The African Union Peace and Security Architecture: Can the Panel of the Wise make a difference?

Submitted in partial fulfilment of the requirements of the LLM (Human Rights and Democratisation in Africa) of the University of Pretoria

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31 October 2008

DECLARATION

I, **Jegede Ademola Oluborode** declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

Signed..

Date..

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Signature ....

Date..

DEDICATION

To Mobolaji, and our two sons, Toluwani & Oluwatoni. Your sacrifice is much!

ACKNOWLEDGEMENT

LIST OF ABBREVIATIONS

ACHPR - African Charter on Human and Peoples' Rights

APRM - African Peer Review Mechanism

ASP - African Standby Force

AU - African Union

CEWS - Continental Early Warning System

CRM - Country Review Mission

CSSDCA - Conference on Security, Stability, Development and Cooperation in Africa

ECOWAS - Economic Community of West African States

ECOMOG - Economic Community Military Monitoring Group

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social Cultural Rights

IGAD - Intergovernmental Authority on Development

HRC- Human Rights Committee

INN - International Negotiation Network

LDC - Least Developed Countries

MINURSO - United Nations Mission in Western Sahara

MISAB - International Mission supervising the Agreements of the Bangui

MONUA - United Nations Observer Mission in Angola

NEPAD - New Partnership for Africa's Development

PAP - Pan African Parliament

PSC - Peace and Security Council

RECs - Regional Economic Communities

SADC - Southern African Development Communities

SRSGs - Special Representatives of the United Nations Secretary Generals

UN - United Nations

UNESCO - United Nations Educational Security Council

UNICEF - United Nations Children Emergency Funds

UNISOM - United Nations Operations in Somalia

UNMIL - United Nations Mission in Liberia

UNOMOZ - United Nations Operations in Mozambique

UNTAG - United Nations Transition Assistance Group

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PREFACE

With a normative and institutional background culminating in the adoption of the Peace and Security Council Protocol in 2002, the African Union (AU) peace and security architecture has emerged. The leading light of the architecture is the aspiration for a home grown approach to find lasting methods of conflict prevention, and peace and security promotion amidst African myriad crises. Towards achieving this end, the Panel of the Wise (the Panel) is established to assist the Peace and Security Council and the Chairperson of the African Union Commission.

Although there is contemporary and considerable scholarly discourse on the peace and security architecture of the AU, no attention has been paid to an examination of the conceptual basis and relevance of the Panel. In particular, a major gap in the discourse has been the appropriateness of the design of the Panel which rather than being examined, appears to have been taken for granted. Yet, an effective design is crucial if the Panel will play a significant role and make a difference in the AU peace and security architecture.This study examines the need for the Panel and critiques its institutional design. It explores the prospective roles of the Panel and shows how the panel can promote the internalisation of peace and security in Africa.

In establishing the need for the Panel, the study adduces evidence from indigenous African settings as well as national constitutions of contemporary African states. The study finds weaknesses and suggests amendments in terms of the membership, scope, and norms of the Panel. Particularly, the study recommends a redesigning of the membership of the Panel into a pool of the wise, following the model of the Economic Community of West African States. The study explores the prospective roles of the Panel to include peaceful interventions and, peace and security promotion. Possibilities are identified at the national, sub-regional, regional and global levels by which the Panel can engage in promoting the internalization of peace in Africa.

The study concludes on the note that a broad understanding of the basis and role of the Panel and amendments of the membership, scope and norms of the Panel are required for the panel to make a difference in the AU peace and security architecture.

CHAPTER ONE

THE AFRICAN UNION PEACE AND SECURITY ARCHITECTURE: MAPPING THE CONTEXT FOR THE PANEL OF THE WISE

1.1.   Background to the study.

Grave threats to peace, security and stability continue in Africa, in spite of the abundant resources that can make a difference to her peaceful and secured existence. In their reflections on this trend, commentators have portrayed the continent in a variety of negative imagery. To some, it is the 'coming anarchy',[1] the 'hopeless continent',[2] and the 'hunted continent',[3] while in the opinion of Buza and Waever, Africa is the 'pessimist's paradise'.[4] These are by no means mere asinine comments far from African realities. The intense and consequence of conflicts in such African states as Sudan, Congo, Uganda (Northern region), Ivory Coast, Chad and Somalia pose a threat to peace and certainly underscore a strong reason for concern. In these states, conflicts have claimed lives and occasioned unprecedented humanitarian crises. Besides, with 17 of the African states 'red-flagged' as struggling with state failure, while another 19 are considered to be in a serious state of fragility, no other region of the world rivals the African continent in its precarious security situation.[5]

