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Hybridization of the UN, AU and ECOWAS mandates for peace support operations and adoption of force in Africa: Challenges, prospects and way forward

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Abstract:

The trend and pattern of United Nation, African Union, and ECOWAS collaboration and implementation of peace keeping mandate in Africa has not received adequate scholarly attention overtime as the few that exist addressed figment of the germane issues of concern. Noticeably, this piece sets to give an appraisal of the implementation of United Nation, African Union and ECOWAS mandate and the nature of the use of force in Africa during peace keeping operations. To achieve this, the paper analyses background of the AU, UN and ECOWAS collaborations in PSOs in Africa. Furthermore, interrogates the impact of U.N, AU and ECOWAS mandate in Africa and the associated challenges with their mandates in Africa. It also discusses the prospects, basic principles of the use of force in conflict situations, the challenges in the use of force in conflict situations and way-forward in preventing the use of force in conflict situation. The paper uses descriptive and analytical approach in its analysis and relies mainly on secondary source of data. It concludes by advocating for optimal collaboration among the three bodies, and emphasizes that in ensuring security in Africa, all options must be explored.

Keywords: PSOs, Peace Keeping, Peace Enforcement, Use of Force, Conflict, Mandate, Security

Introduction

The primary responsibility of every Government of any nation is to provide security to its citizens and defend its sovereignty and territorial integrity with the overall aim of creating conducive atmosphere for human businesses. To achieve such feat, nations come together to form regional and international organizations that can best help to facilitate the realization of cooperations that are cordial and mutually reinforcing in terms of building capacity for peace making, peacekeeping, peace –building and post – peace initiatives, capable of addressing differing socio – economic and political challenges that may resort to conflict within, between or among nations. As a result, these organizations through diverse mechanisms ensure the observance of responsibility to protect, provide framework for good governance and ensure protection of rights of the citizenry and intervention in conflicting situations to allay escalation of conflicts

and eruption of instability in any nations depending on the region where the conflicting states fall.

However, the central question in the regional and global security arena that has gained traction and elicited debate is how the relationship between the UN and regional organisations should be best structured to maximise the comparative advantages of each body and ensure the complementarity of roles, while maintaining the primacy of the UN in the maintenance of international peace and security. Conversely, the primacy of such debate is centered on how feasible 'partnerships' can be between the UN and regional organisations such as the African Union and ECOWAS.[1] This is sequel to the fact that the United Nations (UN) being a universally and internationally recognized body, has the primary responsibility to maintain international peace and security after the disruptions and loss of human lives witnessed in the First and Second World wars .To realize this task, regional and sub – regional organizations were created to facilitate the UN engendered goal of peace across the globe particularly in Africa given trends and dynamics of conflicts.

For instance, in the agenda for peace, the then UN Secretary General Boutros Boutros Ghali acknowledged that the capacities of regional organisations in the key areas of preventive diplomacy, peacekeeping, peacemaking, and post-conflict peacebuilding could not only lighten the UN's burden, but also help consolidate a deeper sense of participation, consensus and democratization in international affairs.[2]Although regional organisations have a clear 'stake' in resolving regional crises, the complex dynamics of such crises can mitigate the impact of these organisations.[3]

The relationship between the UN and African regional organisations has received significant attention due to the preponderance of conflicts on the continent. The UN has collaborated with the African Union (AU) and the Economic Community of West African States (ECOWAS), predominantly in the area of peacekeeping, and continues to make efforts to improve its relationships with them, notably in the area of peacebuilding. The latest initiative of the UN in this regard is the implementation of a ten-year capacity building plan for the AU and its sub regional organisations. Considering that the UN, the AU, and ECOWAS both have peace and security mandates that concern Africa, there is clearly much to be gained from ensuring coherence and coordination of the efforts of these organisations in the maintenance of peace in Africa.[4]

[1] T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?. Friedrich-Ebert-Stiftung, Department for Development Policy, 2008. 30.
[2]T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?...31
[3] T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?...
[4] T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?...32.

The quest to unravel the trend, nature and hybridization of PSOs with the task of unveiling the challenges, prospects and proffers solutions for greater cooperation in view of increasing conflicts necessitated the focus of this paper. Thus, the paper opens with a brief overview of AU, UN and ECOWAS collaborations in PSOs in Africa, it considers the impact, challenges and prospects for a more fruitful collaboration between the UN, the AU and ECOWAS. In the later part of the work, the paper highlights the basic principles of the use of force in conflict situations and the challenges in the use of force in conflict situations and further proffering way-forward in the nature of use of force in conflict situations and the need for clearer and closer working relationships among the three bodies in the area of peace and security.

