1.2.1 *Ingredients of the threat to the peace*

It goes without saying; Article 39 of the UN Charter empowers the Security Council to determine the existence of the threat to the peace. However, the question is thus raised at this juncture as to the definition or ingredients of the threat to the peace. Article 39 is silent on the issue of addressing the fundamental question concerning the definition making up the ingredients of threat to peace. It is clear from the UN Charter that beyond granting the powers, as to the determinations of the term, to the Security Council, it does not further give a clue as to what factors are to be considered in way of determination of the existence of the threat to the peace.

However, the answer that has emerged in practice is that it depends upon the circumstance of the case.¹⁰¹ It also depends upon the relationship of the five permanent members of the Council (UK, USA, Russia, China and France) to the issue under consideration, for a negative veto by any of the permanent member is sufficient.¹⁰²

Hence, despite the absence of direct reference in the Charter, the ingredients of the threat to the peace can be scrutinized in certain cases to which the Security Council adopted by resolutions. However, earlier practice of the council does not reveal the same usage of 'threat to the peace' as does later practice, which is probably a reflection of changing in the type of dispute or conflict occurring in the post 1945 world war.¹⁰³

Without doubt, the primary preoccupation of the United Nations in the 1945 was to maintain the "negative peace", i.e. to maintain the *status quo* and to prevent the use of

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ See White super note 38 at 44

force in international relation.¹⁰⁴ Accordingly, the Security Council identified any act of preparation by the state to launch an armed attack against another state as a “threat to peace” and take mandatory measures under Chapter VII. Among others, the measures under the Charter include: impositions of cease-fire and employment of diplomatic solution to avert further escalation. As a result of international law development in the field of human rights and the self-determination of peoples, the Assembly, and somewhat hesitantly the Council as well, came to recognize that a threat to peace can also emanate from a refusal by a state change a situation deemed or foreign occupation.¹⁰⁵ Hence the view took that the “negative peace” cannot be maintained in the light of continued flagrant and mass violation of human rights.¹⁰⁶ For this reason the Council labeled, the time the situation in Southern Rhodesia and the continued supplying of arms to apartheid South Africa as a threat to peace order coercive measures in the former case, comprehensive economic sanctions, in the latter, only an arms embargo.¹⁰⁷ The fact that the political organs of the United Nation thus assumed the power to determine that serious violation of human rights constitute a threat to peace can be viewed as one of the most fundamental policy changes within the United Nations system, if not in international relations as a whole.¹⁰⁸ In more recent times, the Council has also determined that any act of international terrorism and the proliferation of weapons of mass destruction constitute threats to peace under Article 39 of the UN Charter. It worth mentioning that, in early years, a finding of a threat to the peace was viewed as a preliminary to a finding of a breach of the peace¹⁰⁹ and it was only applied in relations between intr-state. The invasion of Palestine by the surrounding Arab countries after the proclamation of the state of Israel on 14 May 1948, eventually let the Council to classify the situation as a ‘threat to the peace with the meaning of Article 39’, and to order that ‘pursuant to Article 40’, there should be a cession of hostilities which should take place ‘not later than three days from the date of ‘of the resolution. Any failure to comply

¹⁰⁴ Nico J. Sebrijver, The future of the Charter of the United Nations p. 16 available at <http://www.mpil.de/shared/data/pdf/pdfmpunyb/shbrijver> visited on April 08 2008

¹⁰⁵ Ibid p.17

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ Ibid

'would demonstrate the existence of a breach of peace within Article 39.¹¹⁰ In fact this determination was far from the concepts or definition of threat. This is because conflict that already happened is not particularly amount to threatening but rather to say far from it. Hence the Council was not saying that the Arab countries were threatening to beach of the peace for hostilities had already begun, it was the continuance in time of the conflict which would convert a threat into a breach of the peace.¹¹¹

Later practice shows the term being modified to deal with intra-state situations and conflicts (to which such internal conflicts characterized by intercommunal strife, crisis of democracy, fighting marked by struggle over national resources and wealth¹¹²) rather than the traditional inter-state conflict. Moreover, the current situation with regarding to the issue of the reform of the United Nations leads the expansions of the ingredients of the threat to peace to cover other terms in light of interpretations of the Charter. Now there exist a consensus in the United Nations that threats to peace do not only the result from war between and within states, but also from the spread of weapons of mass destruction, international terrorism transnational organized crime infectious diseases, and even- if not in the practice of the Security Council—from serious poverty and underdevelopment and from serious environmental pollution.¹¹³

Generally these all means, it appears that a 'threat to the peace' is the term the Council has shaped to use in situations of non-traditional international violence in which the main danger to international peace is not between two or more states, instead it arises primarily from the internal event in one state.¹¹⁴ However, there are certain debates whether or not determinations of threat to peace also applicable to internal situations. Arntz, the advocate of a closed Charter system, argues that internal situations are not within the ambit of Article 39 because they do not constitute a 'threat of force' against state within the meaning of Article 2(4).¹¹⁵ He argues that the text of the charter, particularly the

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² James Cockayne and David M. Malone, *The Ralph Bunche Centennial: Peace Operations Then and Now* (2005) p.334 available at www.papers.ssrn.com/sol3/papaers.cmf visited on 05 February 2009

¹¹³ Ibid

¹¹⁴ See White super note 38

¹¹⁵ Ibid p.35

preamble and Article 1, indicate that 'peace' is the antithesis of war, and so the Charter only deals with threats to or breaches to inter-state or international peace, and not to intra-state or internal peace.¹¹⁶ However, the evidence is that if an internal situation or civil war is serious enough the Security Council will become involved, subject, of course to political limitation.¹¹⁷ This is sufficient, in itself, to destroy the closed Charter theory.¹¹⁸

3.1.2.2 Ingredients of a breach of peace

It goes without saying that, the Security Council is also empowered to determine the existence of the breach of the peace. However, similar to a threat to peace, what ingredients constitute such factor is also controversial. In practice, a breach of the peace has rarely been found, the recent preference being for findings of aggression.¹¹⁹ This is surprising for aggression is merely a special case of breach; Article 1(1) of the Charter mentions 'acts of aggression or other breach of the peace'.¹²⁰

As a result of absence of general accepted definition of breach of peace, this research opts to find its ingredients by examining the practice of the Security Council. As far as the Council's practice is concerned, there have been four findings of a breach of the peace in conflict brought to attention of the Security Council while it failed to determine in the sense direct inter-state conflicts for instance; conflicts between Ethiopia and Somalia (1977), Tanzania and Uganda (1978-79) Israel invasion of Lebanon (1978) etc.¹²¹

¹¹⁶ Ibid p.35-35

¹¹⁷ Ibid p.36

¹¹⁸ Ibid

¹¹⁹ Ibid p.49

¹²⁰ Ibid

¹²¹ Ibid p. 50

3.1.2.3 Ingredients of an act of aggression

Similarly, no one can find a clear definition of aggression under the Charter. Hence, examining Councils' or General Assembly practices is the only options for finding of its ingredient. As has been suggested above an act of aggression is a special form of a breach of peace, in particular it labels or condemns one of the states involved in a conflict as the guilty party. Here before examining Council practice with regards to the ingredients of Council practice, it is important to overview the definition of aggression adopted and given by the General Assembly.

In relation to the definition of aggression, United Nation General Assembly Resolution 3314(XXIX)¹²² (Definition of Aggression) was adopted by United Nation General Assembly on December 14, 1974 as a non-binding recommendation to the United Nations Security Council on the definition it should use for the crime of aggression. The definition is not binding under international law but it is often cited in opposition to military action.

The definition makes a distinction between aggression (which "give rise to international responsibility") and war of aggression (which is "a crime against international peace"). Article 1 gives a general definition; aggression is the use of armed force against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations. Whereas, Article 3 enumerates acts that qualify aggression and defined acts of aggression as armed invasion or attacks, bombardment, blockades, armed violation of territory, permitting other states to use one's own territory to perpetrate acts of aggression and the employment of armed irregular or mercenaries to carry out act of aggression. From the above definitions one can demarcate the difference between a war of aggression and an act of aggression. Hence, a war aggression is a series of acts committed with a sustained intent and the distinction between an act of aggression and a war of aggression make it

¹²² General Assembly Resolution (1974) of 14 December 1974

clear that not every act of aggression would constitute a crime against peace; only war of aggression does.

However, the definition is not binding on the Security Council. The United Nations Charter empowers the General Assembly to make recommendations to the Security Council but the Assembly may not dictate to the Council. The resolution accompanying the definition states that it is intended to provide guidance to the Security Council to aid it, in determining, in accordance with the Charter, the existence of an act of aggression. The Security Council may apply or disregard this direction as it sees fit. Moreover despite the non binding nature of the definition, the adoption itself grants discretionary power to the Council. Article 4 states that acts enumerated in Article 3 are not exhaustive and the Security Council may determine that other acts constitute aggression under provisions of the Charter. It may also argue that the definition of aggression has had no visible impact on the deliberation of the Security Council. Generally, the definition of aggression adopted by the UN General Assembly in 1974 is too general to allow any rough and ready conclusion. ¹²³ In the event it is left entirely to the discretion and judgment of the Security to determine whether there is breach of the peace, or an act of aggression. ¹²⁴This determination is likely to be political. ¹²⁵

To sum up, it goes without saying that, the determinations of the ingredients of a threat to peace, breach of peace and acts aggression is given to the Security Council. However, the problem here is mainly about the legal considerations as to the ingredients of each factor. In earlier time the ingredients of each factor were mainly applied to inter-state conflicts. But at the end of cold war the determination of ingredients, by the Security Council, are also applied to the internal matters of a state. The above mentioned cases can elucidate distinct type of situation which is deal with under Chapter VII and further will made to find a different or consistent practice of usage of, and perhaps also arrive at definitions of factors under Article 39 of the Charter.

¹²³ See Rao, super note 36 at 145- 146

¹²⁴ Ibid

¹²⁵ Ibid

In this connection, it has become clear from the above analysis that the Security Council enjoys wide discretion in determinations of the ingredients of the factors provided under Chapter VII of the UN Charter to preserve peace and security.¹²⁶ For this end, generally, a threat to peace in the case of Article 39 seems to be whatever the Security Council says a threat to the peace; which is political decision' and, as a matter of principle, not easily subject to legal evaluation.¹²⁷ This conclusion can be seen in relation with the cases of the Congo, Southern Rhodesia, South Africa and Rwanda. In the Congo crisis after the situation has deteriorated so badly as to constitute a civil war, the Council determined that there was a 'threat to the peace' though the controversial nature of the crisis to which whether this was an internal situation with as such Belgium support for Tshombe and Soviet aid to Lumumba. In fact here the crisis had international repercussion by the mere fact that the civil war could suck outside forces. The cases in South Africa and Rhodesia were concerned with the denial of self-determination by racist regime warrant a finding threat to peace, while it was determined that the genocide in Rwanda constituted a threat to peace. In particular, Rhodesia situations can be taken as an example to which a political and veto power decision had been reflected in the determinations of the ingredients of a threat to peace. Resolution 216 adopted on 12 November 1965 condemned the Unilateral Declaration of Independence (UDI) and called upon state not to recognize the 'illegal regime or render any assistance to it.'¹²⁸ The resolution contained no determination of a threat to peace because it arose from the desire to find a compromise between a British draft resolution which determined that the 'continuance of the resulting situation is likely to endanger the maintenance of international peace and security.'¹²⁹ The difference in terminology arose principally because of the British and Western view that Rhodesia should not be subject to immediate punitive sanctions but to a policy of gradually escalating sanction to urge peacefully change, where the Afro-Asian and communist view was that Rhodesia should be subject to immediate and

¹²⁶ See Akehurst's *supra* note 37 at 426

¹²⁷ *Ibid*

¹²⁸ See White *supra* note 38 at 41

¹²⁹ *Ibid*

punitive mandatory sanctions and possibly the use of military force.¹³⁰ This divergence was not primarily due to the difference perception of the matter of the situation in Rhodesia¹³¹ but it because of political interest of the two parties and finally the United Kingdom using their veto power hold over the Afro Asia view.

Generally, a finding of threat to the peace, in particular, is apolitical decision on the part of the council and so such finding as regards a wholly internal situation is not precluded.¹³² However, the permanent members are not going to exercise this desecration unless the situation has potential international repercussions which could affect their on interest, or even involve them an escalating conflict.¹³³ The requirement that the internal situation has international consequences is, (which is an escape clause for Article 2(4) of the Charter for the Security Council) also a convenient method of allowing the permanent members to hide behind the argument that a situation is purely internal and therefore not a threat when they want to protect their interest.¹³⁴ Recent practice suggests that the requirement is something of a formality.¹³⁵ Thus, as it has discussed here in above there is a practice very often rely on a very wide understanding of the notion of ,for instance, “threat to the peace” which is interpreted to include essentially internal situation most unlikely to degenerate into an international conflict. As examples, one might recall the more akin civil war in the Congo, the human tragedy caused by the conflict in Somalia and the ‘humanitarian’ crisis in Rwanda. Similarly, there were also controversial practices of the Security Council in determination of a breach of peace and an act of aggression. The Security Council determined the situation as a threat of peace though in objectively speaking that can be appeared more suitable to a clear violation of Article 2(4) within the term of Article 3 of the Assembly’s 1974 Definition of Aggression. These were true in some cases where North Korea invaded South Korea and Iraq invaded Kuwait. The Security Council was found under a breach of peace.

¹³⁰ Ibid

¹³¹ Ibid

¹³² Ibid p. 8 p.37

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ Ibid

3.2 Ingredients of War Crimes, Genocide and Crime against Humanity, and Serious Threat to Legitimate order; AU Constitutive Act

3.2.1 General

Basically, serious threat to legitimate order and grave circumstances-war crimes genocide and crime against humanity are a ground for AU intervention in the form of peace operation missions. However, since the UN Charter obligates the UN member states to 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, it is doubtful whether intervention in the aforementioned grounds could pass the test of consistency with the purpose of the UN or could be deemed as not constituting an interference in the political independence.

Moreover, the other issue raised here is whether or not such intervention is consistent with the modalities used by UN. Article 24 of the UN Charter confers on the UN Security Council the primary responsibility for the maintenance of international peace and security. To execute its responsibility the UN Security Council uses different modalities provided in the Charter. For instance, Article 53 of the UN Charter provides for a possibility of the Security Council using, where appropriate, regional arrangements or agencies for enforcement action under its authority and prohibits any enforcement action unauthorized by the UN Security Council. Generally, from this analysis it may be concluded that, in deciding on intervention, the Africa Union will have to consider it will seek the authorization of the UN Security Council as it is required to do under Article 53 of the UN Charter. When questions are raised as to whether the Union could possibly have the inherent right to intervene other than through the Security Council, they have to be dismissed out of hand.¹³⁶ Despite these all debate, the writer of this paper wishes to examine the ingredients of the factors here in below.

¹³⁶ Ben Kioko The right of intervention under the Africa Union's Constitutive Act: From non-interference to non-intervention available on [http://www.icrc.org/Web/eng/siteengO.nsf/htmlall/SWNJDL/\\$file/ICRC/852Kioko.pdf](http://www.icrc.org/Web/eng/siteengO.nsf/htmlall/SWNJDL/$file/ICRC/852Kioko.pdf) p. 821 accessed on December 08 2008

3.2.2. Ingredients of War Crimes, Genocide and Crime against Humanity

Africa is today facing greater peace needs than before, against this background Africans have embarked on various efforts in responding to the challenges posed by seemingly unending conflicts. In this connection, despite the issues of its legality in line with the UN Charter, "Article 4(h) of AU Constitutive Act provided for the right of the Union to intervene in a member states pursuant to a decision of the AU General Assembly in respect of grave circumstances, namely war crimes, genocide and crime against humanity and as the AU Heads of States and Government, and further added an amendments to Article 4(h) that extends the right to intervene to situation that pose "a serious threat to legitimate order to restore peace and stability in the Member States of the Union upon the recommendation of the Peace and Security Council."¹³⁷ Article 4(j) of the constitutive Act also indicates that a member state has the right to request intervention from the Union for restoration of peace and security.¹³⁸

If the aforementioned factors are sufficed for the AU to take peace mission actions, the issues here will be about the ingredients of the factors of intervention. The following sections will analyses the ingredients of the factors for triggering peace operations missions by AU.