Yet, conflicts are not the only threats to peace and security in Africa.[6] Other threats include non-traditional security issues such as poverty, corruption, terrorism, electoral malpractices and public health issues such as HIV/AIDS.[7] On poverty for instance, Africa is the continent where 35 out of 48 least developed countries (LDC) inhabit. More than 40% of its sub-saharan population lives below

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[1] 'R Kaplan The coming Anarchy' (1994) 273 2 *Atlantic Monthly* February 44-76.
[2] 'Hopeless Continent' *The Economist* 13-19 May 2000.
[3] 'The Demons that Still haunt Africa' *TIME* 21 January 2008
<http://www.time.com/time/magazine/article/0,9171,1702349-2,00.html> (accessed 15 September 2008).
[4] B Buza & O Waever *Regions and Powers: The structure of international security* (2003) 219.
[5] JJ Hewitt, J Wilkenfeld and TR Gurr (2008) *Peace and security* 2008.
<http://www.cidcm.umd.edu/pc> 4-10; and TR Gurr & MG Monty (2005) *Third report on the peace and conflict series* <http://www.cidcm.umd.edu/papers.asp> (accessed 11 September 2008).
[6] 'Principles of human security' <http://www.humansecuritynetwork.org> (accessed 11 September2008).
[7] J Akokpari, A Ndinga-Muvumba and T Murithi (2008) The African Union and its institutions xiv.

the international poverty threshold of US$1 per day per capital.[8] Regarding the HIV/AIDS prevalence, despite significant efforts on the part of African governments and civil society, the number of people living with HIV/AIDS increased from 24.9 million in 2003 to 26.5 million in 2005.[9] The spread of the disease, particularly among African militaries has affected states' stability and their capacity to perform regional peace keeping.[10] It is on the basis of these broad issues that the peace and security architecture for Africa should be understood.

The evolvement of the peace and security architecture for Africa, at least its intention, dates back to the formation of the Organisation of African Unity (OAU) in 1963. The Charter of the OAU in its preamble evinced the need to maintain and establish conditions for peace and security as pre-requisites for progress and development in Africa.[11] Evidence reinforcing this intention could also be found in the African Charter on Human and Peoples' Rights (African Charter),[12] which guarantees the right to national and international peace and security.[13]

There were also strategic Declarations and Decisions on peace and security under the OAU regime. Although never off the ground, the OAU Declaration on the establishment of a Mechanism for Conflict Prevention, Management and Resolution (Cairo Declaration) created the mechanism for conflict prevention, management and resolution in Africa.[14] However, members' pledges under Cairo Declaration to respect the borders existing on their achievement of national independence went a long way to douse tensions related to border disputes in Africa.[15] OAU Decisions on Unconstitutional Changes of Government inspired the subsequent Declaration on the Framework for Response to Unconstitutional Changes of Government.[16]

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[8] African Union Commission 1 (2004) 'Strategic plan of the African Union Commission' 9.

[9] 'AU, Africa's common position to the UN General Assembly session on AIDS' (June 2006)*; '*AU, special summit of the African Union on HIV/AIDS, Tuberculosis and Malaria' Abuja, Nigeria, 2–4 May 2006, Sp/Assembly/ATM/3 (I) Rev 2 1.

[10] P Tripodi & P Patel 'The global impact of HIV/AIDS on Peace Support Operations (2002) 9 3 *International Peacekeeping* 51-66.

[11] Adopted in Addis Ababa 25 May 1967 and came to force on 13 September 1963. Replaced in 2001 by the Constitutive Act of the African Union.

[12] Adopted by the OAU in Nairobi, Kenya on 27 June 1981 and entered into force on 21 October 1986.

[13] African Charter, art 23(1).

[14] Adopted by the 29th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Cairo, Egypt, from 28 to 30 June 1993.

[15] OAU Doc AHG/Res. 16(I) (1964); and S Tauval, 'The Organization of African Unity and African borders' (1967) 21 *International Organizations* 102-127 (He discussed the historical events leading to the adoption of the Cairo Resolution).

[16] OAU Doc AHG/Dec.141 (XXXV) and AHG/Dec.142 (XXXV) adopted by the 35th Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Algiers, Algeria, from 12 to 14

Some measure of this commitment is also visible in the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA). The CSSDCA adopted a Memorandum on principles of action in four key areas known as 'four calabashes' namely: collective security, stability, development and cooperation.[17]