Conceptual Clarifications

Security: This term encompasses a whole domain of human life and can make more sense if it is qualified. For instance, national or state security, regime or physical security, human security, regional security and international security. Security can therefore be defined as "the quality or condition of being secured, freedom from being exposed to danger, protection, safety of a place, feeling of assurance of safety or certainty, freedom from anxiety or doubt, that which secures a means of protection, defence etc.[5] As time went on and new challenges came to fore, the concept of human security emerged bringing another approach and perspective to security. The concept of human security is primarily concerned with security of man on an individual level of analysis. According to Kofi Annan,[6] "human security, in its broadest sense, embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care ensuring that each individual has opportunities and choices to fulfill his or her potential. Every step in this direction is also a step towards reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear and the freedom of future generations to inherit a healthy natural environment. This paper therefore agreed completely with the submission of Kofi Annan.

Conflict: Conflict can be defined as a conflict that has reached a point where it can be resolved internally.[7]In practice, conflict refers to a dispute that can be resolved by mediation or conciliation. Conflict occurs when the regular decision-making procedure breaks down, making it difficult for an individual or group to choose an action option.[8]To put it another way, conflict is a frustrated attitude or a protest against a lack of chances, recognition, identity, and so on. Conflict can also be defined as a condition of social relationship in which two or

[5] F. Hartman,*The Relations of Nations*. Macmillan Publishers, New York, 1978, 25.
[6] K. Annan, Secretary General Salutes International Workshop on Human Security in Mongolia, presented at a two-day session in Ulaanbaatar, May 8th -10th 2000. http://www.un.org/news/press/docs/2000/2000508.sgsm7382.doc.html accessed 29/03/2021.
[7] Hall P. "Early Warning System: Reframing the Discussion", *the Australian Journal of Emergency Management,* Vol 22, No. 2. (2007). 77.
[8] P. Hall., "Early Warning System…78.

more people have incompatible interests, resulting in a struggle.[9]The nature of a conflict of interest implies more than what is usually conveyed by terms like "disagreement" or "controversy." Conflict, according to this definition, is a situation of complete disagreement. Thus, the terms "hostility," "disagreement," "incompatibility," "competition," "misunderstanding," and "inequality" are used to describe conflict. Conflict is a strained relationship that comes with emotion, it could be said. The higher the emotion, the more intense the dispute as it develops. Even in the best of human societies, conflict arises.[10]

Conflict Management: Conflict management is defined as dealing with the sources of conflicts and its eruption with a view to settling, resolving, mitigating or transforming it and may also include post conflict peace-making, peace-building and reconstruction intended to prevent further eruption of conflicts.[11] Conflict Management involves near equilibrium-restoring instrument in society which involves instuitionalized provisions and regulative procedures for dealing with conflicts whenever they occur.

Peace Support Operations (PSOs): The term Peace Support Operation (PSO) describes organised international assistance initiatives to support the maintenance, monitoring and building of peace and prevention of resurgent violent conflict. There are two categories of PSOs: peacekeeping and peace enforcement. Peacekeeping operations monitor and support the establishment of peace, usually in the context of a peace agreement and peace enforcement operations create conditions for peace and are permitted to use force. Most PSOs are authorised by a UN Security Council resolution under the UN Charter. Peacekeeping operations are generally authorised under Chapter VI and peace enforcement operations under Chapter VII.[12]

A UN Security Council resolution can authorise a UN PSO, or a regional organisation or coalition of willing states to undertake a PSO. UN Security Council resolutions determine the PSO's mandate, which defines the operation's core tasks. A mandate may be altered only by passing a new Security Council Resolution, usually if conditions have changed in the conflict affected country or region in which the PSO is based.[13] Over the past two decades, PSOs have adapted to deal with the changing nature of conflicts in different regions of the world. Mandates range from the traditional monitoring of ceasefire agreements

[9] F.C. Hermann, *Threat, Time and Surprise: A Simulation of International Crises*, (London: Macmillian, 1973). 12
[10] O. Nnoli, *National Security in Africa:A Radical New Perspective,* (Enugu, PACERAP Book series). 2006. 36.
[11] O. Eze, Conflict Prevention and Management through Democracy and Good Governance in Bassey, C.O and Oshita.O.O (eds) Governance and Border Security in Africa. Malthouse, Lgos, 2010, 161.
[12] "Amnesty International's 15-Point Program for Implementing Human Rights in International Peace Support Operations." New York: Amnesty International, n.d. 19 July 2004 <http://web.amnesty.org/pages/aboutai-recs-peace-eng>.
[13] Gender and Peace Support Operations: Opportunities and Challenges to Improve Practice. London: International Alert, 2001. 19 July 2004 .