Unlike the OAU, the AU places important limitations on state sovereignty. It is based on the premise that sovereignty is conditional and is defined in terms of state willingness and capacity to provide protection to its citizens:¹³⁹ the Constitutive Act acknowledge that the state has the duty to protect its citizens. If a state fails to live up to these commitments, the AU has a right to intervene for human protection purpose through peace operation

¹³⁷ See Kristina Powerl super note at 24 p. 11

¹³⁸ Ibid

¹³⁹ Ibid

missions, if necessary.¹⁴⁰ In this connection, Article 4(h) of the Constitutive Act states that the Union has “the right to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstance which contains a common thread uniting the three grounds: namely *war crimes, genocide and crime against humanity*.”¹⁴¹

The issue here is about the possibility of obtaining clear ingredients of the aforementioned factors for conducting of peace operation mission by the AU. Just like the UN Charter, the Constitutive Act of the Africa Union does not contain any further ingredients for the factors of war crimes, genocide and crime against humanity. One can not find a clearer set of criteria under any AU documents.

However, the AU’s provisions for intervention-‘war crimes, genocide, and crimes against humanity’ – can be codified in international law, thereby providing a clearer set of ingredients governing intervention.¹⁴² In other word, it is not so much difficult and debatable to find the criterion of the factors like those in UNSC factors of peace operation mission and as also like the second factors for AU intervention which will be explore in subsequent section. This is because the three factors of intervention – is that they constitute international crimes as defined in the Rome Statute as well as of the international criminal tribunals for Rwanda and Yugoslavia.¹⁴³

For instance, the international legal definition of the crime of genocide is found in Articles II and III of the 1948 Convention on the Prevention and Punishment of Genocide. Article II describes two elements of the crime of genocide: the *mental elements*, meaning the “intent to destroy, in whole or in part, a national , ethical, racial or religious groups, as such “, and the *physical element* which includes five acts described in sections a, b, c, d and e. Similarly, Article III described five punishable forms of the crime of genocide: genocide; conspiracy, incitement, attempt and complicity.

¹⁴⁰ Ibid

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Ibid

Moreover, the definition and ingredient for the factors of crime against humanity is provided in the Statute of the International Criminal Court. For example, Article 7 of the ICC described 11 acts and it defines as "crime against humanity" means any of the 11 acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. From this definition, just like genocide, crime against humanity is also requires criminal intent to the specific act.

3.2.3 Serious Threat to Legitimate Order to Peace and Stability

To state the obvious, the presence of a serious threat to legitimate order with the member states is a newly indispensable second factor of necessitating AU intervention to the state concerned. At this juncture, the very first issue sought to address is to be determine the constituent elements defining "serious legitimate order"? As in the case of UN Charter, the AU's Constitutive Act is fails short of prescribing the main ingredients of to be taken as a yardstick to determine the existence or otherwise of a legitimate order. In the light of this legal vacuum, it remains pretty difficult to make a legal conclusion on the criteria employed by the AU to judge whether the regime in one of its member states - considered for intervention - is legitimate. Nevertheless, the lacuna thus created from the lack of getting formal sources defining the term "serious threat legitimate order" may be filled by injecting interpretive regime. To this end, one may resort to the proceeding OAU constitutional documents which may help in getting a much better definition for the term in issue. Even their, the meaning for serious threat to legitimate order shall be deduced by way of acontrario reasoning of the phrase "unconstitutional change of government" used in OAU's Constitutional development. Hence, the nearest possible interpretation of the statement legitimate order may be found in the OAU's definition of "constitutional change of government" and it says: military coup d'état against a democratically elected Government; intervention by mercenaries to replace a democratically elected Government; replacement of democratically elected Government by armed dissident

groups and rebel movements; and the refusal by an incumbent government to relinquish power to the winning party after free fair and regular election.¹⁴⁴

A close look at to the above ingredients making up the characteristic features of unconstitutional change of governments paves the way for making a more or less persuasive attributes defining legitimate order. The logical parallel to be drawn, thus, is that a legitimate order primarily presupposes a political entity run by a regime whose ascent to power is legitimized through the application of democratic procedures. Among others, assumption of power through democratic means entails the holding of the free and fair election bestowing leadership powers to the sovereign regime as manifestation of popular sovereignty.

Yet, what exactly constitutes free and fair election is itself a highly controversial issue. A possible solution to ease the contention clouding the meaning of “free and fair election” may be the Guide line set out by the Declaration Governing Democratic Election in Africa. This declaration adopted at the Durban Summit in 2002, Heads of State agreed on a Declaration Governing Democratic Elections in Africa¹⁴⁵, to which also included in the Draft Declaration on Elections, Democracy and Good governance in Africa by the AU. A Declaration is not, however as per Rule 33 of the Rules of Procedure of the AU Assembly, binding on Member States and intended to guide and harmonize viewpoints.¹⁴⁶

To make matters worse, the issue has shown to be a major practical problem as, more often than not, election observers failed to reach in consensus in determining whether an election is free and fair or not. A case in point is, the notoriously polarized view of international election observers in judging about the conduct of the election process in Zimbabwe. Presenting their final report on the conduct of the 2008 presidential election of Zimbabwe – observers from western nation and NGO’s was found out to be in fierce

¹⁴⁴ Lome’ Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, AHG/Decl.1.5(XXXVI).

¹⁴⁵ Id AHG/Decl.1(XXXVIII)

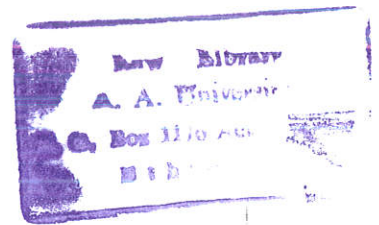
¹⁴⁶ Ibid

division from the AU's observers missions, SADC and some of the South African nations as the free and fairness of the election. Inline with this, while western observers and NGO's criticized the Zimbabwe election as neither fair nor free their counterparts from AU, SADC and Southern Africa countries like, South Africa and Tanzania were prepared to conclude that even if there were not free and fair they were at least legitimate¹⁴⁷ far from meeting the minimum international standards.¹⁴⁸

Similarly, the election held in Ethiopia in the recent past years saw a divide opinion among international and regional elections observers over their "fair and free" nature. Considering the May 2005 third round parliamentary election, it was witnessed that the final report from the international observer missions to be conflicting. Illustrating this scenario is, for instance, the report from the EU observers' missions as presented by Ms Anna Gomez denied the Ethiopian election of as 'free and fair' on meeting international standards. Quite the contrary, the AU observers' mission and the Carter Mission (independent NGO) opposed the EU's finding saying that as the election is fair and free. The other issue is whether or not intervention is possible where an illegitimate order is under threat from popular rebellion. This is true in the recent Kenya elections to which very massive popular rebellion forced the government to change the whole situation and finally the government resolved by sharing power to the opposition party after a massacre of many people. This may be a bad precedent for AU for its actions for the sole grounds of threat to legitimate order. Generally, Unlike the Constitutive Act's on the criteria for intervention-war crimes, crimes against humanity, and genocide –there exist no precise definition of what ingredients a serious threat to legitimate order. If not properly delimited, the concept of threat to legitimate order is sufficiently elastic to encompass even peaceful protest for more accountable government or those stands against illegitimate governments who has been conducting an election neither free/fair or not as grounds for intervention on the par

¹⁴⁷ Amendment to the Africa Union's Right to intervene, A Shift from human security to re.. p. 1 Available at <http://www.iss.co.za/Pubs/ASR/12No2/AfWat.html> visited on 11/21/2008

¹⁴⁸ Ibid



CHAPTER FOUR

4. Challenges on the Existing Modes of Cooperation Involving the UN, AU and IGAD, in Peace Operations for Maintenance of Peace and Security in East Africa

The objective of this chapter is mainly focused on exploring the challenges of the modes of cooperation between UN and AU-IGAD in the processes of peace operation in East Africa. In addition to such focal points of discussion, it also examines the various components of peace operations with the challenges that are faced in the respective constitutional documents of multilateral organizations. To this end, in line with the components of peace operations, the research paper in general, and this chapter in particular, pin points only some of the terms of peace operations. Among others, peacekeeping and peace enforcements are integral parts of the chapter at hand.

Generally, this chapter devotes to encompass definition, principles and challenges on the legal basis of such components of peace operation under the UN Charter and the AU Constitutive Act. Moreover, it goes on examine deeply the challenges on the legal basis of modes of cooperation between UN and AU-IGAD in peace operation. Similarly, based on some case studies, it further explore the challenges of an evolving modes of cooperation between UN and AU-IGAD peace operations for the maintenance of peace and security in Easter part of African continent's.

4.1 Peace operation: Definitions, principles, Challenges

The term peace operation is, as *Report of the Panel on United Nations Peace Operations*,¹⁴⁹ generally includes all forms of operation that are targeted for the purpose of maintenance of peace and security. Accordingly, unlike their unique features, peacekeeping, peacemaking, peace building and peace enforcements are included under the umbrella of peace operation. Here, peacekeeping and peace enforcement (which

¹⁴⁹UN General Assembly and Security Council, *Report of the Panel on United Nations Peace Operations*, A/55/305-S/2000/809, 21 August 2000. The Report's definition of peace operations is also used here, including conflict prevention and peacemaking, peacekeeping, and peace building.

together constitutes peace creation) along with other strategies, are of an overall peacemaking process, designed to resolve, or at least manage violent conflict.¹⁵⁰

Hence, this sub-topics looks at the practice of peace operations, its legal framework, principles and the terms used to define it. Especially, it goes on to examine the legal basis of peacekeeping under Chapter VI and VII of the UN Charter and on the AU Constitutive Act.

4.1.1 The Definitions and principles of peace operation

As to the definition of peacekeeping, it should first point out that, the term does not appear in any of the 111 articles of the UN Charter and the Charter has never been amended in order to incorporate peacekeeping operations into it. Then what is peacekeeping? Simply put, peace keepers are people helping the parties to a conflict to resolve their difference peacefully and the presence of these people, soldiers, military observers or civilian police, encouraging hostile groups not to use arms and instead to keep negotiating for peaceful settlement of disputes.¹⁵¹ Most UN peacekeepers—often referred to as “*blue helmets*” because of the blue colure helmets the wear while on duty--- have been soldiers, volunteered by their governments to apply military discipline and training to the task restoring and mainlining peace: monitoring cease-fire, separating hostile forces and maintaining buffer zones.¹⁵² Moreover, many authors and the UN itself have tried to set concepts and definition about the UN peacekeeping. For instance, the *Review of United Nations Peacekeeping*, published by the United Nations defined as:

As the United Nations practice has evolved over the years, a peacekeeping operation has come to be defined as an operation involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict. These operations are voluntary and are

¹⁵⁰Funmi Olonisakin (2000), *Reinventing Peacekeeping in Africa; Conceptual and Legal Issues in ECOMOG Operations*, Kluwer Law International pp 1

¹⁵¹ Peacekeeping, p.2 available at www.un.org/peace Visited on October 10 2008.

¹⁵² Ibid

*based on consent and cooperation. While they involve the use of military personnel, they achieve their objectives not by force of arms, thus contrasting them with the enforcement action of the United Nations under Article 42.*¹⁵³

From the above definitions, despite what may have been an authoritative definition in its time, peacekeeping has come to encompass many types of activities, both military and civilian, including the use of military force to attain peace.

Furthermore, in the document *An Agenda for Peace*, the Secretary General, Dr. Boutros Gail, attempted to set out some working definitions: First, he drew attention to the role of preventive which involve fact finding and good office, secondly, he identified 'peacemaking' which might be action taken under Chapter VI of the Charter, thirdly, he defined peacekeeping as the deployment of the United Nations personnel in an area with the consent of the parties and finally in contrast he went on to identify 'peace enforcement' which involves peacekeeping undertaken without the consent of the parties and is normally authorized under the term the provisions of Chapter VII.¹⁵⁴ While Boutros-Ghali's definitions initially gained wide currency, their value has decline over time.¹⁵⁵ With the expansions of peacekeeping following the end of cold war, commentators began to speak of successive "generations" of the Untied Nations operations .In some circle , the term "peace operations" and " peace support operations "are now used interchangeably with the term "peacekeeping operations" to encompass a broad spectrum of conflict management and resolution techniques.¹⁵⁶ A new vocabulary of related has emerged, the South African Department of defense, for example, recently identified and defined nine overlapping terms:

¹⁵³ See Olonisakin super note 140 at183

¹⁵⁴ John O'Brien (2001), *International Law*, Cavendish publishing limited London, United Kingdom pp 729

¹⁵⁵ Eric G. Berman and Katie E. Sams (2000), *Peacekeeping in Africa: Capabilities and Culpabilities* United Nations Institute for Disarmament Research (UNIDIR) Geneva, Switzerland.

¹⁵⁶ Ibid

*Peace missions; peace support operations; preventive diplomacy; peacemaking; peacekeeping operations; peace enforcement; peace building; humanitarian assistance; and humanitarian intervention.*¹⁵⁷

To further complicate matters, different countries and organizations ascribed different meaning to the same terms. Recently, some tries to define the terms categorizing with developmental peacekeeping. The basis of their arguments is manly on the analysis of the documentations of the Department of peacekeeping Operations (DPKO). In the DPKO documentation found that the primary focus of traditional peacekeeping methods remains within the traditional understanding of human security, which gives preference to the security of state.¹⁵⁸ *Developmental peacekeeping* is fundamentally rooted in the holistic understanding of human security in all is dimensions and hence,, from this, *developmental peacekeeping* is defined as:

*A post conflict reconstruction intervention which aims to achieve sustainable levels of human security through a combination of intervention aimed at accelerating capacity building and socio-economic development which will result in the dismantling of war economics system and replacing the with globally competitive peace economics.*¹⁵⁹

It is clear that, this definition overlaps with the other wide categories of peacekeeping, namely peace-buildings. This is manly because , as peace-building define as effort to identifies and support areas which tend to consolidate peace in case where the conflict is between two or more countries sustained cooperative work may be undertaken to deal with their economic, social, cultural and ethnic problem¹⁶⁰, the term peace-building can

¹⁵⁷ Ibid

¹⁵⁸ Developmental Peacekeeping- What are the Advantages for Africa? (2004) p.4 African Defiance Summit available on <http://www.commissionforafrica.org/french/consultation/submissions/ro/sb-nov-deco4-067.pdf> visited on 05 February 2009

¹⁵⁹ Ibid p.5

¹⁶⁰ See Yassen Super note at 63 p.4

also incorporates the elements of developmental peacekeeping. Generally, saving the distinctions are important in order to understand the legal principle governing peacekeeping, the current trend in peacekeeping and observation is to combined peacekeeping and peacemaking, in that the parties to the conflict not only agree to a peacekeeping or observe forces to keep the parties apart or to monitor a cease-fire, but the also agree to a specific method of settling the disputes.¹⁶¹Hence, despite having different concepts with the definition of peacekeeping, it is important to know the definitions of those various terms to which scholars used to understand how it relates and differs from peacekeeping.