Despite the above, the score card of the OAU in terms of its institutional agenda and performance on regional peace and security was generally not impressive. Essentially guided by the concepts of non-interference and sovereignty,[18] the organization performed no useful role in the conflict between Ethiopia and Somalia in the 1970s. It was also unable to prevent an attack on Tanzania by its northern neighbor Uganda in 1978, and a much larger retaliatory attack by Tanzanian in 1979.[19] The conflict between Morocco and Algeria over the status of the former Spanish colony of Western Sahara continued into the late 1980s despite repeated efforts at OAU summit meetings to bring the sides to negotiations. When the impasse was broken in 1988, it was not due to OAU efforts; rather, it was in response to a request by the United Nations. Additionally, although preventable, the OAU could not stop the 1994 genocide in Rwanda; and its efforts to resolve the conflict in Chad were unsuccessful.[20]

The end of the cold war in the 1990s changed the dynamics of the international environment and came with a dwindling effect of participation of external factors in African problems.[21] With this reduced international attention to African problems' including conflict,[22] it became clear for many African leaders that finding 'African solutions to African problems' has never been urgent.[23]

July 1999; and OAU Doc AHG/Decl.5 (XXXVI) adopted by the 36th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lomé, Togo, from 10 to 12 July 2000.

[17] OAU Doc AHG/Decl.4 (XXXVI) on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), adopted by the 36th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lomé, Togo, from 10 to 12 July 2000.

[18] Charter of the OAU art 3(2) & (3).

[19] DW Ziegler *War, Peace , and International Politics* (1997) 216-217.

[20] As above.

[21] M Juma 'The Infrastructure of Peace in Africa: Assessing the Peacebuilding Capacity of African Institution' A Report by the Africa Program of the International Peace Academy to the Ford Foundation. International Peace Academy, September 2002 23.

[22] OA Touray 'The Common African Defence and Security Policy' (2005) *African Affairs* 637.

[23] W Assanvo & CEB Pout 'The European Union (EU): African Peace and Security Environment's Champion?' 4 <http://www.frstrategie.org/barreFRS/publications/pv/stabilisation/pv_20071127_eng.pdf> (accessed 20 October 2008).

The launching of the AU on July 9, 2002, marked a new phase in the African leaders' efforts at evolving a responsive peace and security structure in Africa.[24] Earlier, the Constitutive Act[25] adopted in Lomé in 2000 established and mandated the AU as the continental guardian of peace and stability in Africa. As stipulated in Article 3 of the AU Constitutive Act, maintaining continental peace and security is the principal role of the AU. The AU adopted a proactive and interventionist stance to security challenges, placing the creation of an African Standby Force (ASF) by 2010 at the core of its peace and security agenda.[26] It also outlined a Strategic Plan of Action (SPA) 2004–2007 to create an Africa-wide peace and security regime.[27] The adoption of NEPAD (the New Partnership for Africa's Development) in 2001 at the Lusaka AU Summit incorporated the peace, security and political governance initiative as part of the AU's priority areas.[28]

Examples of other institutions in the architecture created to improve the ability of the AU in conflict prevention and peace and security promotion include the African Peer Review Mechanism (APRM) and the Pan African Parliament (PAP). Sub-regional organizations and integrations such as the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC) have also developed key capacities to manage and prevent conflict situations.

At the Lusaka Summit, the AU took a decisive decision to incorporate the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution as one of the organs of the AU.[29] This crystallised in 2002 into the adoption of the Protocol on the Establishment of Peace and Security Council (PSC Protocol).[30] The PSC Protocol provides for a continental architecture for peace and security based on five structures: the Peace and Security Council, the Continental Early Warning

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[24] (n 8 above) 34.
[25] The Constitutive Act of the African Union,< http://www. au2002.gov.za/docs/key_oau/au_act.htm> (accessed 16 September 2008).
[26] TMurithi *The African Union: Pan-Africanism, Peacebuilding and Development* (2005) 25; M Mwanasali 'Emerging Security Architecture in Africa' (February 2004) 7 4 *Centre for Policy Studies Policy Issues and Actors* ; J Cilliers 'The African Standby force: An update on progress' (March 2008) Paper 160 *Institute for Security Studies* (ISS) 4-6.
[27] Commission of the African Union: 2004 – 2007 Strategic Plan Volume 2 <http://www.africa-union.org/AU%20summit%202004/volume%202%20final%20-%20English%20-%20June%202004.pdf > (accessed 11 September 2008) 13 -14.
[28] OAU Doc AHG/Decl.1 (XXXVII) adopted by the 37th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lusaka, Zambia, from 9 to 11 July 2001.
[29] As above.
[30]Adopted at the 1st Ordinary Session of the Assembly of the Heads of State, Durban, South Africa, 9 July 2002, Addis Ababa, Ethiopia, 9 July 2002.