and conducting disarmament, demobilisation and reintegration programmes, to protecting civilians from fighting factions, to the newer mandates for nation building, through which governing structures and the security sector are totally rebuilt.[14]

Peace enforcement operations where multinational forces are permitted to use force to establish peace are relatively recent phenomena, including the operations in Afghanistan and Kosovo. PSOs are usually conducted in the context of a larger effort to reform and rebuild a nation, which can include confidence-building measures, power-sharing arrangements, electoral support, strengthening the rule of law and economic and social development[15]

The UN, AU and ECOWAS Hybridization in PSOs in Africa: A Snap Shot Reflection

The regional-global security debate is as old as the UN itself. The Dumbarton Oaks proposals subordinating regional arrangements' peace and security efforts to the UN Security Council generated strong resistance from Latin American and League of Arab states. An important modification was made at the San Francisco conference concerning the right to individual and collective self-defense: The Article 51 of the UN Charter protected the 'inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations'.[16]

When the UN came into being, there were only four African member states and they did not have much say in the policies and actions of the world body. Consequently, the Congo crisis broke out in 1960, the UN, Belgium, and the Soviet Union intervened because there was no African regional body to contend with the UN over the resolution of the dispute. The Organisation of African Unity (OAU), Africa's first effort at continental integration, was formed in 1963. It marked Africa's first attempt to address its own security challenges. However, the OAU's failure to resolve conflicts in Nigeria (1967-1970), for example, exposed the organisation's limitations and hampered the UN's ability to respond. In a period of waning UN interest in Africa5, the OAU deployed its first military mission, an inter African force, in Tchad in 1981.[17]

The OAU mission was unable to resolve the Chad conflict due to a lack of adequate financial and logistical resources among other factors. In 1993, the

[14] Final Report: "Building Capacities for Peacekeeping and Women's Dimensions in Peace Processes"–Joint European Union-Latin American and the Caribbean Conference. Santiago, Chile: LOM, 2002. 19 July 2004 .
[15] O. Oche, Strategic Response: Peace Support Operations in Bassey, C.O and Dokubo, C.Q (eds) Defence Policy of Nigeria: Capability and Context, A Reader. AuthorHouse, Indiana, 2011, 512.
[16] D. Forti, and S. Priyal,Toward a more effective UN-AU partnership on conflict prevention and crisis management. International Peace Institute., 2019. 125.
[17] D. Forti, and S. Priyal,Toward a more effective UN-AU partnership on conflict prevention and crisis management…

OAU facilitated peace talks and deployed a Neutral Military Observer Group to Rwanda that was eventually taken over by the UN. Subsequent peace interventions in Ethiopia/Eritrea (2000), Burundi (2003-2004), and Somalia (2007-date), among others, have served as precursory efforts to UN missions.[18] The UN's interventions in Somalia and Rwanda accentuated its disinterest in Africa and emphasized the need for stronger African responses to African conflicts. Although the UN has co-deployed in the past with the AU and ECOWAS in several African countries, the joint AU-UN hybrid mission in Darfur (UNAMID) marks an attempt to depart from the previous form of cooperation between the UN and African regional organisations whereby the AU and ECOWAS would deploy first and the UN would eventually take over full responsibility for the mission.[19]

Since its deployment, UNAMID has encountered serious problems including inadequate logistics and personnel. Again, poor capacity on the part of some AU staff raises questions about how equitable a partnership the operation is. The indictment by the International Criminal Court (ICC) of Sudanese President Omar Bashir and the AU's condemnation thereof, suggest that there is insufficient consultation and consensus between the UN and the AU on Africa's security concerns. These issues need to be addressed if the mission is to succeed in fulfilling its mandate as well as serving as a workable model for future cooperation between the UN and African regional organisations.[20]