4.1.1.1 Traditional Peacekeeping and Observation Missions

Generally, the concepts of peacekeeping, as some authors adheres, lies on the terms of traditional and second generation of peacekeeping. There have been a number of attempts to make a clear distinction between the two terms. Many authors try to make distinction on actions before cold war and post cold war. During the ensuing cold war years, the goals of the United Nations peacekeeping were necessarily limited to maintaining cease-fires and stabilizing situations on the grounds, so that efforts could be made at the political level to resolve the conflict by peaceful means, hence, several of the United Nations longstanding operations fit this “*traditional*” model.¹⁶²

At the end of cold war, the traditional meaning of peacekeeping is just changed into a “second generation” concepts particularly with growing of internal armed conflicts. This means the transformation of the international environment has given rise to a new generation of “multi-dimensional” United Nations peacekeeping operations. These operations are typically deployed in the dangerous aftermath of a violent internal conflict

¹⁶¹ See White Super note at 38 p.187 and 189

¹⁶² Department of Peacekeeping Operations, United Nations Peacekeeping Operations: Principles and Guidelines pp. 20 available on http://www.pbpu.unlb.org/pbhs/library/Capstone_Doctrine_ENG.pdf visited on 05 February 2009

and may employ a mix of military, police and civilian capabilities to support the implementations of a comprehensive peace agreement.¹⁶³

Moreover there is also a third generation of peacekeeping , in fact it does not have a definite -- general accepted label; some call it "robust", others 'enlarged', 'defensive' or 'wider (for instance the term wider peacekeeping has been employed by the British army),peacekeeping.¹⁶⁴

Today, its meaning has changed, its role widened and its responsibility broadened. Most peacekeeping operations now are multidimensional, requiring each to carry out a variety of functions involving peacemaking and peace-building. Secretary-General Kofi Annan, in his 1999 report on the Work of the Organization, thus summarized these functions:

"While some traditional peacekeeping operations remain, peacekeepers throughout the decade of the 1990s have been involved in the broader post-conflict peace-building processes associated with the implementation of peace agreements. This involves the return and reintegration of refugees and internally displaced persons, reconciliation, rebuilding judicial systems, strengthening the promotion and protection of human rights, electoral assistance and assistance in rebuilding war-torn political, economic and social infrastructures, as well as more traditional peacekeeping tasks."

To sum up, according to many scholars the terms of distinctions between traditional and second generation manly lies on the year between before Cold War and, post and during Cold War. Hence from their point of view, many post-Cold Wars peacekeeping, and indeed, some specific operations during Cold War, are described by some analysts as second generations peacekeeping.¹⁶⁵ In Ratner's analysis of the major difference between both, the former performs a monitoring and inter-positional role, while the latter is concerned with 'operations responsible for overseeing or executing the political solution of an interstate or internal conflicts', with the consent of the parties.¹⁶⁶

¹⁶³ Ibid p.22

¹⁶⁴ See Olonisakin super note 140 at 93

¹⁶⁵ Ibid p. 9

¹⁶⁶ Ibid

In relations with the terms of *Observation Missions*, the missions are generally considered to sit within the traditional peacekeeping umbrella. Indeed, the current trend in peacekeeping and observation is to combine peacekeeping and peacemaking, in that the parties to the conflict not only agree to peacekeeping or observer force to keep the parties apart or to monitor a cease-fire, but they also agree to a specific method of settling the dispute.¹⁶⁷

4.1.1.2. Conflict Preventions, Peacemaking an Peace enforcement

Conflict prevention involves the application of structural or diplomatic measures to keep intra-state or inter-state tensions and disputes from escalating into violent conflict.¹⁶⁸ Ideally, it should build on structured early warning, information gathering and a careful analysis of the factors driving the conflict.¹⁶⁹ Conflict prevention activities may include the use of the Secretary-General's "good offices," preventive deployment or confidence-building measures.¹⁷⁰

Moreover Peacekeeping and peacemaking are two sides of the same coin. Peacekeeping generally includes measures to address conflicts in progress and usually involves diplomatic action to bring hostile parties to a negotiated agreement.¹⁷¹ While Peace Enforcement operations involve the use of an armed force, or the threat of such use, in order to compel combatants to cease their fighting and seek peaceful methods of conflict settlement.¹⁷² These operations might be directed at all combating parties, or at a single party that refuses to halt the military actions. On a practical level, peace enforcement actions include:

◆ carrying out international sanctions against the opposing sides, or against the side that represents the driving force in the armed conflict;

¹⁶⁷ Ibid

¹⁶⁸ See Department of peacekeeping super note 153at 17

¹⁶⁹ Ibid

¹⁷⁰ Ibid

¹⁷¹ Ibid

¹⁷² Juridical Evaluation of the Peacekeeping Operations in Transnistria in Conformity with the International Law, p. 5 available on http://www.ipp.md/public/biblioteca/15/en/Membrii_Eng.pdf visited on 14 April 2008

- ◆ isolating the conflict zones and preventing arms deliveries to the area, as well as preventing penetration of the area by armed formations;
- ◆ air or missile strikes on positions of the side that refuses to halt its combat actions;
- ◆ rapid deployment of peace forces to the combat zones in numbers sufficient to carry out the assigned missions¹⁷³

4.1.1.3. Peace buildings and Humanitarian Action

Peace-Building Operations represent the whole aggregate of actions and measures that may be undertaken once the military phase of a conflict concludes.¹⁷⁴ While Humanitarian Actions in whatever form or on whatever scale, are a part of almost all peace operations and in addition, they are carried out independently from other efforts aimed at ending the conflict.¹⁷⁵ Moreover, humanitarian actions are undertaken to provide relief and to support the survival of the civilian population who have fallen victim to military actions.¹⁷⁶

To sum up the boundaries between conflict prevention, peacemaking peacekeeping, peace building and peace enforcement have become increasingly blurred.¹⁷⁷ Peace operations are rarely limited to one type of activity, whether United Nations-led or conducted by non-United Nations actors.¹⁷⁸ While United Nations peacekeeping operations are, in principle, deployed support the implementation of a cease-fire or peace agreement, they are often required to play an active role in peacemaking efforts and may also be involved in early peace building activities.¹⁷⁹ Although the line between “robust” peacekeeping and peace enforcement may appear blurred at times, there are important

¹⁷³ Ibid

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ See Department of peacekeeping super note 156 at 18

¹⁷⁸ Ibid p.19

¹⁷⁹ Ibid

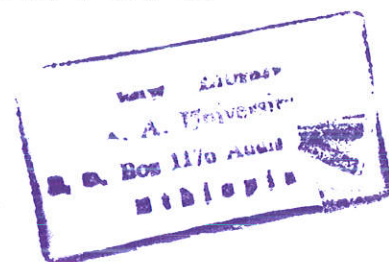
differences between the two.¹⁸⁰ While robust peacekeeping involves the use of force at the tactical level with the consent of the host authorities and/or the main parties to the conflict, peace enforcement may involve the use of force at the strategic or international level, which is normally prohibited for Member States under Article 2 (4) of the Charter unless authorized by the Security Council.¹⁸¹

Generally, although the practice of United Nations peacekeeping has evolved significantly over the past six decades, three basic principles have traditionally served and continue to set United Nations peacekeeping operations apart as a tool for maintaining international peace and security:¹⁸²

. Consent of the parties

. Impartiality

. Non-use of force except in self-defence and defence of the mandate



These principles are inter-related and mutually reinforcing. It is important that their meaning and relationship to each other are clearly understood by all those involved in the planning and conduct of United Nations peacekeeping operations, so that they are applied effectively.¹⁸³

4.1.2 Challenges on the Legal Basis of Peace Operations: the UN

In relation to the issue of the legal basis peace operation, some argue that the principal factor in historical, political and legal background of UN peace-keeping operations has been the failure by the organization and its member- states to conclude agreements under article 43 of the UN Charter providing the possibility to deliver military units for enforcement of the UN Security Council resolution. In any case, however, despite the fact that peacekeeping is primarily an activity associated with the UN there is no direct reference to peacekeeping in the Charter. It is clear that the UN Charter is a legal basis

¹⁸⁰ Ibid

¹⁸¹ Ibid

¹⁸² Ibid p.31

¹⁸³ Ibid

for the organization's action. But since peacekeeping operations are not specifically mentioned in the UN Charter, the legality of the UN actions is become questionable. Accordingly, as peacekeeping was not contemplated by the drafters of the UN Charter, the legal foundations for peacekeeping operations have been widely debated over the years. Despite these debates, the lack of express reference to peacekeeping was scrutinized in the expense case, in an Advisory Opinion of the International Court of Justice. The issues which had been requested by the General Assembly were not issues with regards to the operations (forces) but it was the issue whether or not the expenses of the forces were the expenses of the UN. However, the Court brief remarks about the legality of their creation were somewhat inconclusive; it limited itself to saying that the creation of the forces was probably legal, and to rejecting various arguments against their legality, but it did not say precisely which provisions of the Charter constituted the legal justification for their creation.¹⁸⁴In one instance, in the view of the function of peacekeeping operations, Secretary-General Dag Hammarskjold once suggested to devote a new "Chapter VI and a Half" of the Charter to peacekeeping.¹⁸⁵

Moreover, peacekeeping has been argued to be inferred from the purpose of the Charter. The fact that UN peacekeeping forces do not have an official, formal basis in the Charter does not mean however that they are unconstitutional. In its Advisory Opinion, the Court concluded that, when the UN undertakes action that may be considered to be in pursuit of the purpose of the organization, such as the maintenance of international peace and security, such act is not *ultra vires*.¹⁸⁶From this argument, although the implied power for the use of peacekeeping forces is derived from the primary purpose of the UN set out in Article 1 of the Charter, the purposes or grounds for which the implied powers which may be used are found in Chapter VI and VII. It is upon these two chapters that all peacekeeping operations have been founded. While Article 1 of the Charter represents the general head of power on which legitimacy for peacekeeping can be founded, there are elements in both Chapters VI and VII which are relied upon as the basis for different

¹⁸⁴ See Akehurst's super note 37 at 420

¹⁸⁵ See Rao super note 36 at 84

¹⁸⁶ Robert C.R. Siekmann (1991), National Contingents in United Nations Peace-keeping Forces, Martinus Nijhoff Publisher pp7

types of operations in the peacekeeping field.¹⁸⁷ Particularly, worth mentioning challenge would be the fact that in Chapter VI there is no power to make binding decision with regard to member states. The position of both the Security Council and the General Assembly is that they may only make recommendations. Hence the power to force compliance with a Chapter VI recommendation that a Peacekeeping operation be launched is therefore come from a political source not a legal one.¹⁸⁸ The legal result is that if a peacekeeping operation derived from a request from the parties under Article 33, or from any other provision of Chapter VI, for example from a recommendation under Article 36, consent of the parties to the peacekeeping operation is mandatory.¹⁸⁹ If consent is not present, regardless of the reason why consent has been withheld, regardless of the kind or nature of the operation and regardless of the implied powers of the UN, without the acknowledgment that it is the parties own choice; a peacekeeping operation cannot be a Chapter VI operation. Where the UN is dealing with a situation in which the government has collapsed without successor and there is, therefore, no means by which the State can give consent, or accede to a recommendation of the General Assembly or Security Council, then any peacekeeping operation, must be initiated under Chapter VII.¹⁹⁰

As far as the legal basis of peacekeeping operations under Chapter VII is concerned, Article 39 permits the Security Council to make recommendations as well as make findings and decide on measures. After finding, the UN Charter in Article 42 deals the types of actions that the Security Council may undertake. However, despite the fact that the Charter intends to make States that have entered into an Article 43 agreement provide the forces for an operation conducted under Article 42, no provision in the Charter suggests that the Security Council should organize its military response in the form of peacekeeping. However, the absence of Article 43 agreements does not mean that military forces cannot be provided as the International Court of Justice said in its

¹⁸⁷ Ibid

¹⁸⁸ Ibid

¹⁸⁹ Ibid

¹⁹⁰ Ibid

advisory opinion on *Certain Expenses of the United Nations*:¹⁹¹ Accordingly, it can not be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under Article 43 have not been concluded and it is possible for the Council to take direct action depending on the conclusion of agreement on an *ad hoc* basis with those member states who are willing to supply troops. Generally, even if it is true that there is no specific Article that particularly deals with the term peacekeeping operations under Chapter VII, the said Chapter allows the use of force to the Council under Article 43 in order to implement the use of force in article 42, though action under Article 42 will be impossible until such agreements have been concluded. Therefore, Chapter VII peacekeeping can only be based on Article 39 recommendations. Given the difficulties inherent in specifying which article is to be relied upon it is not surprising that the Security Council prefers to make a general reference to Chapter VII.

Finally, the *1950 Uniting for Peace Resolution*¹⁹² gave the General Assembly's most important contribution to strengthening the UN collective security system. The General Assembly passed this resolution in order to increase its ability to exercise its secondary or residual responsibility.¹⁹³ The Uniting for Peace Resolution states that, if Security Council fails in its primary responsibility for maintaining international peace and security, the General Assembly shall consider the matter immediately with the view to making recommendation for collective measures, including the use of armed force where necessary; and it recommends members to maintain contingents in their armed forces which could be made available 'for the service as a United Nations unit... upon recommendation by the Security Council or the General Assembly'.¹⁹⁴ Generally, this resolution has to be viewed as a recommendation under Chapter VI operation and as in *Certain Expenses Case* as the International Court of Justice interpreted 'action' to mean 'enforcement action', said that the United Nations Emergency Force in the Middle East, created by the General Assembly in 1956, was not contrary to Article 11(2) because it was not designed to take enforcement action. The Court clearly implied that the General

¹⁹¹ *Certain Expenses of the United Nations*, 1962 I.C.J 151

¹⁹² General Assembly Resolution 377(1950) of 3 November 1950

¹⁹³ See Akehurst's super note 37 at 392

¹⁹⁴ *Ibid* p.393

Assembly would have acted illegally if it had set up a force designed to take enforcement action..¹⁹⁵ These reasons make as confirmed the power of the General Assembly to make recommendations for peacekeeping forces to which the resolutions represent the legal and political development for the basis of peacekeeping. Its legal basis was forwarded in the form of argument based on the provision of the Charter. For instance, some argued on the basis of Article 24 of the Charter, in that this Article gave the Security Council 'primary responsibility for the maintenance of international peace and security. Nevertheless, it was argued that this did not preclude the General Assembly from exercising a secondary and residual responsibility – and argument that was approved by the International Court of Justice in the *Expense case*.¹⁹⁶

Apart from this, one could further argue that the establishment of a peacekeeping force is an institutional prerequisite to the General Assembly by virtue of Article 22 of the Charter. The argument would be based on the fact that the Article empowers the General Assembly to establish subsidiary organs for performance of its functions and that this power may be used for establishment of a peace keeping force. In this connection UNFE, in particular, has been established under this article.

4.1.3. The Legal basis and Challenges of Peace Operations by AU-IGAD

Basically the UN Charter does not state explicitly on the issues of regional led peace operations. Article 52 and 53 of Chapter VIII of the UN Charter simply envisioned a noteworthy role for regional arrangements in the pacific settlement of local disputes as well as in enforcement action under the authority of the Security Council. However, there is a strongly supported assumption that regional organizations may establish peacekeeping as one part of peace operations having non-enforcement actions. If a peacekeeping operation conforms to the legal principles, as have been outlined in the above sections, then it can lawfully be undertaken by a regional organization, or on an ad

¹⁹⁵ Ibid

¹⁹⁶ Ibid p. 392

hoc, collective basis, or indeed by individual States. This is mainly because consensual, non-offensive operations do not breach the ban on the use of force contained in Article 2(4) of the UN Charter, nor are they actions which require the authorization of the Security Council under Article 53 of the UN Charter, which is confined to enforcement action.

On the other hand, an issue of primary jurisdiction may be raised even if it is argued that regional arrangements can undertake peacekeeping operations by reference to Chapter VIII (Arts. 52 and 53) of the UN Charter. Here, the answer to the central question as to the extent to which the regional agency has priority in deciding on the merits and whether the Security Council is under an obligation to defer in a given case, depends on whether Art. 52(4), by stating that Arts. 34 and 35 remain unimpaired, excludes the application of Arts 36 and 37.¹⁹⁷ The issues here will be clear if one to make investigates on the relationship between Art. 52 and Chapter VI of Art. 24 of the UN Charter. Furthermore, some commentators have tried to settle the issues in a way that as long as the requirements of Art. 52 are met, the Security Council cannot take a decision on the merits and must, where appropriate, refer the case to the regional agency-Art. 52 in this respect *lex specialis* to Arts. 33 *et seq.*¹⁹⁸ If on the contrary, the conditions of Art. 52 are not present, or if the case one in which states which are non-members of the regional agency invite the regional agency to settle the dispute, the general regulation of Chapter VI stands, and Art. 52, with its exclusive primary competence for the settlement on the merits of regional disputes, is not applicable.¹⁹⁹

However, currently as such the above issues are not so much debatable and will be challenges. This is mainly because today, unlike the OAU, the Africa Union has adopted a more controversial issue in relation to the legal basis of peace operations simply by adding peace enforcement action. For this purpose, unlike the OAU, the AU legitimizes its mandate of peace operation under its Constitutive Act. The OAU, which emphasized

¹⁹⁷ Bruno Simma, (ed. 2002), *The Charter of the United Nations; A Commentary* 2nd ed. Volume I, by in the United States of Oxford University Press Inc., New York P.840

¹⁹⁸ *Ibid* p.841

¹⁹⁹ *Ibid*

the principles of national sovereignty and non-interference, lacked both the statutory authority and capacity to intervene in matters related to peace and security.²⁰⁰ The AU, which embraces international cooperation and recognizes the primacy of the UN Charter in peace and security, has also adopted a wider field of engagement options, from mediation to using force to intervene in specific circumstances.²⁰¹ Article 4 of the Constitutive Act specifies: “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances, namely: war crimes, genocide and crimes against humanity... the right of Member States to request intervention from the Union in order to restore peace and security. For this purpose, the AU adopted the Protocol on the Peace and Security which launched the creation of the Peace and Security Council, the Africa Stand by Force, the Continental Early Warning Mechanism and the Panel of the Wise.