System (CEWS), the African Standby Force (ASF), the Peace Fund, and the Panel of the Wise.[31] One of the significant objectives of the PSC is to promote peace, security and stability in Africa.[32] The PSC is the collective security and early-warning mechanism for timely and efficient responses to conflict and crisis situations in Africa.[33] Described therefore in terms of its norms and structures relating to averting conflict and war, mediating for peace, and maintaining security in Africa, the African peace and security architecture has emerged.[34]

It is against this backdrop that the Panel of the Wise (the Panel) was inaugurated on 18 December 2007.[35] The Panel was a *sui generis* concept established to support the PSC and the Chairperson of the AU Commission in their efforts in the areas of conflict prevention, promotion and maintenance of peace, security and stability in Africa.[36] The members of the Panel who were elected in January 2007 comprises respected statesmen (Salim Ahmed Salim, former Secretary- General of the Organisation of African Unity (East Africa), Ahmed Ben-Bella, former President of Algeria (North Africa), and Miguel Trovoada, former President of Sao Tome é Principe (Central Africa); and respected women who head reputable domestic institutions (Brigalia Bam, Chairperson of the Independent Electoral Commission of South Africa (Southern Africa), and Elisabeth K Pognon, President of the Constitutional Court of Benin (West Africa).[37]

1.2   Statement of the problem

For long, internationally grown solutions have not been particularly effective in addressing peace and security challenges in Africa. In the 1990s, peace keeping missions were sent by the United Nations Security Council to Africa : the UN Transition Assistance Group (UNTAG) to Namibia from 1989 to 1990; the UN Mission in Western Sahara (MINURSO) from 1991 to 1999; The UN Operations in Mozambique (UNOMOZ) from 1992 to 1994; the UN Observer Mission in Angola (MONUA) from 1997 to 1998; the UN Operations in Somalia (UNISOM I and II) from

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[31] PSC Protocol arts 3-13, 21.
[32] PSC Protocol, art 3(a).
[33] PSC Protocol, art 2(1).
[34] SA Salim, 'The Architecture of Peace and Security in Africa', address during the African Development Forum III, 'Defining Priorities for Regional Integration' 3-8 March 2002 Addis Ababa, Ethiopia.
[35] PSC Protocol, art 11(2).
[36] PSC Protocol, art 11(1).
[37] AU Doc Assembly/AU/Dec.152(VIII).

1992 to 1995; the UN Mission in Liberia (UNMIL) from 1993 to 1997; and the International Mission supervising the Agreements of the Bangui (MISAB) from 1996 to 1999.[38] Private agencies have also been involved in seeking to prevent conflict or bring peace back to Africa. The International Negotiation Network (INN) of the Carter Centre of Emory University has worked on regional conflicts in the Horn of Africa, the Great Lakes, Congo Brazzaville, and Liberia. International Alert in London also brought its good offices to Sierra Leone.[39] These measures have been faulted for their foreignness and ineffectiveness at preventing conflicts in Africa.[40]

In the same token, African conflicts have not benefited much from efforts of seasoned peacemakers. Special Representatives of the UN Secretary General (SRSGs) were sent to Rwanda, Burundi, Zaire, Sierra Leone, Liberia, Western Sahara, Congo (Brazzaville), Mozambique, Angola, and South Africa. As a measure of 'good will' towards Africa, individual countries such as United States and France have sent peacekeeping missions to Somalia (Operation Restore Hope) in 1990 and Rwanda (Operation Turquoise) in 1994. Similar operations were sent for the evacuation or protection missions to Liberia in 1990, Sierra Leone in 1997, Central African Republic in 1996, Congo (Brazzavile) in 1997, and Zaire in 1991, 1993 and 1996.[41] With attention always given only after conflicts had erupted, the fundamental flaw remains; initiatives for conflict prevention were never part of their terms of reference and conflicts have never been brought under control.

Equally too, the activities of the OAU and sub-regional bodies have followed a similar pattern. The OAU sent special representatives to conflict areas such as Congo in 1993 and 1997, and Zaire in 1997, and peacekeeping forces in Rwanda (NMOG) in 1994. ECOWAS sent a military monitoring group (ECOMOG) to Liberia in 1990 and Sierra Leone in 1997 while the Inter-Governmental Agency for Development (IGAD) had attempted unsuccessfully on several occasions to mediate the Sudanese conflict in 1994.[42] These domestic efforts suffered the same fate as global efforts; the arrangements paid no attention to the causes of conflict before they interacted and manifested their deadly effect.

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[38] IW Zartman 'Introduction: African traditional conflict medicine' in IW Zartman (ed) *Traditional cures for modern conflicts: African conflict medicine* (2000) 2.
[39] As above.
[40] FO Hampson *Nurturing Peace: Why peace agreements fail or succeed* (1996) 217.
[41] Zartman (n 38 above) 3.
[42] As above.