Other efforts at regional integration followed in Africa's various sub regions, notably the Eco- nomic Community of West African States (ECOWAS) in 1975. ECOWAS was formed with a primary mandate to improve regional economic integration in West Africa. However, the onset of civil war in Liberia and Sierra Leone underscored the indispensability of peace and political stability to successful economic integration, forcing a shift from economic to political priorities. ECOWAS deployed its Ceasefire Monitoring Group (ECOMOG) in Liberia (1990-1998, 2003- 2006), Sierra Leone (1997-2000), Guinea Bissau (1999), and Côte d'Ivoire (2003).[21] The ECOMOG missions in Liberia and Sierra Leone occurred without prior UN authorisation due to internal divisions within ECOWAS and the UN. The UN Security Council held several informal consultations, some in response to ECOWAS' requests for assistance, but took no immediate action.[22]

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[18] D. Forti, and S. Priyal,Toward a more effective UN-AU partnership on conflict prevention and crisis management…126.
[19] J.J. Rabe, Africa and the International Criminal Court (ICC): Revisiting Bones of Contention. University of Johannesburg (South Africa), 2019.
[20] A. Adeleke, "The politics and diplomacy of peacekeeping in West Africa: The ECOWAS operation in Liberia." The *Journal of Modern African Studies* 33, no. 4 (1995): 569.
[21] A. Adeleke, "The politics and diplomacy of peacekeeping in West Africa: The ECOWAS operation in Liberia…
[22] A. Adeleke, "The politics and diplomacy of peacekeeping in West Africa: The ECOWAS operation in Liberia…

After difficult negotiations, the UN sent military observer missions to Liberia in 1993 (UNOMIL) and Sierra Leone in 1998 (UNOMSIL) to help ECOMOG implement its mandates under the respective peace agreements. While the UN retained UNOMIL, resource constraints forced the partial withdrawal of ECOMOG troops from Sierra Leone in 2000.[23] The UN responded by transforming UNOMSIL into a peacekeeping mission, UNAMSIL. Difficulties that confronted the UN-ECOWAS cooperation in Liberia and Sierra Leone included lack of clear mandates, disparities in logistics and remuneration, and divergent approaches to issues such as sanctions, and elections. As such, even though there were some useful consultations between the UN Security Council and ECOWAS, the above factors created a disconnect between the political decisions that were made and their implementation in the field. ECOWAS withdrew its troops from Guinea-Bissau after a few months due to a lack of financial and logistical support from the UN and the international community. After questionable elections in 1999, the UN established a Peacebuilding Support Office in Guinea-Bissau (UNOGBIS).[24]

Impact of UN, AU and ECOWAS Mandate in Africa

Throughout their existence, the OAU (now AU) and ECOWAS' conflict management capacities have been constantly tested by a succession of conflict scenarios. The same conflicts have continually tested the provisions of the UN Charter concerning regional solutions to instability and the UN's evolving disposition towards engagement with such initiatives. Despite extensive mediation activities by the AU and ECOWAS, previous cooperation between these organisations and the UN has focused mainly on peacekeeping. Since 1995, the UN has made several efforts to broaden the scope of these relationships and clarify the roles of each party. While underlining the UN's control over the maintenance of international peace and security, several high level and thematic meetings with regional organisations, Security Council debates, and key documents/reports and resolutions have affirmed the important role of regional organisations in peace and security and made recommendations aimed at ensuring more effective cooperation between them and the UN.[25]

In 2005, the UN Security Council issued Resolution 1631 which identified priority areas for collaboration between the UN and regional organisations. Further to the recommendations of the Secretary-General's report on implementing Resolution 1631, the UN Security Council and the AU Peace and Security Council elaborated a ten-year Capacity Building Programme to enhance the ability of the AU and its sub regional organisations to 'address the

[23] A. Adeleke, "The politics and diplomacy of peacekeeping in West Africa: The ECOWAS operation in Liberia…570
[24] A. Adeleke, "The politics and diplomacy of peacekeeping in West Africa: The ECOWAS operation in Liberia…571.
[25]Fassbender, Bardo, ed. Securing human rights?: Achievements and challenges of the UN Security Council. Collected Courses of the Acade, 2011.

challenges to human security in Africa'.[26] The focal areas identified by the Framework include conflict prevention and peacebuilding. In April 2008, the UN Security Council issued Resolution 1809 highlighting progress made so far and identifying areas that require further attention.[27]

Implementation of the Capacity Building Programme has so far focused mainly on the activities of the "African Union Peacekeeping Support Team" within the UN Department of Peacekeeping Operations. This team has deployed staff at the AU headquarters in Addis Ababa with the aim of providing the necessary expertise and transfer of technical knowledge to enhance the AU's capacity for planning and managing Peace Support Operations.[28] In furtherance of this same goal, the Department of Peace Keeping Operations (DPKO) has held a number of training programmes targeted at senior AU officials (civilian, military and police). The DPKO has also provided some support towards the realisation of the African Standby Force (ASF) although this support has been criticised as being insufficient.[29]