To sum up, despite the recognitions of its legitimacy under its Constitutive Act, still several challenges are faced in relations to AU’s peace operation mission. The first challenge is about the legality of peace enforcement action on the auspices of peace operation mission in line with the UN Charter. The AU legitimacy under its Act contradicts with Chapter VIII and Article 2(4) of the UN Charter, i.e. the issue here being the legality of peace enforcement action by regional organizations. Moreover, there undoubtedly remain substantial challenges to be overcome before the AU can make it more operationalised. Such challenges with respect to which further elaboration shall be provided in the forgoing chapters are; issues of funding and core military capabilities, and the means of cooperation. Meanwhile, whether or not the interventions in Burundi and Darfur have shown that the division of labor between the United Nations and African organizations can work will be another issue.

As far as peace operations conducted by sub-regional organizations are concerned, like the AU, there is no explicit provision mandating IGAD to conduct peace operations in the Horn of Africa. On the other hand, East African, member states of the Intergovernmental

²⁰⁰ See Kristina Powell super note at 24

²⁰¹ Ibid

Authority on Development (IGAD) have traditionally cautioned against the establishment of a similar sub-regional peacekeeping force in the absence of a single country in that sub-region with sufficient power to take the lead.²⁰² The friction between some countries in the sub-region has militated against the creation of such force. However, this has not prevented IGAD from undertaking a range of peace initiatives in the Horn of Africa, particularly in Somalia and the Sudan. For instance, IGAD led the mediation initiatives that produced the Transitional Federal Government (TFG) in Somalia in 2004 and in March 2005, IGAD proposed a Peace Support Mission to Somalia (IGASOM) involving 10,000 troops at a cost of \$500 million in the first year, but the AU approved a smaller force of 8,000 in September 2006, at an estimated cost of \$ 335 million for the first year.²⁰³

4.2. Mode of Cooperation – Legal Basis and Challenges: UN-AU-IGAD in peace operations

Under this sub topic the writer of this paper wishes to explore the legal mode of cooperation of UN-AU-IGAD in peace operations with the challenges that faced it. This can be done mainly by references to the Charter of the world organization and the Constitutive Act of the AU and the establishing document of IGAD. Hence, here in below, are examined their legal mode of cooperation and the challenges of present and future cooperation.

4.2.1 The Legal Basis of Cooperation: Chapter VIII of UN Charter

The debate over the relationship between the United Nations and regional organizations goes back to W.W.II.²⁰⁴ In this relation different proposal were adopted before settling the debate into the final UN Charter. In relation to the issues at hand, different proposal were offered in behalf of the Champion of W.W.II. Finally, the result of the Dumbarton Oaks process was largely reflected in the final UN Charter. The Security Council, under

²⁰² Ibid

²⁰³ Gilbert M. Khadiagala, *Eastern Africa: Security and the Legacy of Fragility*(2008) p. 11 available at <http://www.ipacademy.org/asset/file/404/eastern-africa.pdf> visited on December 03 2008

²⁰⁴ See Quayat super note 1 at 2

Article 24 of the UN Charter, has the "responsibility for the maintenance of international peace and security." However, Chapter VIII of the Charter was created as compromise and gave a broad and somewhat ambiguous role to regional organizations. Article 52 of the Charter prescribes that regional organizations may be called upon by the Security Council to maintain peace and security "as appropriate for regional actions." The Charter also places regional organizations at the disposal of the Security Council for use in enforcement actions. For this purpose, the mandate of the Security Council is expressly required before any regional organization can undertake enforcement action except in instances of self-defense.

Moreover, there were debates over the universalism and regionalism roles of regional organizations. In this relation, the ambivalent compromise between universalism and regionalism ultimately reached in San Francisco was expressed in the fact that the Charter of the UN, in contrast to its otherwise universal concept and character, recognizes in Chapter VIII (Arts. 52-54) the concepts of decentralization and regionalism although only in the areas of the maintenance of peace and pacific settlement of disputes.²⁰⁵ Moreover, recently, beyond the world's Charter, the constitutional documents of regional organizations are also adopted the formal relationships with the UN in the maintenance of peace and security in their respective regions.

Under the UN Charter, regional organizations are not allowed to use force against one another except in case of self defense and unless the Security Council authorizes to trigger action based on the response to a "threat to the peace, breach of peace, or act of aggression". Hence, it is the Security Council that authorizes regional organizations to conduct peace operations based on the provisions of Chapter VI and VII of the UN Charter. Accordingly, unlike UN, regional organizations are prohibited to conduct peace operations in relation with the aforementioned Chapter of the UN Charter without the prior authorization of the Security Council. Nevertheless, the UN Charter recognizes its relations by affirming the role of regional organizations in conducting of certain forms of

²⁰⁵ Ibid p. 315

peace operation for the purpose of maintenance of peace and security. In this connection, and for this purpose, the legal relation is premised under Chapter VIII of the UN Charter and this Chapter contains the following Articles:

Article 52: "nothing contained in the Chapter precludes the existence of regional arrangements or agencies for dealing with such matters relating to international peace and security as are appropriate for such arrangements or agencies, providing that these are consistent with the purpose and principles of the UN itself".

Article 53: that "the Security Council where appropriate shall utilize such arrangements or agencies for enforcement action under its authority".

Article 54: "the Security Council is to be kept fully informed at all times of activities undertaken or in contemplation by regional organizations".

However, despite this formal way of framework or the affirmations of their relations and the role of organizations, several issues arise which further have impact on the cooperation of global, regional and sub-regional organizations in peace operations. The first issue is in relations with the elements of the term regional, arrangements and agency. With regard to the issues for the components of regional elements, different commentators have propounded different measurements. Some used geographical set up as the criteria where as others prefer the use of common culture and historical relations of states as to the measurement of regional elements.²⁰⁶ Moreover other argued that for clarification of the exact conceptual content of the criterion of 'regionality' in Art. 52(1), it is necessary to refer back to the purpose of the regulation.²⁰⁷ The purpose of Chapter VIII is to grant certain international organizations- by modifying the general and immediate jurisdiction of the UN --- powers to resolve local disputes(52(2)) with their own jurisdiction and on a local basis and to serve thereby the purpose of the maintenance

²⁰⁶ See Buruno Super note at 183

²⁰⁷ Ibid p. 822

of international peace and security.²⁰⁸ Here, legally speaking, according to the opinion of the writer of this research paper, the finding of the criteria for the term regional must first start by exploring the concept from the Charter. In fact geographical as well as common culture and historical relations of states can be used as further criteria.

Further more, as far as the issues of the term “arrangements or agency” are concerned, both terms can be used in alternative way by the mere fact that they are connected with ‘or’. As a result of such a setup, states are free to use either of the terms. It is worth noting here that distinctions are made between regional bodies under Article 51 and regional arrangements under Chapter VIII of the UN Charter. In the view of White²⁰⁹, organizations such as the North Atlantic Treaty Organization (NATO) and the former Warsaw pact are not, *prima facie*, regional organizations constituted under the Chapter VIII, and indeed the treaties establishing these bodies seem to be clear that they are based on Article 51. Hence, arrangements are probably confined to those which have similar functions and powers to the United Nations as regards international peace and perhaps as regards economic and social cooperation, except that these powers are operated on a regional not a global level.²¹⁰ Accordingly, White concludes that organizations designed primarily to enhance the defense and military capability of power blocks do not fit this concepts.²¹¹

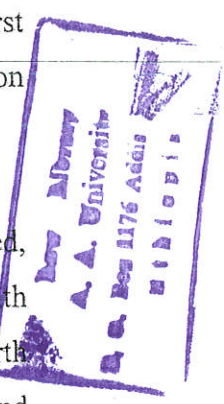
Finally, and most importantly, the issues in relation to the question as to what extent of regional actions is consistent with the UN purposes and principles and as to the scope of the term ‘local disputes’ are of paramount significance into the current security structure of AU vis-à-vis Chapter VIII of the UN Charter. This is mainly because of the AU’s incorporations of enforcement actions and the right to intervene in the member states in its Constitutive Act beyond what has been intended in the UN Charter. As the Charter’s provisions, the United Nations is the only international organization with the right to decide on enforcement action. Chapter VII of its Charter allows the Security Council to

²⁰⁸ Ibid

²⁰⁹ See White super note 37

²¹⁰ Ibid

²¹¹ Ibid



take enforcement action in relations with a threat to peace or breach of peace of international peace and security. Therefore, the incorporations of the right of intervention by the African Union in its Constitutive Act will be questioned to decide interventions outside the UN framework, particularly out of Chapter VIII of UN Charter, and have raised the issues of what role has the United Nations assumed in such interventions even outside the scope of relations under Chapter VIII. Article 52 (1) puts a condition that the activities of regional organizations or agencies be consistent with the purposes and principles of the UN Charter. Article 2(4) of the UN Charter states that, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations". Generally, therefore, it follows from Article 52 and 103 of the UN Charter that the members of regional agencies are fully subject to the obligations under their membership in the UN and cannot avoid these obligations by invoking the constitution of the regional agencies.²¹²

Moreover, the scope of the term 'local dispute' more or less is related to the above issues with regard to the right of intervention by African Union in member states. This issue, on the other hand, is mainly connected with the Charter's applications of measures of settlements of local disputes by peaceful means. In other words, the issue is whether or not the term "disputes" is of inter-state or intra state conflict and whether or not the term 'local' refers to other concepts in the absence of clear terms of reference from Chapter VIII of the UN Charter. Here, the scope of the term 'disputes' is further analyzed in comparison with other provisions of the Charter. Article 52 (2) of the UN Charter does not mention the competence of regional organizations to handle 'situations' in contrast to Arts. 34, 35, and 36;. Some conclude from this fact that Chapter VIII is not applicable to 'situations'.²¹³ However, it can be concluded that a comparison with Arts. 34 and 35, whose application, is not impaired, according to Art. 52(4), shows that these two provisions, as has previously been mentioned, are designed not only for 'disputes' but

²¹² See Bruno super note at 183

²¹³ Ibid pp.824-825

also for a 'situation' which 'could lead to international friction or cause a dispute'.²¹⁴ Hence, from this, it follows that internal conflicts can also be subsumed under the notion of 'local disputes', but only in so far as these conflicts are capable of representing a threat to international peace.²¹⁵ Finally as far as the 'local character' of the dispute is concerned, the conflict must be locally confined, i.e. occurring between members of the regional agency.²¹⁶ Hence, if non member state participates in the dispute, Chapter VIII of the Charter would not be applicable.

4.2.2 Challenges on the legal basis of Cooperation

This sub-section deal with the issues of cooperation in relation to the challenges surfaced in the terms which provided in Chapter VIII of the UN Charter. Furthermore, history and current practice in peace operations missions show more issues of cooperation between UN-AU-IGAD in the maintenance of peace and security in the continent. In particular, East Africa has been noted to its being a locus of UN-AU-IGAD peace operations. For instance, the UN and AU have been active in peace operations in Ethiopia and Eritrea, and in Burundi, in the Sudan since 2004 up to now, and currently AU in Somalia after the government of Ethiopia has decided to withdraw its forces at the end of 2008. Similarly, IGAD had also been conducting peace operations in Somalia and the Sudan. In all these cases, Chapter VIII of the UN Charter might generally serve as a ground in respect of the peace operations made by AU and IGAD which further raise issues of the scope of relationship with the UN.

Hence, in line with Chapter VIII of the UN Charter, issues or challenges in relations to the manner, terms of reference and the scope of relationship or partnership between the UN and AU-IGAD in peace operations for the maintenance of peace and security in Eastern Africa would arise in the course of coordinated peace operations of the above kind. This is mainly because Chapter VIII of the Charter that had been created as a

²¹⁴ Ibid

²¹⁵ Ibid

²¹⁶ Ibid

compromise gave a broad and somewhat ambiguous role to regional organizations. Chapter VIII indicates the word arrangements but it did not incorporate the terms or other references into the concepts of cooperation/coordination. This could have served as a basis for the partnership between UN and AU-IGAD. Here, in fact, when peace operations are conducted through the authorization of the UNSC, some sort of formal relationship will be raised among global and regional organizations.

Historically, despite the fact that the undefined references to Chapter VIII of the UN Charter were clarified before and at the end of the Cold War era as a result of practical relationships of the UN with regional organizations. In this connection, the experience of the Cold War did little to clarify the role of regional organizations in the maintenance of international peace and security within a UN context.²¹⁷ With the onset set of the Cold War, the United Nations Security Council (UNSC) became paralyzed.²¹⁸ With the exception of Korea and the Belgian Congo, the Council authorized no enforcement missions. Instead, the paralysis sparked a remarkable increase in the number of regional organizations devoted to promoting peace and security including the North Atlantic Treaty Organization (NATO), the Warsaw Pact, the South East Asian Treaty Organization (SEATO), and the Central Treaty Organization (CENTO).²¹⁹ Despite the proliferation of these groups, only once did a regional organization act in a peacekeeping or peacemaking capacity. For instance, during the 1979 Chad civil war, a conference held at Kano, Nigeria agreed on a peace framework for Chad to which the highlights of the framework included the creation of a government of national unity and the insertion of a force sponsored by the Organization of African Unity (OAU).²²⁰ However, the lack of a formal command structure, improper equipment, and a lack of financing doomed the IAF to failure.²²¹

²¹⁷ See Quayat super note 1

²¹⁸ Ibid

²¹⁹ Ibid

²²⁰ Ibid

²²¹ Ibid

Yet, the peace operation made by OAU in Chad was not even generally under the spirit of Chapter VIII of the UN Charter. Even though the operation represented a typical case where absence of clear modes of cooperation took place with reference to the role of regional organizations in the maintenance of peace and security, the UN did not overlook the problem faced by OAU. In spite of lack of clear and formalized reference of cooperation, the UN did little to improve the situation. What all the UN could do was the approval Resolution 504²²² on 30 April 1982 and the Resolution only tacitly recognized the IAF, and requested the UN Secretary-General to solicit voluntary financial contributions to the force.