With the formation of AU and subsequent adoption of the PSC Protocol establishing the Panel, there has evolved a peace and security architecture to cope with the above challenges. However, as Levitt argues the key instruments of the AU including the PSC Protocol were hurriedly drawn. The implication of this, in his view, is the existence of gap for academic discourse to fill.[43] Being a creation of the PSC Protocol, the Panel suffers similarly, most importantly from the lack of an appropriate discourse on its key issues and features.

There was nothing to show, for instance, that there was a discourse on whether the establishment of the Panel would not be merely duplicating the functions of similar mechanisms within the AU system such as special envoys, representatives and emissaries. In composing the Panel, no thought appears to have been given to the question of whether a pool of the wise would be preferable to a panel of the wise. Ambiguities also exist in terms of the scope of Panel which appears similar with that of Special envoys and representatives. There is no clear rule on how the Panel is to relate with similar mechanisms within the AU and sub-regional bodies and the matters in respect of which this must take place.

The above shortcomings perhaps add up to the inability of the Panel to register its presence in the Kenya crisis; none of the mediators chosen to mediate the crisis was a member of the Panel. It could also explain the sidelining of the panel when the PSC recently requested the creation of a panel of eminent Africans to come up with recommendations on how to address issues of accountability and reconciliation raised by the Darfur conflict.[44] It is against the foregoing background that this study, based on the following underlying questions is conducted:

   a. Is there the need for the Panel in the AU Peace and Security Architecture?
   b. Is the institutional design of the Panel appropriate for its roles?
   c. What are the prospective roles for the Panel in the AU Peace and Security Architecture?
   d. How can the Panel promote the internalisation of peace and security in Africa?

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[43] JI Levitt 'The Peace and Security Council of the African Union: The known and the unknowns' (2003) 13 *Transnational Law & Contemporary Problems* 109-37, 136.
[44] 'African Union demands Security Council suspend ICC indictment of Bashir' *VOA News* 22 July 2008.

1.3.   Objectives

The prospects of the Panel as a conflict prevention and peace and security promotion tool in the AU Peace and Security architecture may remain dim unless its concept is understood and the Panel is effectively operationalised. To this end therefore, the objectives of this study are as follows:

a. To examine the need for the Panel in the AU Peace and Security Architecture.
b. To examine the institutional design of the Panel.
c. To explore the prospective roles for the Panel in the AU Peace and Security Architecture.
d. To identify how the Panel can promote the internalisation of peace and security in Africa.

1.4.   Significance of the study

The Panel was created to support the PSC and the AU Commission in the discharge of its mandate. Great optimism has been expressed by writers on the institutional architecture of the AU in safeguarding peace and security of the African continent.[45] Nothing however has been done to examine the Panel as a vital feature of this aspiration. Yet, such examination is important considering that the mere establishment of the Panel is unlikely by itself to enhance the African continental peace and stability structure if it is ineffectively designed and operationalised.

The Panel has attracted no attention in spite of the burgeoning literature exploring the PSC and its role in the peace and security structure of the AU.[46] There is therefore the need to fill this gap by examining the Panel in the AU Peace and

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[45] K Kindiki 'The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: A critical appraisal' (2003) 3 *African Human Rights Journal* 97-116; A Tokunbo 'African Union and the challenge of continental peace'
<http://www.nigeriansinamerica.com/articles/184/1/Africa-Union-And-The-Challenge-Of-Continental-Peace> (accessed on 29 August 2008); and MB TchoumaviI, 'A critical assessment of the possible role of the African Union in achieving the right to national and international peace and security in Africa' unpublished LLM Dissertation, Centre for Human Rights, University of Pretoria, 2005.
[46] Kindiki (n 45 above); J Cilliers and K Sturman, 'Challenges Facing the AU's Peace and Security Council' (2004) 13 *African Security Review* 97; and F Viljoen *International Human Rights Law in Africa* (2007) 206- 214.

Security architecture. This is necessary in order to distil a body of information on its design and prospective roles for stakeholders who may benefit from its operation.

The study will propose key strategies to improve the relevance of the Panel as a tool of the PSC in facilitating peaceful interventions and promotion of peace and security in Africa.

1.5. Methodology

A combination of comparative and analytical approaches was used in this study. Primary sources including treaties, declarations, resolutions, and reports of regional and global organizations were examined. Reports of the organs of the AU such as the PSC, African Commission, and the Pan- African Parliament were also considered. Reliance was placed on library based information which was critically analysed to discuss the research questions with the view of making relevant deductions. Due to the nature of the study which involves new concepts and institutions that have emerged recently, the study also relies on important documentation on the internet.

1.6. Limitations of study

The Panel is a recent initiative of the AU. The activities of the Panel at the time of this study are scanty. Requests made by the author for an interview with the members of the Panel were not granted. If granted, the findings would have further enriched the analysis of the Panel.