Hybridisation of the UN, AU, and ECOWAS Mandates in Africa: Challenges so far

Fierce debates preceded the deployment of UN missions in Liberia and Sierra Leone, reflecting the UN's ambiguity towards co-deploying with a regional organisation (in Africa).[30] In order to forestall future misconceptions or willful manipulations of the provisions of Chapter VIII of the UN Charter, the UN must confirm its commitment to work more closely with regional organisations by creating through a collaborative process a framework that defines the responsibilities of the UN and relevant regional organisations in a given conflict situation, while maintaining flexibility with regard to the rate of response and other peculiarities of varied conflict situations. For instance, it is a major principle of the UN not to intervene in a conflict without a peace agreement whereas ECOWAS is prepared to do so.[31]

However, in certain situations, it is not possible to negotiate peace agreements without first establishing some measure of stability. ECOWAS deployed in Sierra Leone and Liberia without peace agreements and subsequently created

[26]Fassbender, Bardo, ed. Securing human rights?: Achievements and challenges of the UN Security Council…
[27] H. Yamashita, "Peacekeeping cooperation between the United Nations and regional organisations." *Review of International Studies* 38, no. 1 (2012): 165.
[28] H. Yamashita, "Peacekeeping cooperation between the United Nations and regional organisations…
[29] H. Yamashita, "Peacekeeping cooperation between the United Nations and regional organisations…
[30] T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?...245.
[31] T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?...

the conditions for negotiations that led to the respective peace agreements.[32] A mechanism for monitoring and periodic evaluation should accompany the framework for cooperation between the UN and regional organisations to ensure that all the parties fulfill their responsibilities. Concrete action should be taken to hold consultations on and finalise partnership agreements between the UN and regional organisations. For this relationship to be meaningful, it must be clear enough to show who will do what, when and how. For example, will UN approval of AU- or ECOWAS-led missions be given pre- or post- deployment? What effect will this have on the legitimacy of these missions?

The principle of the sovereignty and territorial integrity of member states is central to the UN; how will it be reconciled with the exigencies of the principle of the Responsibility to Protect (R2P) as enshrined in the ECOWAS and AU conflict management frameworks? As Jackie Cilliers rightly observes, the differences in approach by these organisations to the principle of R2P raise issues regarding the handover by ECOWAS and/ or the AU to the UN in situations where this is deemed necessary due to logistical and resource constraints.[33]

The UN and the AU both respect the sovereignty of member states. However, the Constitutive Act of the AU, in stark contrast to its predecessor states that it has the "right … to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity". This raises issues of how mandates will be determined and the different criteria for intervention for both organisations fulfilled in order to ensure a smooth transition from one mission to another.[34] The UN and bi- lateral and multilateral development partners of ECOWAS will have to bear the burden of financing joint UN-ECOWAS operations for the foreseeable future. Most ECOWAS member states will not be in a position to contribute financially to peace missions while they continue to stagger under the weight of unwieldy debt burdens. Funding has long been a major issue for the AU, the ECOWAS, and other African sub regional organisations. It is inconceivable that African countries continue to service unrealistic debt burdens with money that could be put to better use in critical areas of need.[35]

U.N, AU and ECOWAS Mandates in Africa: Re – Appraising Prospects

Previous cooperation among the UN, the AU and ECOWAS has consisted mainly of peacekeeping. Thus, lessons learned from joint peacekeeping operations must first be consolidated in order to improve future collaborations, before

[32] T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?...255.
[33] P.D. Williams, Enhancing civilian protection in peace operations: Insights from Africa. No. 1. Government Printing Office, 2010. 11.
[34] P.D. Williams, Enhancing civilian protection in peace operations: Insights from Africa…
[35] R. Utley, "'Not to do less but to do better…': French military policy in Africa." *International Affairs* 78, no. 1 (2002): 129.

other opportunities for collaboration may be considered. In joint peacekeeping operations, cooperation must occur at all levels (i.e. political, military, and economic) and must be based as far as is practically possible on the comparative advantages of all organisations involved.