Moreover, at the end of the Cold War, though a change of belief was made in the Security Council to fulfill its promise to the maintenance of international peace and security through a dramatic increase in size and number of UN peace operations, the involvement of regional organizations had been kept to a minimum. This all totally is the result of the existence of blurred affirmations of reference of cooperation between the UN and regional organizations. The tragedy of the conflict in Somalia can be such evidence to the case here. On 3 December 1992 the SC adopted Resolution 794²²³ that created the Unified Task Force (UNITAF) under the command and control of the United States. Operation Restore Hope was authorized under Chapter VII of the Charter to employ all necessary means to establish a secure environment in Somalia for the safe delivery of humanitarian assistance. Somalia, which had descended into civil chaos in 1989, had no functional government and was ruled by well-armed warlords. On 4 May 1993, the United Nations Operation in Somalia II (UNOSOM II) replaced UNITAF as the force responsible for security in Somalia. Despite the shift away from US command and control, the US remained the single largest contributor to UNOSOM II. However, because of different reasons, the UN ended its tragic involvement in Somalia after the departure of the US from UNOSOM II

²²² Ibid

²²³ Ibid

Moreover, as a result of the imprecise stipulation of means of cooperation under Chapter VIII of the UN Charter absorb and address the past trends or practice of the role of global and regional organizations in the maintenance of peace and security in line with such Chapter, the inclusions of the concepts as references on the relationships between the UN and regional organizations was forwarded. In these relations, as the cold war ended, it was hoped that the relevant parts of the UN Charter concerning the role of regional organizations and arrangements in the maintenance of international peace and security could be invoked effectively. The following recommendation of the Secretary-General, in *An Agenda for Peace*, issued on 31 January 1992, toward a greater role for regional organizations in peace-related activities could be taken as an exemplary affirmation of the aforementioned hope. The Secretary-General recommended:

“But in this new era of opportunity, regional arrangements or agencies can render great service if their activities are undertaken in a manner consistent with the purposes and principles of the Charter, and if their relationship with the United Nations, and particularly the Security Council, is governed by Chapter VIII. ... Under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security, but regional action as a matter of decentralization, delegation and cooperation with the United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs. ... and should the Security Council choose specifically to authorize a regional arrangement or organization to take the lead in addressing a crisis within its region, it could serve to lend the weight of the United Nations to the validity of the regional effort”.

Based on the past experience and the current trends in relation to Chapter VIII, the main challenges of cooperation/coordination under Chapter VIII in a way that offers important

perspectives for viewing the capacity of peace operations by the AU-IGAD are to be presented in the subsequent sub-sections. These include discussions of various issues concerning how the UN, regional sub regional in Eastern Africa are expected to work together; and how they could cooperate and coordinate in developing and better tools for conducting peace operations. Before indulging into the challenges with respect to legal relations as provided under Chapter VIII, it would be of paramount significance to highlight the meaning and components of the term cooperation and coordination. Hence, the following excerpt by a certain scholar;

*“Cooperation can be considered to be ‘working together for a common purpose’. It is as much an attitude as it is a physical act. It is ‘a willingness to explore possibilities in partnership with other ‘stakeholder and, if agreed, to pursue a course of action. The fundamental pre-requisite for cooperation is communication, personal connection and shared analysis. Without effective communication, the personal and professional relationships that underpin cooperation cannot develop. Moreover, communication is essential not only to develop relationships in the first instance, but also to share relevant information, to jointly develop plans, policies and procedures, and to be able to work together on common objectives in support of a peace operation’s mandate.”*²²⁴

Moreover, coordination also incorporates further concepts that would help to analyze Chapter VIII in its relation to UN-AU-IGAD for effective peace operations in Eastern Africa. Hence the term coordination has been defined as;

“Coordination implies cooperation, but extends further to the systematic use of policy and actions to achieve mandated aims in a cohesive and effective manner by leading, planning, managing, negotiating and implementing. The aim is to achieve effective and

²²⁴Elanders Gotab, The Challenge Project pp.40-41 available on www.Challengesproject.net/roach/images/pdf/phase_II_concluding_report.pdf. Visited on December 07 2008

efficient results by harmonizing, prioritizing and sequencing of separate components and actor activities. Coordination needs to involve all disciplines with a part to play in achieving a specific objective-political, security, humanitarian and developmental, peacebuliding and sustainability."²²⁵

If cooperation and coordination imply the abovementioned concepts which could entail and serve as important perspective to analyze and evaluate the effectiveness and efficiency of peace operations, one could easily discern the absence of express mandates or of clear references substantially implying and containing the aforementioned concepts under Chapter VIII of the UN Charter. It can also well be argued that such absence in Chapter VIII have implicated different implications of the Charter thereby resulting in the 'impotence' of the UN Charter, or its Charter, to effectively deal with the main legal and practical issues which need to be addressed.

Apart from the abovementioned assertions, worthy of note are arguments propounding the role of regional organizations, via peace operations, inter alia, as constitutive of one of the roles of these organizations, as partners, in contribution to the UN and international community toward the maintenance of international peace and security. This argument was presented as stemming from Chapter VIII the UN Charter that underlines the role that regional organizations can play as partners of the UN in maintaining of international peace and security.

Hence, in this connection, in seeking to improve the cooperation and coordination between the United Nations and regional organizations; especially, the African Union, there are several issues which should be resolved concerning how to interpret Chapter VIII UN Charter.²²⁶ Part of this deals with the discussion of the role of regional organizations broadly, but the AU specifically, in international peace and security but it is

²²⁵ Ibid p. 41

²²⁶ United Nations Security Council p. 6 available on <http://www.globalplicity.org/Security/peacekpg/region/0407aficaunion.pdf> visited on December 03, 2008

also about the type, nature and division of responsibilities.²²⁷ Any endeavor to enhance the relationship between the United Nations and regional organizations under Chapter VIII will need to be based on a clearer definition of the basis and processes of such cooperation.²²⁸ While both the United Nations and regional organizations, particularly the African Union, refer to partnership, there remains the potential for misunderstanding and misperception concerning the meaning and scope of such a partnership.²²⁹ Hence, from the statements it may be concluded that, Chapter VIII of the UN Charter lacks clear framework of cooperation and coordination, and even does not possess how UN-AU-IGAD formalized the terms of their relationships and modalities of cooperation and coordination.²³⁰

It goes without saying that, cooperation and coordination are two concepts for effective peace operations. But Chapter VIII does not have any implied recognition. Hence as a result of contemporary UN-AU-IGAD peace operations in Eastern Africa several issues require clarification. For example the doctrines of cooperation and coordination and other legal issues need to be clear and formalized. In this connection, because of such issues, as African Union develops interest and ability to lead operations, apprehension with United Nations is expected to exist. The UN is struggling to meet its basic requirements of fielding concurrent, large mission mandated by the Security Council as the expanding role of regional actors provokes the question of priorities in support for their peace operations. Generally, several great challenges may arise, for instance, over supplies of available forces, logistics, funding and leaderships, as well as over what a UN authorization of a regional or sub regional group's operations means when there is no established standard or direct control. Tensions may also grow if the United Nations has not acted or is unlikely to authorize action, and regional groups seek to intervene, or when regional groups wish to take a lead but fall short of accomplishing their stated goals.

²²⁷ Ibid

²²⁸ Ibid

²²⁹ Ibid p. 6-7

²³⁰ Ibid

The above challenges have existed due to lack of well defined and formalized, clarified terms of reference of the concepts of cooperation and coordination under Chapter VIII of the UN Charter. Believing the challenges, there are recent attempts to bring forth framework of cooperation for peace operations further to make clear the idea of Chapter VIII. For instance, in the AU Summit of January 2007 requested that the UN should consider funding the peace support operations undertaken by the AU or under its authority and with the consent of the UN Security Council.²³¹ This demand has resulted in consideration of the legal lacuna of Chapter VIII by the UN Security Council. To this effect, the UN Security Council has requested the Secretary-General to provide a report, in consultation with relevant regional organizations, to include specific proposals on how the United Nations can better support arrangements for further co-operation and co-ordination with regional organizations on Chapter VIII arrangements.²³²

Furthermore, the aforementioned challenges are not as such the only problems of the Charter of the UN but also delve into the constitutional documents of regional organizations which do not have clearly stated means of cooperation. Given these challenges, the AU has endeavored to undertake institutional reforms including the making of a reference to the organization's commitment of engaging in institutional cooperation and coordination with the UN. Nonetheless, like that of the Charter of the UN, the Constitutive Act the AU's failed to pin point the mechanisms for realizing the stated objectives of undertaking institutional cooperation and coordination among the UN and AU. In other words, although the Constitutive Act does state that one of the objectives (Article 3(a)) of the AU is to "encourage international cooperation, taking due account of the Charter of the United Nations," it does not state how this cooperation would take place. Thus, while the very stipulation of cooperation and coordination by the AU is deemed to be a major reform from the OAU framework, the absence of detailed procedure on the implementation of cooperation and coordination commitment with the world body is becoming a challenge for effective peace operation in Eastern Africa.

²³¹ Africa Partnership Forum, (Berlin, German 22-23 May 2007) p.4 available at <http://www.oecd.org/dataoecd/57/52/38666711.pdf> visited on October 29 2008

²³² Ibid

Another set of challenge in relation to the interpretation of the Charter seems to be the linkage between the African Union Peace and Security Council with the United Nations Security Council. Whereas, the UN has primary responsibility for peace and security globally, it is not clear whether the AU has assumed that role continentally in Africa based on the AU Constitutive Act and on the arguments of “The Principle of Responsibility to Protect” and with the notions of “African solutions for African problems. This further raised a challenge as to the funding of peace operation conducted by the AU and IGAD. This is mainly because, as some argued if peace operations are conducted without prior authorizations, the UN is not responsible for any expenses incurs particularly in relation to the question of funding.

In order to tackle the above challenges, the United Nations clearly needs a sustainable formal process to establish working relationships with the African Union and IGAD and to set priorities for co-operations and coordination. Cooperation with the African Union would benefit from a legal approach in peace operations. Without clear legal mechanisms to cooperate and coordinate with the AU and IGAD on sustainable bases, since there are attempts of co operations in ad hoc bases in case of deployment forces, future peace operations for the purpose of maintenance of peace and security in Eastern Africa would not be effective.

4.3 The Evolving Modes of Cooperation's of UN-AU-IGAD in Peace Operations and, its Challenges

4.3.1 General Overview

It goes without saying that a legal relationships between UN and AU-IGAD is premised under Chapter VIII of the UN Charter, in order to encourage “ pacific settlements of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by references from the Security Council”. Hence, finding a possible legal framework of modes of cooperation/coordination in Chapter VIII would be essential for the UN’s long-term ability to work with regional and sub-regional

organizations. In this bond, in past recent years, practically arguments and supports are forwarded for effective utilization of the Charter's provisions dealing with the role of regional arrangements for the maintenance of peace and security. In this correlation, there have been few attempts to clearly delineate the role of regional organizations in UN peace operations to make highlight the mechanisms of cooperation between the UN and regional organizations. On the occasion of the 50th anniversary of the United Nations, former Secretary General Boutros-Ghali released a follow up to his 1992 report *An Agenda for Peace*. Within the supplement, Boutros-Ghali devoted a substantial amount of attention to the role of regional organizations. In terms of peace operations, the follow up to *Agenda for Peace* lists three types of cooperation between the UN and regional organizations.

The following sub sections, examine the types of existing modes of cooperation/coordination and, their challenges and prospects which have been proposed out of the legal framework of Chapter VIII of the UN Charter.

4.3.2 Types of Evolving Modes of Cooperation/Coordination

Basically Chapter VIII of the UN Charter does not provide what modes of cooperation/coordination should exist between UN and AU-IGAD under the team of the Charter's arrangements in peace operations for the maintenance of peace and security in East Africa. However, practically, taking into cognizance of the role of regional and sub-regional organizations or arrangements for the maintenance of peace and security, the Secretary-General proposed various modes of cooperation/coordination between the UN and AU-IGAD in the conduct of peace operations. The Supplement to An Agenda for Peace, issued on 3 January 1995, outlined three different models of cooperation between the UN and regional organizations in the context of maintaining peace. These are :

- a) *Operational Support: This cooperation varies according to requirements on the ground. One example was the provision by NATO of air power to support the United Nations Protection Force*

(UNPROFOR) in the former Yugoslavia. (Although NATO does not consider itself a regional arrangement under Chapter VIII). Another, was the support provided by the NATO-led multinational Implementation Force/Stabilization Force (IFOR/SFOR) to the United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (UNTAES) in establishing a safe and secure environment in that region of Croatia and the operational support provided by the CIS forces to the UN observer mission in Tajikistan. The European Union has provided support in Eastern Slavonia, Bosnia and Liberia while the Western of the UN peacekeeping forces in Iraq/Kuwait.²³³

*b) **Co-deployment:** UN field missions have been deployed in conjunction with the peacekeeping forces of ECOWAS in Liberia and Sierra Leone, and of the CIS in Georgia and Tajikistan. This model has again been followed in Bosnia and Herzegovina where the UN and regional organizations and arrangements are co-deployed with different mandates, but for the common purpose of bringing peace and stability to the country: The United Nations Mission in Bosnia and Herzegovina (UNMIBH) includes the International Police Task Force (IPTF), which among other things monitors the local police; the NATO-led multinational peacekeeping force (IFOR/SFOR) helps maintain a safe and secure environment; OSCE assists in the organization of elections; the Office of the United Nations High Commissioner for Refugees (UNHCR) provides care for refugees; while the European Union provides development assistance; and the Office of the High Representative is responsible for overall coordination. Each organization is also responsible for monitoring protection of human rights.²³⁴*

²³³Ibid

²³⁴Ibid

*c) Joint Operations: In Haiti, the UN and the OAS jointly launched the International Civilian Mission in Haiti (MICIVIH) for which the staffing, direction and financing were to be shared between the UN and the OAS. This arrangement has worked and it, too, is a possible model for the future that will need careful assessment.*²³⁵

What is important here is that, regardless of the role played by the regional organizations, the UN under all typologists listed plays a role, for instance in some of in deploying forces.

4.3.3 Case Study: Operation in Burundi and Darfur

4.3.3.1 General Overview

In the African continent, inter-state and intra-state conflicts have been, and still are the most evident challenges to peace and security. For instance, the DRC intra state conflict now is the worst where many people are displaced from their home country. When we come to Eastern Africa, the challenges are further than other parts of Africa. Intra-state conflicts in Somalia and the Sudan, and inter-state conflicts between Ethiopia and Eritrea on one hand and Eritrea and Djibouti on the other are the current international, regional and sub-regional threat to peace and security. As a result of such conditions, Eastern Africa is one of the sub-regions in the African continent where UN and AU-IGAD peace operations missions have been conducting until presently. For instance, Ethiopia/Eritrea and the Sudan, in the future Somalia are the hosts of UN-AU-IGAD peace operations. Nowadays, the AU Peace and Security Council is busy in adopting a decision on conducting peace operations in Somalia after the government of Ethiopia has decided to withdraw their soldiers.

Accordingly, as results of the efforts of peace operations by UN and AU-IGAD for the maintenance of peace and security to Eastern Africa, it is true that institutional

²³⁵Ibid p. 8

cooperation/coordination between them are be normal. In this connection, it is apparent that UN and AU-IGAD cooperation/coordination are taking a new direction. They had conducting peace operations in the forms of *hybrid*, *joint* and *transition*. Hence, it is important to explore the challenges and the prospects faced in the various modes of co operations based on case studies.

Here, since AU has been the youngest and of with a very short experience, the challenges with respect to the modes of cooperation have been seen in the practice to two cases. In this link, in its history the AU launched its first peace operation in Burundi and second in the Sudan and Somalia in various modes of cooperation with the UN and IGAD.

4.3.3.1 Case Study: Operations in Darfur and Burundi

The conflict in the Western Darfur region of the Sudan represents one of the most critical test cases. Not only the hard efforts of the UN, as a custodian of international peace and security, and the regional system, the AU, but also it is a test for the practical implementation of the evolving mode cooperation/coordination between UN and AU. Of particular concerns are the challenges it pause to the international bodies in terms of their modes of peace operations roles and efforts towards ending what has been described as ‘the worst humanitarian catastrophe since the 1994 Rwandan genocide’ through their hybrid modes of peace operation.

Accordingly this case study examines the new modes of AU/UN hybrid peace operations, identifies the challenges to such new modes in line with the legal framework of the Charter of the United Nations.