1.7. Literature review

Conflict poses a great challenge to peace, security and democratic stability and development in Africa. In describing the threat posed by conflicts to stability in Africa, world leaders such as Kofi Annan related that since 1970, more than 30 wars have been fought in Africa.[47] In 1996 alone, 14 of the 53 countries in Africa

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[47] K Annan 'The causes of conflict and the promotion of durable peace and sustainable development in Africa' (1998) 1-6; JP De Cuellers 'The Report of the Secretary-General on the work of the organisation' (1992) 21; B Ghali 'An agenda for peace: Preventive diplomacy, peacemaking, and peace

were afflicted with armed conflicts accounting for more than half of all war related deaths worldwide and resulting in more than 8 millions refugees, returnees and displaced persons. African issues on the UN Agenda relate to nations such as Western Sahara, Liberia, Sierra Leone, Cote D'Ivoire, Democratic Republic of Congo, Burundi, Sudan, Chad, Ethiopia and Eritrea, Somalia,[48] and most recently, Kenya,[49] and Zimbabwe.[50] All these countries are inflicted by conflict in one way or another.

African states have thus far failed to find lasting methods of conflict prevention or solutions to end conflicts. Instead for many years, African leaders have relied on the international community to resolve conflicts on the continent, despite its repeated failure to do so successfully. At the time of liberation from colonial rule, Mazrui noted: 'Pax Africana asserts that the peace and security of Africa is to be assured by the exertions of Africans themselves.'[51]

Scholars have therefore suggested peace and conflict resolution mechanisms which focus on the concept of using wisdom and values of distinguished personalities in African society. Mazrui for instance, explores four African resources that can be tapped in conflict resolution. These are the Africa's limited memory of animosity, values of the elders, Africa's ecumenical spirit and African women.[52] Malan also favours an approach that would provide deeper understanding of the origin and nature of conflict, the role of elders and social environment throughout the process of resolving conflicts.[53] Tuto contributes the *Gada* system within the Oromo society and the role of elders in the mechanism as an example of indigenous process of conflict resolution in Africa.[54]

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keeping Report of the Secretary- General pursuant to Security Council Statement of 17 June 1992' UN Doc A/47/277-S/24/111 paras 6-50.
[48] Annan (n 47 above).
[49] Report of the Secretary-General on the work of the Organization, UN General Assembly Official Records Sixty-third Session Supplement No.1 (2008) 8 para 36.
[50] UN Security Council Briefing SC/9387 at Security Council 5929th Meeting
< http://www.un.org/News/Press/docs/2008/sc9387.doc.htm > (accessed 20 October 2008).
[51] A Mazrui 'Towards a pax-Africana: A study of ideology and ambition' (1967) 52 4 *The Journal of Negro History* 315-318.
[52] A Mazrui 'Towards containing conflict in Africa: Methods, mechanisms and values' (1995) 2 *East African Journal of Peace and Human Rights.* 81-90.
[53] J Mallan 'Conflict resolution wisdom from Africa' 1997 ACCORD 9-17.
[54] H Tuso 'Indigeneous processes of conflict resolution in Oromo society' in IW Zartman (ed) *Traditional cures for modern conflicts: African conflict medicine* (2000) 67-79.

The works of Albert, Awe, He'rault and Omitogun, on the major tribes in Nigeria discuss the role of elders and an indigenous value system in dispute resolution which emphasises reconciliation, good neighbourliness and peaceful co-existence.[55] Osaghe cautions on the application of traditional methods of conflict resolution. In Osaghe's opinion, such methods are limited by politicisation, the character of conflict and their localized applicability.[56] In addition, Osaghe's view on discrimination against women in decision making and efforts aimed at conflict prevention agrees with the position that the potentials of women are largely ignored and untapped.[57] Zartman contributes the concept of governance as conflict management.[58]

The capacity of the African Union regional and sub-regional framework on conflict resolution has been considered by Kindiki who points out the contradictions that may arise out of the interpretation of this framework.[59] There are thematic reports and strategic papers which have also discussed the prospects of institutions on the continental, sub-regional, national and local levels in promoting peace, security and stability.[60] Recent studies by Acharya and Johnston have however reinforced the shift of scholarly attention from whether institutions matter to the investigation of their design features to find out how institutions actually work.[61]

It is noteworthy however that the foregoing literature does not specifically discuss or examine the Panel in the AU Peace and Security framework. Building on the existing corpus of knowledge, this study examines the need for the Panel in the AU peace and security architecture. In discussing the Panel, the study critiques its

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[55] A Albert *Informal channels for conflict resolution in Ibadan, Nigeria (*1995) 19- 50.