Africa has experienced military personnel and is currently not in a position to make significant financial contributions to joint peacekeeping missions. As such, the UN and Africa's bi- and multilateral partners must commit to provide the required funding and logistics for joint peacekeeping operations.[36] African countries must be consistent in their demand for this. Mandates must be clear, coherent, and complementary in order to ensure mission success. In Sierra Leone, erroneous assumptions by UNOMIL about the deployment locations of ECOMOG led to serious casualties for the UN.[37]Therefore, care must be taken to distinguish between capacity-building and capacity substitution. It is useful for the UN and bilateral and multilateral development partners to loan technical capacities to organisations like the AU. However, care must be taken to ensure that the intended knowledge is genuinely transferred. This form of assistance does not eclipse the need to develop the capacity of the beneficiary organisation in the face of pressure to meet deadlines and achieve set targets.[38]

Beside the UN, there is presently a multiplicity of development partners (organisations and states) seeking to work with the AU and ECOWAS in different areas.[39] It is not clear whether either organisation has identified priority areas for support or is coordinating its work with partner organisations and countries within the framework of its stated needs. Further research is needed to address this important question. One actor whose role urgently needs to be strengthened is civil society, in particular the West Africa Civil Society Forum (WACSOF). More so, efforts are ongoing to revive WACSOF which was paralysed for a while by internal divisions among its members.[40]

Additionally, ECOWAS should work with independent civil society actors and WACSOF to support WACSOF to fulfil its function as a forum for civil society engagement with ECOWAS. Civil society has an important role to play in conducting research, providing expertise to the AU and ECOWAS, and assisting in the implementation of stated goals in diverse areas of peace and security. The AU and ECOWAS should partner with universities and other educational and training institutions to establish training programmes specifically targeted at developing, especially among young Africans, the knowledge and skills needed to enhance Africa's capacity for conflict management. Other courses could be

[36] R. Utley, "'Not to do less but to do better…': French military policy in Africa…
[37] R. Utley, "'Not to do less but to do better…': French military policy in Africa…
[38] B. Malam, "Peace and Security in Ecowas: An Assessment of United Nations-African Union and Ecowas Partnership for Regional Security in West Africa." *International Journal of Arts & Sciences* 8, No. 5 (2015): 113.
[39] B. Malam, "Peace and Security in Ecowas: An Assessment of United Nations-African Union and Ecowas Partnership for Regional Security in West Africa…
[40] T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?...111

organised in collaboration with networks of experts such as the African Security Sector Network (ASSN) and the West African Network for Security and Democratic Governance (WANSED).[41]

A Review of Basic Principles of the use of force in conflict situations

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

A. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

B. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

C. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

D. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

[41] T. Ajayi, The UN, the AU and ECOWAS: A Triangle for Peace and Security in West Africa?...

E. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment achieved;

F. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

G. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

H. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.[42]

Special provisions

I. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

J. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

[42]Critical Issues in Policing Series Guiding Principles On Use of Force, March 2016

K. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.[43]

Policing unlawful assemblies

K. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

L. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

M. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.[44]

[43]Critical Issues in Policing Series Guiding Principles On Use of Force, March 2016
[44]Critical Issues in Policing Series Guiding Principles On Use of Force, March 2016

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Policing persons in custody or detention

N. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

O. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

P. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.[45]

Qualifications, training and counseling

Q. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

R. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

S. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

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T. Governments and law enforcement agencies shall make stress counseling available to law enforcement officials who are involved in situations where force and firearms are used.[46]

Reporting and review procedures

U. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

V. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

W. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

X. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

Y. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.[47]

Challenges Associated with the use of force in conflict situations in Africa

Despite the ethical conducts that guide the use of force, in most conflict situations in Africa, the international community often do not act in a timely

[46]Critical Issues in Policing Series Guiding Principles On Use of Force, March 2016
[47]Critical Issues In Policing Series Guiding Principles On Use Of Force, March 2016

fashion to stop the humanitarian carnage and protect civilians. Besides, there are some challenges stemming from a lack of conceptual and operational clarity on political and operational constraints which contributed to the near-abysmal performance in executing the mandate to protect civilians. Though this is not only an exclusive zone of the international community, but most especially the responsibility of continental and regional organizations.

First, there were analytical and operational challenges with regard to the broad concept of protection of civilians and the responsibilities of the different actors involved in contemporary peace support operations. The UN, troop contributing countries (tccs), host states, humanitarian actors, human rights professionals and the missions themselves continue to struggle over what it means for a peace operation to protect civilians both in theory and in practice.