The term ‘hybrid operations’ is increasingly used as shorthand for the different and overlapping forms of international engagement currently found in many crisis and

conflict zones.²³⁶ As a model, hybrid operation is evolving on a case-by-case basis.²³⁷ And, hence, this obviously makes it difficult to define and categorize hybrid operations. The term is therefore often considered self-explanatory and left undefined.²³⁸ However, despite the difficulties of finding legal as well as universally accepted definition for the term “hybrid and their components of three modes of cooperation”, it may be helpful to explore other definitions given by some writers or scholars. Hence, in this connection, the Swedish Challenges-project provides the following description, which will serve as a working definition:

*“Increasingly operations have taken on a hybrid character with two or more organizations responsible for different elements of the international response. Differences in circumstances have led to no standard form being adopted, and thus the UN has sometimes deployed troops alongside those of other organizations with without formal cooperation, or precede of followed a multinational, regional or bilateral force, with responsibilities and relationships changing as the mission matures”.*²³⁹

Whereas, in spite of admitting the fact that there has not been a universally accepted definition so far to the term ‘hybridisation or ‘hybridism’, a suggestive generic definition (Aboagy2 2007:2) the elements of which have been presented to be gathered from the key lessons and basic features of the joint AU/UN Hybrid Operation in Darfur (UNAMID) has been forwarded. Hence, the suggestive definition of the term ‘hybridisation’ contains the following elements altogether:

“► A joint multinational and /or multidisciplinary operation in a specific area of operational responsibility.

²³⁶UN Peace Operations in the 21st Century: State-Building and Hybridity p. 30 available at http://www.diis.dk/graphics/publications/Reports%202007/RP_2007_11_web.pdf visited on 16 January 2009

²³⁷ Ibid P.27

²³⁸ Ibid

²³⁹ Ibid

- ▶ Conducted by forces from different organizations and/or states each with its own mandate (objectives, missions, tasks, end states, composition, etc).
- ▶ Under different status of forces or Missions Agreement (SOFA/SOMA), and host nation agreements.
- ▶ With different rules of engagements.
- ▶ Each under the command and control of its respective mandating authority.
- ▶ Each retaining its organisation's identity throughout the operation.
- ▶ Each undertaking different functional missions and tasks.²⁴⁰

From the explanations, it can be concluded that the various forms or modes of cooperation proposed by the Secretary-General Boutros Galle in his supplement to Agenda for Peace can be categorized under such form of operation. This is mainly because most attempts at categorizing hybrid operations are inspired by reports prepared to the DPKO's department for best practice according to which have been distinguished into four different types of formal arrangements. These being: integrated operations (different organizations operate with single or joined chain of command); Coordinated operations (different organizations operate side-by-side but coordinated) ; Parallel operations (UN deploys alongside another organization's force without formal coordination) ; and Sequential operations (UN precedes or follows another force).²⁴¹

Similarly, the conflict in Burundi is another area of discussion in relation to the challenges on other modalities of cooperation. AU (AMIB) and the UN (ONUB) were participants in the peace settlement of Burundian conflict and violence. The two organizations

²⁴⁰ Festus Aboagye, (2007), The AU/UN Hybrid Operation in Darfur: Challenges, Lessons and Implications for Regional Peacekeeping Training, p 6 available at www.apsta-africa.org/pdf/darfurfestus.pdf visited March 10 2009

²⁴¹ Linnea Bergholm, The African Union (AU) and its commitment to non-indifference: can the AU be an actor for the promotion of human security? P. available at http://www.dfh.uu.se/pdf/er/cc5/cc5_web.pdf visited on 16 January 2009

cooperated in the form of co deployment and operational support (transition or sequential) modalities. Accordingly, the forgoing cases are taken to explore the major challenges encountered on the existing modalities of cooperation between the UN and AU-IGAD.

4.3.3.2 *The Case of Darfur*

Since early 2003, Sudanese government forces and militia called “Janjaweed” have engaged in armed conflict with rebels groups called the Sudanese Liberation Army/Movement (SLA/SLM) and the Justice and Equality (JEM).²⁴² Hence, then, the crisis in the Sudan’s Western Darfur has become one of the world’s worst human rights crisis. The scale and brutality of this complex crisis have compelled some observers to call for international intervention in accordance with the principles underpinning *The Responsibility to Protect*, claiming that the threshold conditions for international response have been met (and exceeded) in Darfur and the international community is obligated to initiate robust action to curtail the violence.²⁴³

As a result of these situations, both African Union and the UN have been taken different steps to make end violence and humanitarian crisis. In the first place, by employing different mechanisms, the African Union has tried to settle the conflicts. In this connection, in March 2004, the AU began issuing public statements expressing its concerns over the “grave humanitarian situation in the Darfur region”, condemning the Janjaweed militia for its campaign of attack and destruction against the civilian population.²⁴⁴ These early declarations were reinforced by concerted action on the part of the AU to play a lead role in the political negotiations between the government and the rebel groups in the Chadian capital of N’djamena, beginning in March 2004.²⁴⁵ The process produced a Humanitarian Ceasefire Agreement signed by the parties to the

²⁴² Human Rights Watch; Q and A: Crisis in Darfur,(2004), available at <http://www.hrw.org/english/does> visited on February 02, 2008

²⁴³ See Powell Super note at 24

²⁴⁴ Ibid

²⁴⁵ Ibid

conflict on 8 April 2004.²⁴⁶ This agreement calls on the parties “to cease hostilities for renewable 45-day periods, to free ‘prisoners of war’ and to facilitate humanitarian access to IDPs and other civilian victims”.²⁴⁷

After a number of steps, at its July 2004 Summit, the African Union agreed to deploy over 300 troops from Nigeria and Rwanda to provide protection for the AU observers in Darfur.²⁴⁸ However, in a July 27 the communiqué from the Peace and Security Council, the AU signalled its willingness to transform this force into a peacekeeping mission with greater presence on the ground and a more robust mandate, if necessary, to ensure effective implementation of the ceasefire agreement. Critically, the PSC explicitly stated that “protection of the civilian population” would be a primary objective of this invigorated mission, along with the disarmament and the neutralization of the Janjaweed and the facilitation of the delivery of the humanitarian assistance.²⁴⁹ In October 2004, the PSC released another communiqué, expounding the revised mandate of the expanded AU deployment. The communiqué envisioned a larger African Union Mission in Sudan (AMIS) to be deployed for a one year, with the possibility of renewal, consisting of over 3,320 personnel, including military personnel, observers, civilian police, as well as civilian personnel.²⁵⁰ AMIS has been given the following mandate: to monitor and observe compliance with the April 8th Ceasefire Agreement, and any future agreement; to assist with confidence building; and to help create conditions sufficiently secure for the delivery of humanitarian relief and, beyond that, the return of Internally Displaced Persons (IDPs) and refugees to their homes, in order to assist in increasing the level of compliance of all parties with the Humanitarian Ceasefire Agreement and to contribute to the improvement of the security situation throughout Darfur.²⁵¹ Following the situation, the UN Security Council took two important steps in 2005 as well. One was the referrer of the situation in Darfur to the International Criminal Court in The Hague because of

²⁴⁶ Ibid

²⁴⁷ Ibid

²⁴⁸ Ibid p. 5

²⁴⁹ Ibid

²⁵⁰ Ibid

²⁵¹ Ibid

crimes against humanity and war crimes in Darfur.²⁵² The Second step was establishing a sanctions committee and a panel of experts to investigate individuals who violate the arms embargo, commit abuses of human rights, or impede the peace process.²⁵³

In addition to the abovementioned steps, the UNSC is also taken other steps through adopting several Resolutions. The resolutions cover steps from establishing the United Nations peacekeeping forces up to formations of joint peace operations with AU. In the first place, with the continuing of fighting between the parties and other disaster, a proposal to replace or “blue Late” AMIS with the UN force gathered momentum in January 2006 as AMIS funding problems increased.²⁵⁴ The proposal for the UN force has met stiff resistance from the Sudan government. Later on, after months of debate and negotiations, the UN Security Council delegations secured assurance from President Al-Bashir and from other members of the Sudan government that Sudan unconditionally accepts the deployment of the AU/UN hybrid peacekeeping force for Darfur.²⁵⁵ After the establishment of the UNMIS mission in Darfur, the UNSC passed a resolution to call up coordination. For instance, the UN’s Security Council Resolution 1590 adopted on 24 March 2005 does call for better coordination between AMIS and UNMIS, the UN force that will monitor the comprehensive peace agreement negotiated between the GoS and the SPLM.

Later on, following Sudan’s acceptance of the peace operation mission, the AU Peace and Security Council (PSC), at its 22 Jun 2 2007 meeting, endorsed the AU/UN hybrid operation to Darfur and extended AMIS’ mandate until 31 December 2007, to ensure a smooth transition between AMIS and the UN operation.²⁵⁶ Finally, on July 31 2007, the UN Security Council passed Resolution authorizing a joint United Nations/ Africa Union

²⁵² Human Rights Watch; In context, (2006), available at <http://www.hrw.org/background/africa/sudan0406/2.htm> visited on February 02 2008

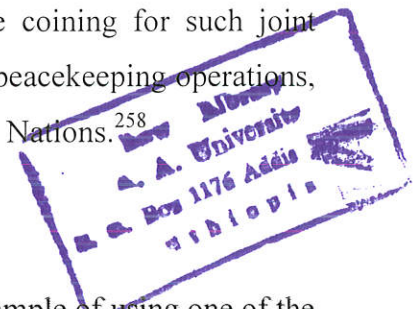
²⁵³ Ibid

²⁵⁴ Ibid

²⁵⁵ UN Department of Public Information, Daily Press Briefing, 18, June 2007, available at <http://www.un.org/News/briefing/docs/2007/db070618.doc.htm>. visited on 16 January 2008

²⁵⁶ African Union Peace and Security Council, *Communiqué on the situation in Darfur*, 79th meeting, PSC/PR/Comm(LXXIX), 22 June 2007.

peacekeeping operation for the Sudan's Darfur region/. Under UN Security Council Resolution 1769, the 26,000-strong United Nations-African Union Mission in Darfur (UNAMID) will be made up of 19,555 military personnel, including 360 military observers and liaison officers, a civilian component including up to 3,772 international police and 19 special police units with up to 2,660 officers. Acting under Chapter VII of the UN Charter, the Council has authorized UNAMID to take all necessary action to support the implementation of the Darfur Peace Agreement, as well as protect its own personnel, humanitarian workers and civilians "without prejudice to the Responsibility of the Government of Sudan."²⁵⁷ Indeed, the term "hybrid" is de coining for such joint operation. Jane Holl Lute, assistance Secretary-General for UN peacekeeping operations, calls a joint force as an "unprecedented "operation for the United Nations."²⁵⁸



4.3.3.3 *The Case of Burundi*

It goes without saying that, the case in Darfur is taken as real example of using one of the modalities of joint operations or as those coning as "hybrid "in which that proposed by the former Secretary-General Dr, Butrous Gail. Before examine the modalities followed in Burundi, it is important first to pin points backgrounds in relation to AU and the UN peace operation. Accordingly, in the first place violent conflict in Burundi has a long and complex history. The latest cycle of violence erupted in 1993 when Melchior Ndadaye, Burundi's first democratically elected president and leader of the Hutu Front pour la Démocratie au Burundi (FRODEBU), was assassinated by the Tutsi-dominated army, resulting in open warfare between Hutu rebels and the military.²⁵⁹ The ensuing ethno-political violence has claimed the lives of over 300,000 Burundians – many of them civilians – and has displaced millions more.²⁶⁰ A number of African leaders, including former Tanzanian president Julius Nyerere, former South African president Nelson

²⁵⁷ UN Security Council Resolution 1769 of 31 July 2007.

²⁵⁸ Council on Foreign Relation, Lute: Hybrid peacekeeping Force in Darfur an "unprecedented" operation available at <http://www.cfr.org/publication> visited on February 02 2008

²⁵⁹ See Powell super note at 24 p. 1

²⁶⁰ Ibid

Mandela and former South African deputy president Jacob Zuma, have sought a resolution to the conflict.²⁶¹

In this connection, the OAU/AU has been actively engaged in efforts to resolve the conflict in Burundi since 1993. The pan-African organisation has accompanied on-going negotiations coordinated by the regional powers and is a co-signatory to all major political agreements.²⁶² In April 2003 the AU deployed its first peacekeeping mission to support the peace process in Burundi.²⁶³ While the 2000 Arusha Agreement originally called for a UN peacekeeping operation to assist with the implementation of the peace agreement, the UN would not authorise a mission in the absence of a comprehensive ceasefire agreement.²⁶⁴ Consequently, the AU, regional leaders and the Burundian parties agreed to the deployment of the African Mission in Burundi (AMIB) to operate under the auspices of the AU.²⁶⁵ At full capacity, AMIB consisted of some 3,335 troops from South Africa, Ethiopia, and Mozambique with additional military observers from Burkina Faso, Gabon, Mali, Togo and Tunisia. AMIB's central objective was to create conditions sufficiently stable for the UN Security Council to authorise a UN intervention. AMIB was deployed based on an understanding that the UN would take over peacekeeping responsibilities in Burundi after twelve months.²⁶⁶ It constituted what de Coning refers to as a "hybrid mission" inasmuch as AMIB was deployed for peacekeeping in the absence of a comprehensive ceasefire but lacked the civilian functions that usually form part of such complex peace operations.²⁶⁷ AMIB essentially provided the security dimension of the UN's political mission in Burundi. It was through this political mission that it was officially linked to rest of the UN system. AMIB was specifically mandated, among other tasks, to:

“► establish and maintain liaison between the parties;

²⁶¹ Ibid

²⁶² Ibid

²⁶³ Ibid

²⁶⁴ Ibid

²⁶⁵ Ibid

²⁶⁶ Ibid

²⁶⁷ Ibid

- ▶ monitor and verify the implementation of the ceasefire agreements;
- ▶ facilitate movement of combatants toward assembly areas;
- ▶ facilitate and provide technical assistance to the disarmament, demobilisation and reintegration (DDR) process;
- ▶ facilitate the delivery of humanitarian assistance, including to refugees and internally displaced persons; and
- ▶ coordinate mission activities with the UN presence in Burundi.”²⁶⁸

It is important to note that the mission was not given an explicit mandate to protect civilians. However, after several months on the ground, senior AMIB officials drafted rules of engagement (ROEs) to allow their troops to use force to protect civilians in “imminent danger of serious injury or death”.²⁶⁹ According to these ROEs, troops could intervene with force to protect civilians in cases of genocide and mass killings along ethnic lines, although they required prior authorisation from military and civilian officers.²⁷⁰

In May 2004, the UN Security Council passed Resolution 1545 (2004) authorizing the deployment of a UN peacekeeping operation in Burundi.²⁷¹ One month later, after 14 months on the ground, AMIB was officially taken over by and absorbed into the UN Operation in Burundi (known by its French acronym, ONUB).²⁷² The UN Mission comprises 5,650 troops from the three AMIB contributing nations as well as Kenya, Nepal, and Pakistan. It has an annual operating budget of close to US\$333.2 million.²⁷³ ONUB has been provided with a Chapter VII mandate and has been deployed to ensure respect for the ceasefire agreements, to carry out disarmament, demobilization and cantonment activities, and to contribute to the successful completion of the electoral

²⁶⁸ Ibid

²⁶⁹ Ibid

²⁷⁰ Ibid

²⁷¹ UN Security Council Resolution 1554 of May 2004.

²⁷² Tim Murithi, *The Africa Union’s evolving role in peace operations: the Africa Union Mission in Burundi, the Africa Union Mission in Sudan and the Africa Union Mission In Somalia* p.75 available at <http://www.globalpolicy.org/security/peacekpg/region/2008/0101evolving.pdf> visited on December 3 2008

²⁷³ Ibid

process. It is also authorised to protect civilians under direct threat of physical violence.²⁷⁴

The case of peace operation mission in Burundi is also another area of finding modalities of cooperation between AU and the UN. The precedent reflects the various modes of peace operations similar to which proposed in the Supplements of Agenda for Peace. The mode of the mission was de coining as of a Co-deployment in one side and Transition in the other. Here, the term 'Co-deployment' is simply to mean that deployment of peace operation to a country or a region alongside another peace operation mission. On the other hand the term 'Transition', generally, refers Sequential operation: to mean that UN precedes or follows another force.²⁷⁵ For instance, in Europe, the tradition has been for the UN and NATO to hand over missions to the EU and in Africa a widespread perception is that the UN normally would take on the responsibility for long-term peace building after an early intervention by the AU possibly also including a short-term reinforcement by the EU.²⁷⁶ Indeed, in relation to these modes of peace operations, while not authorized by the UN Security Council, the mission was set up with the expectation that the AU would hand it off to the United Nations which is know as a Transitions or Sequential modes of peace operation. On the other hand during the AMIB deployment, the United Nations operated alongside the AU in the Burundi political process and offered resources from its MONUC peacekeeping mission in the Democratic Republic of the Congo; this mode generally reflects the concepts of Co-deployment peace operations. To sum up, the cases in Sudan (Darfur) and Burundi demonstrate that the practice of the various modes of peace operations in the maintenance of peace and security in Eastern Africa having in mind the challenges that had faced alongside the operations.