[56] EE Osaghae 'Applying traditional methods to modern conflict: Possibilities and limits' in IW Zartman (ed) *Traditional cures for modern conflicts: African conflict medicine* (2000) 201-230.

[57] Beijing Platform for Action (1995) <http://www.un.org/womenwatch/daw/beijing/platform/plat.1.htm > (accessed 10 September 2008); UN Security Council Resolution 1325 on women , peace and security (2000) <http://www.un.org/docs/scres/2000/sc2000.htm >(accessed 15 September 2008).

[58] IW Zartman, ed. *Government as conflict management: Politics and violence in West Africa* (1997) 9-20.

[59] Kindiki (n 45 above) 103-105.

[60] 'The Infrastructure of peace in Africa: Assessing the peacebuilding capacity of African institutions' (2002) www.ipacademy.org/PDF_Reports/FORD.pdf (accessed 10 September 2008); Ghali (n 41 above); K Annan 'We The Peoples: The Role of the United Nations in the 21st Century' (2000) <http://www.un.org> International Commission on Intervention and State Sovereignty 'The Responsibility to protect' (2001) <http://www.iciss.ca/report-en.asp >(accessed 10 September 2008); African Union: 2004 – 2007 Strategic Plan Volume 2 <http://www.africa-union.org/AU%20summit%202004/volume%202%20final%20-%20English%20-%20June%202004.pdf> (accessed 11 September 2008) 13 -14.

[61] A Acharya and A 'Comparing regional institutions' in A Acharya and A Johnston (eds.) *Crafting Cooperation: Regional Institutions in Comparative Perspective* (2007) 3-60.

design features, explores its prospective roles and fills gaps in literature by contributing suggestions to improve its effectiveness.

1.8. Scope /Overview of chapters

Chapter one provides an introduction to the Panel in the context of the African peace and security architecture; it highlights the imperviousness of varied efforts aimed at conflict prevention and resolution in Africa.

Chapter two argues that Panel is a revival of the concept of the wise which is widely used for conflict prevention, promotion and maintenance of peace, security and stability in indigenous Africa and has found expression in some post colonial African states.

Chapter three draws from theoretical insights, particularly from seminal work of Acharya and Johnston on institutional design features to provide an overview and critique of the Panel of the Wise. This chapter concludes that there is the need for a redesigning of the Panel if it is to perform in an efficient and productive fashion.

Chapter four explores the prospective roles of the Panel from peaceful interventions to the promotion of peace and security. It discusses the prospects of the Panel to enhance peace and human security in Africa by acting singly or collaboratively with external mechanisms with similar mandates and internal organs within the AU system.

Chapter five presents the conclusions and recommendations on how the Panel of the Wise can be improved.

CHAPTER TWO

PROBING THE NEED FOR THE PANEL OF THE WISE: AFRICAN EVIDENCE ON THE CONCEPT OF THE WISE

2.0 Introduction

The need for homegrown solutions to African challenges has engaged the attention of African scholars for long.[62] African leaders have shared in similar renaissance. In his view, Julius Nyeyere pointed out the need for Africa to start from its 'african-ness' and a belief in its own past to chart solutions for contemporary challenges.[63] In probing the need for the Panel of Wise (the Panel), this chapter situates the existence of the Panel in African proverbs on the concept of the wise. It points at practices from different parts of Africa which exemplify the wisdom of the elderly as relevant to conflict prevention, maintenance of peace and security in indigenous African settings.

In answering the question as to whether the concept of the wise is still relevant in post colonial Africa, the chapter examines various arguments around the concept, and draws from evidence from national constitutions and sub-regional practices to establish the relevance of the concept. The chapter concludes that the introduction of the Panel into the African Union (AU) peace and security architecture is a reflection of the belief that the wisdom of the elderly can be tapped in resolving conflicts, and maintenance of peace and security in modern Africa.

2.1 African proverbs, practices and the concept of the wise

In most parts of Africa, the concept and secret of wisdom are regarded as predominantly in the sphere of the elderly persons.[64] Proverbs abound in Africa that emphasise the wisdom of elderly.[65] On the question as to who is qualified to inform on the past, proverbs from the Niger Delta area in Nigeria points to age as the most important criterion. To the Nembe, 'more days mean more wisdom', while

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[62] Mazrui (n 52 above); Mallan (n 53 above); and Osaghae (n 56 above).
[63] JK Nyeyere   *Freedom and Unity (Uhuru na Umoja) : A selection of writings and speeches 1952-65* (1967) 316.
[64]K Gyekye *An Essay on African philosophical thought: Akan conceptual framework* (1987) 18.
[65] Unpublished: LP Kimilike ' An African perspective on poverty proverbs in the book of proverbs : An analysis of transformational possibilities' Unpublished PhD University of Pretoria (2006) 95.

the Ikwerre people from the same region believe that 'what an old man sees seated, a youth does not see standing.'[66] A similar expression is found in another proverb from the East Africa that 'what old people see seated at the base of the tree, young people cannot see from the branches.'[67] Also in Uganda, there is the saying that 'it is the black spot in the eyes of the elders which has vision,' meaning that what a young person may not see, elders will.