The lack of relative clarity of the term 'civilian' is perhaps due to the fluidity of the term in contemporary conflict situations in Africa. As a result, there is often a blurred definition of who exactly is a civilian who thus merits protection. This becomes worse given the fact that civilians are both victims and perpetrators of atrocities against other civilians. While civilians have become the focus of violence in contemporary conflicts, many have also been forced to become not just victims but also perpetrators of violence and atrocities. Therefore, the challenge is that modern peace operations in Africa are frequently deployed into situations where distinguishing civilians from combatants is difficult. More so, the term 'protection' also has its own challenges. The main challenge tends to lie in differences between various humanitarian organisations. Some think of protection in terms of the fulfillment of human rights and legal norms. Military institutions, on the other hand, tend to see protection in more limited terms as related to the physical defense of particular 'individuals, communities and installations' or demilitarised safe areas. Indeed, most UN peacekeeping missions have lacked both a conceptual understanding and comprehensive strategies for the execution of their mandates.[48]

Second, the politics of the UN Security Council can be a major obstacle to timely intervention. For instance there are differences among members of the Security Council on how best to deal with the situation that arose in Côte d'Ivoire. While the US and European members were convinced of Gbagbo's obduracy in Cote d Ivioire, for instance, and favoured additional sanctions at an early stage, as they had already imposed such measures on a national basis, Russia and China continued to have reservations and seemed to question the rationale for additional sanctions. However, these differences were eventually overcome

[48] A. Kwesi and S. Naila, The Protection of Civilians In Peace Support Operations: Lessons From Côte D'ivoire, accessed 27/04/2022, https://www.researchgate.net/publication/292141121_Protection_of_Civilians_in_Peace_Support_Operations_Lessons_from_Cote_d%27Ivoire%27?enrichId=rgreq-061bab949d98bceb98f1a94656512dac-XXX&enrichSource=Y292ZXJQYWdlOzI5MjE0MTEyMTtBUzozMjI4MzAwMDcyNDI3NTJAMTQ1Mzk4MDA3OTkwMQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf. 31.

when it became clear that Gbagbo and his circle would never agree to negotiate. Even among the Council's African members, Gabon and Nigeria were supportive of the ECOWAS position which called for sanctions. South Africa, on the other hand, sympathised with the Gbagbo camp, fearing that the 'winner-takes-all' election might throw the country into chaos and that accordingly a deal with Gbagbo should be pursued. South Africa's position changed when the AU high Level panel recommended recognition of Ouattara as the winner of the presidential elections.[49]

Third, at the regional level, there were some challenges to the initiatives undertaken by ECOWAS to forestall the escalation of the political crisis. For example, the proposal to resort to the use of force to remove Gbagbo from office as a last resort was unrealistic. This was met with mixed responses from individual member States. Several arguments were put forward. These included the lack of political will, tactical differences, operational costs, logistical and funding constraints, as well as the unintended consequences of such military adventurism on the civilian population in that country and the spill-over effects on neighbouring countries. Member States like Ghana reiterated the call for a diplomatic or negotiated solution to the problem citing their inability to contribute troops due to overstretch of their limited personnel in peacekeeping operations in other parts of the world. In addition, efforts at the continental level by the AU were fraught with numerous problems due to the lack of a common African position. ECOWAS, for example, repeatedly though covertly condemned the attitude of some members of the AU High Panel on Côte d'Ivoire (such as South Africa) on their perceived lack of understanding and neutrality in the mediation process.[50]

Way-forward Towards Discouraging the Use of Force

The following way-forward could be employed in discouraging the use of force in turbulent African zones.

Political mediation and dialogue: Mediation and dialogue are the most effective, and cheapest, tools for preventing and resolving armed conflicts. It is the core responsibility of the tripartite organisations involved in PSOs in Africa to consider the role of mediation and dialogue in other to bring an end to the brutal use of force in the regions of Africa in every conflict situation. This can be achieved especially if there is effective synergy between the organisations.

Military and police operations by peacekeepers: The organisation's police and military personnel (A.U, U.N. and ECOWAS) are another unit that can enforce peace and carry out the mandates defined by the United Nation's Security Council. Military operations aim to protect populations against threats and contribute to a secure environment while policing is central in preventing, mitigating and resolving violent conflict and contributing to early peacebuilding

[49] A. Kwesi and S. Naila, The Protection of Civilians In Peace Support Operations…32
[50] A. Kwesi and S. Naila, The Protection of Civilians In Peace Support Operations…

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and reconciliation. Therefore, the various units under the Military and police can also contribute to the prevention of the use of force in African conflict.