²⁷⁴ Ibid

²⁷⁵ See IGAD super note at 80 p. 27

²⁷⁶ Markus Derbiom, Eva Hagstrom frisell, Jennifer Schmidt, UN-EU-AU Coordination in Peace Operation in Africa, p. 45 available at <http://www.foi.se/upload/projects/Africa/un%20Eu%20AU%20coordination520in%20peace%20Ops%20in%20Africa%20foir2602.pdf>. Visited on December 3, 2008

4.3.3.4 Assessment on the Challenges of the Evolving Modes of Cooperation

Generally, “Collective efforts by regional organizations are entirely complementary to the purpose and principles of the UN Charter and are often undertaken in close cooperation with the UN.” On top of this, regional organizations are also mainly subordinate to the UN in matter of maintenance of international peace and security. Emphasizing to “the complementary and subordinate” relationship between the UN and regional organizations, Chapter VIII of the UN Charter provided the way through which the Security Council may strengthen its interaction with regional organizations. However, as has been repeatedly asserted, the Charter lacks the forms or modes of cooperation between the UN and regional organizations. Filling this legal loop hole in the Charter is the evolving mode of cooperation witnessed after a Supplement to An Agenda for Peace in line with the growing tendency of peace operations by UN, regional and sub-regional organizations.. In particular, *Co-deployment, Hybrid and Transition or Sequential* modes of cooperation are currently in operations between the UN and AU peace operation missions in Easter Africa. Yet, it would still be obvious that Chapter VIII of the UN Charter is not explicit on the possibility of establishing such *Hybrid* or *Co-deployment* or *Transition* modes of peace operations and one cannot even finds equivalent legal terms. This reason is witnessed a statement made by Jane Holl Lute, assistance Secretary-General for UN peacekeeping operation, calla a joint force as an “unprecedented” operation for the United Nations and never before in the history of the United Nations has the AU and the UN peace keepers worked explicitly with another organization.²⁷⁷ However novel they may be, the adoption of these new modes of cooperation has not reminded without challenges.

Principally, all modes of operations are by nature complex, multinational, multicultural and multi-dimensional. Furthermore they take place in difficult political, security, economic and humanitarian environments. Hence, setting a degree of predictability in those complex arrangements, whilst the necessary political autonomy of each organization and the responsibilities of the Security Council, will be a major challenge in

²⁷⁷ See Lute super note at 254

the years to come. For instance, in the Darfur case, while the latest UN Security Council resolution may pave the way for a more efficient peacekeeping force in Darfur, there are formidable challenges calling for concern regarding the mandate and command control of the force, troop contributions, the timetable for deployment, funding and the government of Sudan's resort to delaying tactics in particular. One of the challenges that AU-UN mission is going to face is the force's mandate.²⁷⁸ So much so that, while the mandates of peace operation force under chapter VII mandate is highly welcomed; the acknowledgement of Sudan's sovereignty within the same paragraph quite to be troublesome on the face of the familiar attacks launched by the Sudanese Government's in its own civilian population. This to mean that, under the hybrid UNAMID formulation, operational command and control is in the hands of both institutions for the first time, in one of the most complex operational and political environments experienced²⁷⁹ would be the challenges of effective cooperation. As a result of these political realities, (the compromise UNAMID as shaped by an intransigent Sudanese government, as well as the individual policies of members of the UN Security Council), UNAMID'S mandates have not been matched with the necessary resources and capabilities- military, civilian and logistical.²⁸⁰ The operation's dual decision-making and command structures risk watering down accountability across the UN and AU, an issue that has also plagued the parallel UN/AU hybrid mediation process.²⁸¹

Moreover, another challenge that UNAMID encountered is one with respect to troop contribution. UN Security Council 1769 remains vague on troop contributions for the hybrid force and calls on the UN Secretary-General and the Chairperson of the African Union Commission to agree to the final composition of the military component of UNAMID. The government of Sudan has been resisting the deployment of non African troops into its territory, whereas only few African countries contributed troops to AMIS

²⁷⁸ Towards an Understanding of peacekeeping Partnerships: Prospects, Lessons Learned and the Future Partnerships in Africa p. 2 available at

<http://www.cic.nyo.edu/internationalsecurity/docs/towardsanunderstanding.pdf> visited on

²⁷⁹ Ibid

²⁸⁰ Ibid p. 3

²⁸¹ Ibid

and from all indications, they are not prepared to make any further contributions. Unlike troop's contribution, one of the most critical challenges UNAMID will be facing is the question of funding. The hybrid operation is expected to cost more, yet no detailed long-term funding plan has been put in place. In this relation one may argue the concepts cooperation in light of UNSC Resolution 1590. In fact it is true that after the establishment of the UNMIS mission in Darfur, the UNSC passed a resolution to call up coordination. For instance, the UN's Security Council Resolution 1590 adopted on 24 March 2005 does call for better coordination between AMIS and UNMIS, the UN force that will monitor the comprehensive peace agreement negotiated between the GoS and the SPLM. This may eventually create space for UNMIS "to identify ways in liaison with the AU to utilize UNMIS's resources, particularly logistical and operations support elements, as well as resource capacity toward this end". However, it is not clear how this type of coordination might work in practice. In other word, the UN – through UNMIS – may be in the position to provide significant support to the AU, but it is not clear how this coordination might work in practice, given that each organisation has pursued a distinct course of action in Sudan. This is mainly because; the AU and the UN have charted out very distinct courses for action in Darfur. For example, the AU has led on the political negotiations and has provided a presence on the ground in a situation where the UN Security Council was paralysed.

In addition, several challenges are also seen in other modes of cooperation. In case of a co-deployment a command is one challenge for effective peace operations. For instance, challenges of the coordination in a mission area, as the EUSR and an EUFOR Force Commander in the field, under separate chains of command and with weak coordination arrangements, may well be troublesome.²⁸² In addition, co-deployments are often limited in time and scope, which reduce the incentives for transparency and information sharing, and these features may work counter-productively to the institutionalisation of trust and long-term commitment in peace support operation partnerships.²⁸³ On the other hand, the Transition instrument, however, contain risks since it relies on a level of predictability of

²⁸² Super note 97 p. 44

²⁸³ Ibid p.p 44-45

partnership that currently does not exist, for example, in UN-EU-AU relation.²⁸⁴ Furthermore, the ownership and responsibility for the outcomes of the various stages of a peace operation may become blurred. The inheritance of both perception and structure in handing over of responsibility is also a source of friction and here, UNAMID still struggling with the legacy of the perception of AMIS.²⁸⁵

Moreover, the problem of funding and the mechanisms of making the cooperation in practice are also challenges into the other existing modes cooperation; co-deployment, transitions or sequential. This is true in relation to the case in Burundi. In response to the conflict in Burundi, in April 2003 the AU deployed its first peacekeeping mission to support the peace process in Burundi (AMIB). AMIB's central objective was to create conditions sufficiently stable for the UN Security Council to authorise a UN intervention and was deployed based on prior agreement that the UN would eventually assume responsibility for the mission.²⁸⁶ In other word, AMIB was deployed based on an understanding that the UN would take over peacekeeping responsibilities in Burundi. The concepts related with the modalities of "transitions or Co-deployment. However, though the transition was so effective, it is not without challenges. In the first place, AMIB lacked the requisite financial resources to carry out such a robust mandate in the context of continued insecurity and was hampered by a lack of capacity (For example, the Peace and Security Council, and the Peace and Security Department, which were only coming into being when AMIB was deployed, did not have the institutional capacity to organise the financing or deployment).²⁸⁷ Moreover, though, the transition was a flat one and may highlight important lessons for future AU-UN operational relations, without legal framework, it could not possible to argue that the cooperation is more effective. The fact is true because, from the beginning of its engagement in Burundi, the OAU/AU worked closely with the UN and the two organizations developed a common understanding of the dynamics of the conflict in Burundi.²⁸⁸ As a result, they were able to

²⁸⁴ Ibid p. 47

²⁸⁵ Ibid

²⁸⁶ See Powell super note 24 pp. 2-3

²⁸⁷ Ibid

²⁸⁸ Ibid

reach consensus on the requirements for resolution and their respective roles for delivering on this agenda.²⁸⁹ Consequently, AMIB headquarters and the UN political office in Burundi were keen to coordinate efforts and developed informal mechanisms for sharing information, analysis and best practices throughout AMIB's tenure.²⁹⁰ But, despite the existence of some sort of mechanisms of cooperation/coordination at that time, since the ways of cooperation are informal, it is difficult to conclude to be an effective means.

Generally, it should be noted here that all of the above challenges are arising from the different meanings attributed to definitions of possible cooperation given by the former Secretary-General, Dr. Boutros- Gail's. His definitions have failed to determine who will be responsible for absorbing the costs of missions or which organization will act as the fulcrum in which type of operations. However, despite his ambitions, Boutros-Ghali foresees no instance where regional organizations are simply handed a peace operation.

What it is evident that, the cooperation between the UN and AU-IGAD in peace operations have had significant effects, the need to establish effective cooperation between will still be a source of contention in the peace mission for years to come, particularly in mission of large scale engagement with various modalities of cooperation. Hence, finding appropriate mechanisms for cooperation and coordination is important for operational efficiency. In other words, the major challenges impeding functional UN-AU-IGAD cooperation and coordination schemes need to be addressed in order to make operations more effective everywhere. Accordingly, a legal platform governing cooperation should be adopted having a binding effect on the concerned parties. In particular, the legal tools should clearly spell out the responsibility of the respective entities engaged in the mission. The UN, particularly the Security Council, should underline the importance of establishing a clear framework for cooperation and coordination between the UN and AU-IGAD, whenever the UN deploys forces alongside the forces of AU-IGAD. Such a framework should include specifying objectives, the

²⁸⁹ Ibid

²⁹⁰ Ibid

careful delineation of the respective roles and responsibility of the UN and the AU-IGAD and the areas of interaction of forces, and clear provisions regarding the safety and security of personnel.

Accordingly, for future effective peace operations in Eastern Africa, conceptual tools which are put forward by the United Nations Missions approach have paramount significance. The main conceptual tools to achieve integration and coordination suggested by such concepts include: emphasis on clear strategic frameworks, promoting common understanding and outlining the purpose and desired objectives; process for intergraded and joint analysis, planning and assessment; and structures that allow political direction to come from one office and for coordination in the field, suggestions for executive coordination bodies, joint implementation plans, extensive use of liaisons, decentralizations of decision-making, co-location of headquarters, and joint coordination of press and information activities are put forward.²⁹¹ If not, one may clearly forecast the effects of absence of a legal means for putting the ideas into practice. Furthermore, undefined strategic frameworks fail short of defining how, when and why different actors combined their efforts, and promoting a mutual understanding of the mandate, approaches of different actors to address the most important element of enhanced direction; and absence of an established level of predictability in the inter-organizational partnerships are further challenges in relation to the modalities of cooperation.²⁹² The simple fact of having modalities for UN support scheme and cooperation with the regional organization – such as the AU – will not be sufficient and sustainable unless backed by the necessary legal tools of enforcement.²⁹³ The legal framework, thus needed should be capable of providing predictable atmosphere for financial and resources support for regional peace operations. It is then that the objectives of UN-AU cooperation in the maintenance of peace and security in Eastern Africa will be successfully realizing the spirit of the UN and regional organizations cooperation as stated under Chapter VIII

²⁹¹ Executive Brief; UN-EU-AU coordination in peace operations in Africa p. 8 available at www.foi.se/upload/project/Africa/UN%20EU%20%AU20%coordination%20in%20peace visited on Dec. 07,2008

²⁹² Ibid

²⁹³ Ibid

of the UN Charter. Above all, such reform within the provisions of the UN Charter will have enormous impact in enhancing UN's overriding responsibility realizing sub-regional peace operations.

Furthermore, 'a full scale legal reform on Chapter VIII of the UN Charter requires contemplating about the adoption of new laws or rules sought to advance the role of the world body's cooperation with regional organizations in peace operation missions. In particular, any attempt to revitalize the modalities of cooperation envisaged under Chapter VIII decline to provide a solution on the problems possibly arising from the veto power exercised by the UNSC.'²⁹⁴ To this end, the task to be performed should answer the basic issue on what will be the panacea to forestall the political problems associated in UNSC voting procedures potentially impeding the manner or ways of modalities of UN cooperation with the regional organizations such as AU-IGAD-²⁹⁵ The process also calls for considering about the inclusion or formulations of more specific instructions for cooperation arrangement in the mandates itself which may lead the cooperation meaningful. This is because for instance, absence of concepts prescribing and establishing clear structures, processes and mechanisms of cooperation and coordination for joint operations or hybrid or co-deployment missions as well as means of financial support could be the elements that are of the major future challenges of cooperation in peace operations.²⁹⁶ For the purpose of changing the old legal relationships or in a quest of adding new framework for the formal mechanism for the new modalities of cooperation, one interesting problem would be aroused between UN and AU future cooperation in peace operations. On one hand, the Charter encourages regional organizations to undertake peacemaking initiatives in their respective regions. On the other hand, under Articles 53 of the UN Charter, regional organizations are, however, required to obtain authorization from the UN Security Council before any enforcement actions are taken and to keep the Council fully informed of their actions. But, currently the AU adopts principal sources of authority with respect to its interventions in Africa,

²⁹⁴ Ibid

²⁹⁵ Ibid

²⁹⁶ Ibid

with or without prior authorization from the UN. Such a new adoption is aroused from legal way of interpretations which pauses a major challenge for the conducting of peace enforcement operations in cooperation and coordination with the United Nation. Generally, having in mind such an unambiguous legal framework, further legal forms of cooperation between the UNSC and AUPSC in relation to the various proposed modalities of cooperation could be put in question. In this connection, the writers of this paper argues that the African Union and the sub-regional organizations must now fully accept the fact that they have to take the primary ownership of the efforts to solve the continent's problems especially those relating to peace and security. This is necessary because, in my view, the outside world has for sometime now, shown signs that it is becoming increasingly less enthusiastic in solving the continent's problems. Indeed, if the Union fails to take care of Africa's problems as a regional entity, it will have to continue to live with and shoulder costly humanitarian problems such as refugees and internally displaced persons, environmental degradations, as well as continue to bear witness to heavy loss of human life.²⁹⁷

With regard to the prime responsibility, while it is not questionable as to the necessity of observing the UN Charter stipulation as clearly defined in Chapter VIII, it must be take into considerations the most important role of the AU that can play should be a political one and where UN action is hesitant to manage an unfolding conflict in African continents.²⁹⁸ In line with this, the AU's endeavor to bring lasting peace and security within the continent may be fruitful if there is some sort of delegated power attributed to it or discretion to act taking into account the actual fact on the ground.²⁹⁹ If so the UN should also institute mechanisms that oversee AU and sub-regional actions and ensure that they are legitimate under Chapter VIII of UN Charter.³⁰⁰ Moreover, such delegated power will make the UN itself stronger and more relevant and, make it to recognize the

²⁹⁷ Ibid

²⁹⁸ Ambassador Sam B. (2002), the Role of Supra-regional Organizations and the UN in the Africa Union available http://www.uneca.org/eca_resources/.../2002_speeches/030302statement_amb_sam.ht accessed on December 10 2008

²⁹⁹ Ibid

³⁰⁰ Ibid



actions in the manner of cooperation in part of Chapter VIII of the UN Charter, and further sees to reform the Chapter.³⁰¹ The problem here is taking into the current roles of the AU; how certain functions could be devolved to it, which should proceed with plans to create a 15,000 strong African stand-by force by 2010 that it can active in cases in which the UN is unwilling to act could easily solved is so great.³⁰² Having taken on peace operation responsibilities that might otherwise have fallen initially to the United Nations; the AU has become a more substantive actor and UN partner in addressing peace and stability on Eastern Africa. Because of the organizations' shared interest in promoting peace and security in Eastern Africa, cooperation and coordination with AU and development of its peace operations capacity has become to be taken into consideration in future UN reforms. This analysis is affirmed in a meeting in a seminar held in the Center for Conflict Resolution (CCR) Cape Town, South Africa. In the particular meeting, participants deliberated the merits of institutional reform of the United Nations (UN) - a pivotal actor in Africa's security architecture- and considered a possible restructuring of its relationships with the Africa Union (AU) and Africa sub-regional organizations.³⁰³ In this connection, in support of such a priority, the following analysis has been stated:

A clear institutional division of labor based on respective capacities and political realities must be established. Drawing on the respective strength and weaknesses of the AU and UN, these organizations should better define burden-sharing mechanisms for peace operations on the continent, clarify each institutions roles and thus support more predictable responses in the future. Based on these defined roles, the AU Peace and Security Council and the UN Security Council should develop better methods of communication and establishing concrete and predictable funding mechanisms to support AU-lead peace operations. AU an UN cooperation on peace operations is critical necessity: the AU and the UN stand to retain

³⁰¹ Ibid

³⁰² The New Partnership for AFRICA'S SECURITY available at www.iss.org.za/index.php?link visited on 16 January 2009 P.12

³⁰³ Ibid p. 8

*their current responsibility for promoting security and developments throughout Africa in the years and decades ahead.*³⁰⁴

Generally, if the Security Council fails to encourage the UN and AU to facilitate the development of compatible legal framework for effective transitions between UN and non-UN peace operations, in close consultation with them that have experience in such transitions and building on lessons learned and practices, it could not be possible to trace the very end-goal of operation in east Africa.³⁰⁵ Here, legal planning factors include those arising from the framework for consultation between the UN and AU-IGAD conducting the peace operation; arrangements for the provision of diplomatic and operational support to such operations; arrangements for the conduct of combined, joint and integrated operations by and co-deployment of the United Nations and other such forces and standards for training and planning of operations as major focus of consultations.³⁰⁶ A focus of interest in the meeting, that needs to be cited here, held to discuss the issues of cooperation of the UN and AU. In March 2007, the Security Council held a special meeting to discuss the UN collaboration with the Africa regional organizations, particularly the African Union.³⁰⁷ At the meeting, the Council requested that the Secretary-General collaborate with the African Union and other regional organizations to develop ‘specific proposals on how the United Nations can better support arrangements for future cooperation and coordination with regional organizations in Chapter VIII arrangements’ on common security challenges and “to promote the deepening and broadening of dialogue and cooperation between the Security Council and the Peace and Security Council of the African Union”.³⁰⁸ The team and objectives of the meeting has paramount significant but, if such initiatives are not developed into in a legal framework on the nature and structure of cooperation and coordination between the UN and AU-IGAD, the current roles of regional organizations in the maintenance of peace and

³⁰⁴ The Henry Stimson Center; A Better Partnerships? UN-AU Collaborations for Peace Operations 23 February 2007 available at http://www.stimson.org/fopo/pdf/UN_AU_MEETING_NOTE_FINAL.pdf. visited on Dec. 12 2008

³⁰⁵ Ibid

³⁰⁶ Ibid

³⁰⁷ Ibid p. 112

³⁰⁸ Ibid

security will become paralyzed, and a more insecure regions and sub-regions could proliferate.³⁰⁹ To sum up, absence of defined and clearer design of structure of modalities of cooperation between the UN and AU and IGAD at three organizational levels, and with unclear understanding of the comparative advantage that each organization/institution would totally foster the future challenges of UN-AU-IGDA peace operation missions. Moreover, while the peace missions in Burundi, and Darfur have shown that a division of labor between the United Nations and African Union can work, many related issues still require clarification. For example, a questions of doctrine of co-existence and cooperation for whether or not to make it formalize the legal, operational and financial details of regionalizing peace operation responsibility in Eastern Africa with the need of ensuring the additional burden for African states that had been kept as light as possible are quests for future effective peace operations.

³⁰⁹ Ibid

Conclusion and Recommendation

Conclusion

The relationship between UN and regional organizations was premised in Chapter VIII of UN Charter, which addresses regional arrangements for international peace and security. Under Article 52 of Chapter VIII, nothing “precludes” regional arrangements or agencies from dealing with matters related to peace and security, within the territory of the Security Council. But the Charter requires their actions to be consistent with UN decision-making. Article 53 states that the Security Council shall where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

However, despite recognitions of relationships on the UN Charter, several challenges are raised between UN and regional organizations. In particular, this has been the case of the UN and AU-IGAD cooperation in peace operation missions for the maintenance of peace and security in East Africa. It is obvious that, the Africa continent, especially the East Africa sub-regions, remains to be the locus of most UN and AU-IGAD peace operation missions. Through their own missions’ experiences, AU-UN has conducted peace operation independently and sometimes jointly or in transition. This is true for instance, peace operations missions in Ethiopia and Eritrea, Burundi and the Sudan, and now in Somalia.

Considering these engagements to be in line with the relationships envisaged under Chapter VIII, the very first challenges here is in understanding the idea of “relationship” as it arises from the plain reading and interpretation of the Charter. As one simply reads Chapter VIII, it is not clear and elaborate as to concepts of relationship or cooperation and coordination between the UN and AU-IGAD in the area of peace operation missions. For instance, Chapter VIII merely stipulates the words of arrangements or agency for the purpose of pacific settlements without providing any other explanations. Moreover, it

also merely puts that the Security Council may utilize such organizations for the maintenance of peace and security without mentioning the mechanisms of operational or other means of support. Based on this assumption, because of such premised absence of explicit terms of reference for effective cooperation/relationship, it would lead misconception, misunderstanding and misperception as to what such relationship entails, and what should be other additional guiding principles of this cooperation need. Generally, while the actual recognition of the role of regional organizations under Chapter VIII is not questionable, it is difficult to pin point the terms of relationship or partnerships. How do they and should they work together to address the peace and security in the continents are not clearly stated. Particularly, Chapter VIII does not indicate the manner of each other support within the framework of institutional collaboration. To sum up, from the plain reading of the Charter, one may conclude that, lack of well defined, formalized and clarified terms of reference on the concepts of modes of cooperation and coordination under Chapter VIII of the UN Charter, are the problems for future joint peace operation mission.

Moreover interpretations' of the wordings of the UN Charter is another trouble of cooperation/relationships between UN and AU-IGAD in peace operation missions. This challenge is very critical especially in relations to the AU'S emerging peace and security architectures and its active engagements with peace and security issues of the Africa continents. For instance, while the UN Charter stipulates that it can authorize a regional organizations to undertake enforcement action under its authority and also while it asserts that, no enforcement action shall be taken under regional arrangements or agencies without the authorization of Security Council, there are several provisions in both the Constitutive Act and the Protocol establishing the AU PSC that appear to be contradictory. A close look at such documents show a level of ambiguity as to whether the PSC could taken upon the prime responsibility for peace and security in Africa. First of all, the two documents are silent as to whether or not require prior consent from the Security Council. Secondly, the other issue in this regard is, while the PSC has recognized its prime responsibility for promoting peace and security in Africa, it should

further pledges to cooperate and work with the UNSC. In view of these two cases of confusing arrangement, it seems sound to question some conceptual, legal, and operational issues that come into picture in UN-AU-IGAD cooperation in peace operation missions. To what extent must the UN support the AU-IGAD when for instance the PSC take unilateral decisions? Or how far can the UN go to support decisions taken by AU-IGAD outside the realm of the Security Council in terms of for instance, troops, funding and other supports could be a possible pitfalls.

Here, several reasons are forwarded as to why the AU undertakes peace security intervention through the mechanisms of Charter interpretation. Some argued that, so long as AU's actions have contributed to the UN mandate of maintaining the peace and security of international community, the decision to intervene by the AU could not be seen to violate the provision of Article 2(4) of the UN Charter and the customary principle of 'non-intervention' under general international law. Moreover Chapter VIII underlines the roles that regional organizations can play as partners of the UN in maintaining international peace and security. This is also a similar reason why when the AU undertakes peace and security intervention: it perceives that its actions as a contribution to the UN and international community.

The challenge facing the UN-AU-IGAD cooperation in peace operation in East Africa so far can be exemplified by the early evolved modalities. In this context, in the past recent years has saw enormous development in the emergency of practical arguments in support of effective utilization of Charter provisions dealing on the role of regional arrangements for the maintenance of peace and security. Notably among these are, the substantial amount of attention devoted to discussing the role of regional organizations by Boutros-Ghali within the *Agenda for Peace* and its *supplement* have paramount significant. In terms of peace operations, the follow up to *Agenda for Peace* lists three different modalities of cooperation between the UN and regional organizations. These are; *Co-deployment, Operational support and Joint operation (others call Hybrid and Transition or Sequential)* to which practically in use by AU-UN peace operation missions in East

Africa. Darfur (Sudan), AU/UN hybrid peace operation mission, is one example where AMIS and UNMIS finally conducted peace operation under the acronym of UNAMID. Similarly, peace operation in Burundi was also another aspect where AU-UN employed the rest two modalities. The AMIB was the AU's first peace operations worked alongside with the UN and on the other it was set up with the expectation that AU would hand it off to the UN. However, unlike the growing ambitions for creating ways of cooperation, as such these new modalities are not without problems/challenges.

By analyzing these cases (Burundi and Darfur) we have also seen some problems. The first challenge here is, with regard to their legitimacy under the UN Charter. Without any doubt Chapter VIII of the UN Charter is not explicit on the possibility of establishing such *Hybrid* or *Co-deployment* or *Transition* modes of peace operations and even one cannot find legal terms. Hence, given such vague arrangements, the situation may give rise to wide possibility of raising serious questions as to the legality of the different modalities of cooperation. Parallel to this, it seems hardly realistic to succeed in responding to or resolve those intersnic and accessory issues related to the modalities of peace operation without there being a binding effects attached to it. The other fundamental challenges are related to constituent elements during the formations of modalities of cooperation and with the facts faced during operational missions. For instance, AU/UN hybrid mission in Darfur, the hybrid UNAMID formulation, operational command and control is in the hands of both institutions for the first time, in one the most complex operational and political environments experienced be the challenges of effective cooperation. Moreover the operation's dual decision-making and command structures risk watering down accountability across the UN and AU, an issue that has also plagued the parallel UN/AU hybrid mediation process. Another challenge that UNAMID faces is one with respect to troop contribution. UN Security Council Resolution 1769 remains vague on troop contributions for the hybrid force and calls on the UN Secretary-General and the Chairperson of the African Union Commission to agree to the final composition of the military component of UNAMID. Far more than, the problems of troop's contribution and questions of funding are some of the most critical

challenges facing in the UNAMID peace operation missions in Darfur. The hybrid operation is expected to cost more, yet no detailed long-term funding plan has been put in place.

Furthermore, modalities of co-deployment and Operational (transition) are also faced similar challenges. In case of a co-deployment a command is one challenge for effective peace operations. For instance, challenge coordination in a mission area, as they EUSR and an EUFOR Force Commander in the field, under separate chains of command and with weak coordination arrangements, may well be troublesome. In addition, co-deployments are often limited in time and scope, which reduce the incentives for transparency and information sharing, and these features may work counter-productive to the institutionalisation of trust and long-term commitment in peace support operation partnerships. For the same, the ownership and responsibility for the outcomes of the various stages of a peace operation may become blurred. The diverse perception on the structure to be employed in handing over of responsibility is also a source of friction. Here it is worth mentioning the case in Burundi where AU (AMIB) and the UN (ONUB) were undertook operation using such modalities. Here the means of exchanging information in the activities of coordination b/n AU and the UN was not formal. It is clear that absence of legal as well as formal means of cooperation/coordination is further make the problem worse. In addition, AU (AMIB) encountered with problems of funding and institutional capacity up to the time of processing the transition and when the UN operated along side with AU.

Concluding, the discussion on the aforementioned challenges one sees a complex situation portraying the problem shadowing UN-AU-IGAD cooperation in peace operation missions. Needless to say, the circumstance aggravating the problems even further is the absence clear cut legal framework for the implementation of the modalities of cooperation. The way how to from the modalities of cooperation are not emanate from the formal or legal framework, like for instance Chapter VIII of UN Charter. Moreover saving with the absence of legal framework, the problems also aggravated due to the

deficiency of understanding the constituents of the terms of modalities. In this connection such new modalities of cooperation, to which was proposed by Boutros-Ghali's, former Secretary-General, his definitions fail to determine who will be responsible for absorbing the costs of missions or which organization will act as the fulcrum in which type of operations. However, despite his ambitions, Boutros-Ghali foresees no instance where regional organizations are simply handed a peace operation.

Recommendation

We have discussed the different challenges in this thesis. These challenges were shown in areas of the existing mode of cooperation and coordination of UN-AU-IGAD peace operation missions in East Africa and gaps in legal provisions with regard to the mechanisms or ways of cooperation and coordination under Chapter VIII of the UN Charter and the AU's Constitutive Act. In light of the different observations made based on the findings of the research, the research puts the following recommendations with a view to improving the existing arrangements:

1. Defining the role of regional organizations play in the maintenance of peace and security under Chapter VIII is crucial, in particular the prevention, management and resolution of conflicts;
2. Establishing a system and a laying out a working formula that allows the United Nations to engage with regional organizations when a conflict erupts are needed.
3. providing for a legally binding and comprehensive support and cooperation mechanism between UN and other regional organizations, such as the AU, including predictable legal framework for financial and resources support for regionally peace operations in line with a contemporary application of Chapter VIII of the UN Charter.

4. With regard to fulfilling the prime responsibility of peace and security, AU-IGAD initiative and over all undertaking should be conducted in the auspice of the UN - as it's clearly stipulated in Chapter VIII of UN Charter. Nonetheless, the whole business of peace operation missions for the maintenance of peace and security in the region should take into account the overriding importance of the available solution emanating from the AU in addressing continental or regional instability. Especially, such approach appears to be fruitful where there is ambivalence from the UN hesitating to take action on and manage unfolding conflicts in African nations. On top of these, it is indispensable to stress, here, that – the UN should have the upper hand in installing mechanism to over see AU-IGAD actions on whether or not their engagement is legitimate under Chapter VIII of UN Charter.
5. In line with Chapter VIII of UN Charter, there is a need for establishing and strengthening of normative/legal rules and frameworks of cooperation which will create triggers for prompt action by the AU, the UN and others when there is a crisis that threatens democracy and human rights.
6. The expansion of the present provisions of the UN Charter is of paramount significance so as to give the AU improved and more direct access to the cumbersome UN machinery, and for this effect, all available means should be clearly defined. Along with this, improved access must come the financial, material and human support for the Union's efforts, through often legal process rather than a self-triggering mechanism, and political procedures of the UN to secure support.

7. The strengthening and improvement of regular institutional coordination and regular consultations between the UN and the AU are needed.
8. Discussing common approach and frameworks that can be designed to ensure that the nature of the collaboration and cooperation between the United Nations and regional organizations are very crucial. Corollary to this, the Security Council should encourage the UN and AU to facilitate the development of compatible legal framework for effective transitions between UN and non-UN peace operations, in close consultation with them that have experience in such transitions and building on lessons learned and practices. Among the many legal planning factors, include those arising from the framework for consultation between the UN and AU-IGAD conducting the peace operation, arrangements for the provision of diplomatic and operational support to such operations; arrangements for the conduct of combined, joint and integrated operations by and co-deployment of the United Nations and other such force should be the main components of the planning.
9. Finally, the better legal framework direction sets the prerequisites for cooperation, the better relationship and coordination in the peace operation mission will work are the overall need this because cooperation/coordination benefited from specific rules or laws, and such legal frameworks are emerging. Moreover there is a pattern emerging in peace operation in East Africa with quick intervention by the AU, and transition to the UN or dealing jointly or in co-deployment when the situation permits. Hence, the need to develop and find explicit definitions and concepts from the legal point of view for the evolving modalities are evident.

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