Civilian casualty recording and human rights reporting: Casualty recording has received increasing recognition as an important and effective means of enhancing the protection of civilians in armed conflict situations and elsewhere. It serves the key purposes of identifying patterns of harm and shedding light on behaviour that has the most adverse effect on civilians and, in some instances, on those responsible. The evidence base generated from casualty recording frequently facilitates engagement with parties to a conflict as well as informs their efforts to better protect civilians and prevent violations of international humanitarian and human rights law as it concerns the use of force. It also serves as a bridge to strengthen dialogue and coordination with other actors involved in protection work, including humanitarians, helping to direct resources to communities with pressing protection needs.

Ceasefire monitoring and verification: A thought provoking checklist of key issues to bear in mind for effective ceasefire monitoring includes the need for a creative planning as static mandates are pitched against rapidly changing realities on the ground. Ceasefires is a part of a process that begins before the actual agreement and does not stop until fully implemented. Identifying the political and economic considerations of the parties is important here, also, knowing just when and how to involve experts, devising internal and external communication strategies and creating an environment to avoid new conflict and security vacuums are part of the processes to turn ceasefires into peace.

Arms embargoes and sanctions regimes: Security Council sanctions have taken a number of different forms, in pursuit of a variety of goals. The measures have ranged from comprehensive economic and trade sanctions to more targeted measures such as arms embargoes, travel bans, and financial or commodity restrictions. The Security Council has applied sanctions to support peaceful transitions, deter non-constitutional changes, constrain terrorism, protect human rights promote non-proliferation, protection of civilians and the prevention of the use of force in conflict situation.

Disarmament, demobilization and reintegration (DDR): DDR is the collection, documentation, control and disposal of arms, ammunition, explosives and weapons in the possession of combatants and civilians. It is also concerned with the development of legitimate arms and its management for security and maintenance of peace. Since DDR is the official controlled disengagement of active combatants from the armed groups and/or armed forces, the U.N, A.U and ECOWAS can use this as a viable strategy to curb the use of arms and force in conflict situation.

Community violence reduction (CVR): There is no uniform or standard template for CVR, although all CVR programmes share the overarching goal of reducing armed violence and sustaining peace. CVR can be used for a variety of purposes, ranging from the prevention of (re-)recruitment to improving the

capacities of communities to absorb ex-combatants and associated groups. CVR may also be used as stop-gap reinsertion assistance at the community level, while reintegration is still at the planning and/or resource mobilization stage. If the tripartite organisation involved in Africa's conflict management, adopt this approach also, there would be high reduction in community violence and minimal level of force use in conflict situation.

Security sector reform (SSR): There is the need to enhance Security Sector Governance (SSG) through the effective and efficient delivery of security under conditions of democratic oversight and control. African nations must enhance their security sector to tackle the prevailing security threats in their countries this is an exclusive zone of leadership and ensuring that the security sector of their countries stands the test of time. This will also ease the burden on the tripartite organisations involved in PSOs in Africa and also enhance the process of the reduction of the use of force in conflict situation.[51]

Conclusion

The rationales for engagement on peace and security between the UN and regional organisations are numerous. Yet, the regional organisations do not always have the necessary resources to enable them respond appropriately to conflicts. The UN, on the other hand, may lack the required expertise or understanding of regional conflict dynamics to intervene alone; hence the need for partnership. Over the years, the UN has restated its desire to work more closely with regional organizations and attempted to create an acceptable framework. If this latest attempt is to succeed, two main issues must be addressed: the clarity of roles, the capacity of the AU and ECOWAS to engage with the UN, and the capacity of the UN to absorb the capacities of these organisations and in its responses to security situations in Africa. The principle of reciprocity must inform all future UN-AU and UN-ECOWAS collaborations. African troops and civilian personnel have been and continue to be active in UN-led peace missions throughout the world. Even if other UN-member states cannot provide the human resources needed for peace missions in Africa, they should not withhold financial and material support to African-led or joint peace missions. The accountability that the UN expects from regional bodies with a mandate for regional security comes at the cost of a stronger and sustained commitment to such organisations. All options must be explored for closer collaboration between the AU and ECOWAS.

[51]L. Damian and F.M. Barbara, "Enhancing the protection of civilians through the conventional arms control: challenges and opportunities for united nations peace operations", https://reliefweb.int/sites/reliefweb.int/files/resources/UNIDIR-IPI_Enhancing-the-Protection-of-Civilians-through-Conventional-Arms-Control_Final-version.pdf . accessed 28/04/22

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