Relating with elders in times of conflicts and involving them in decision making is encouraged in a number of proverbs. In signifying for instance that a secret can be safely confided in the elders, the Bassa people in Liberia consider the elders 'as a bath-tub which cannot expose any secret of those who stand before it daily.' In Burundi, signifying elder's role in conflict prevention, the saying is that 'where there are old people, the soup will not be poured out'. Consequently, refusing elders' involvement is rare and exceptional. As shown in the proverb from the Luo people of Congo, 'those who do not listen to the voice of the elderly are like trees without roots'. Considering therefore the above African wide view, it is believed that elders play an important role in maintaining security, managing and preventing conflict at least, in most indigenous African settings.

A vital element which also rings throughout Africa's institution on conflict prevention and decision making on community security is the tradition which tapped on the wisdom of the elders.[68] 'Elder meetings' held under trees, public or village assemblies and other gatherings dealt with issues of dispute before they matured into full blown conflicts. Examples of such meetings include the 'palaver hut' meetings of the Vai and Kpelle people of Liberia,[69] and the Ndendeuli of Tanzania.[70] Elders can be very instrumental in guiding talks toward an agreement which would reflect as inclusively as possible the consensus of disputants on issues capable of escalating into threat to peace.[71] Evidence of the involvement of the elders in traditional institution for conflict prevention and community security exists in other parts of Africa.

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[66] <http://www.ccsu.edu/afstudy/upd1-4.html> (accessed 13 September 2008).
[67] As above.
[68] JL Comaroff & S Roberts *Rules and Processes: The cultural logic of dispute in Africa context* (1981) 109.
[69] S Nanda *Cultural anthropology* (1987) 96-98.
[70] CJ Witty *Mediation and society: Conflict management in Lebanon* (1980) 6.
[71] Malan (n 53 above).

In pre-colonial Nigeria, for instance, the course through which dispute resolution proceeds is hierarchical with important roles for the elderly to play all through the hierarchy. As a matter of fact, some of these traditions have endured. Among the Yorubas in Ibadan, for instance, three hierarchies which involve the elderly in conflict prevention and resolution are noticeable. These are namely the *baale,*[72] the *mogaji,*[73] and the *olubadan*[74] in Council. According to Albert, Awe, He'rault and Omitogun, in Ibadan, the *mogaji* is formally recognized as the head of an *ebi,*[75] by the hierarchical power structure.

The *mogaji* is usually the eldest or most influential person in the *ebi.* A responsible *baale* in Ibadan, as in any other part of Yorubaland, is one whose opinions and decisions are respected by those within his household.[76] Fadipe finds that as the head of his household, the *baale* is also a mediator whose thoughts in disputes among members of his family must be respected. He keeps peace and order in his household, and as noted, he is the chief lawgiver and magistrate of the compound. The *baale* also controls the relationships between members of his family and outsiders. Where a dispute cannot be resolved or decisions reached, the matter may eventually find its way to the *mogaji* or in the rare case to *olubadan* in council.[77]

In other multi-ethnic African societies such as in traditional Somali society, the clan is a social and political unit of organisation and government. Although, the clan is cited as a factor in the collapse of Somalia,[78] evidence at least from Somaliland, points to the fact that the clan elders are a source of reconciliation and maintenance of peace.[79] In Somaliland, each clan has its own leaders and a council of elders that is involved in maintenance of peace and conflict prevention, management, and resolution. The council of elders and traditional chiefs ensure harmony and sustain peace in the clan communities. In addition to the rights and limitations of neighboring clans, the council defines the rights and obligations of

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[72] The *Baale* means household head.
[73] The *Mogaji* means the head of the extended family.
[74] The *olubadan* is the title of Ibadan king.
[75] The *Ebi* means extended Family.
[76] Albert (n 55 above) 21.
[77] NA Fadipe *Sociology of the Yoruba* (1970) 106.
[78] F Ssereo 'Clanpolitics, clan-democracy and conflict regulation in Africa: The experience of Somalia ' (March /June 2003) 2 *The Global Review of Ethnopolitics* 26.
[79] M Bryden 'Rebuilding Somaliland, issues and possibilities' (2003) 6-27.

the members of the clan and their relations.[80] Even where breach of security takes place, the elderly fixes the traditional customary conventions on war and crisis situations, the laws of mutual assistance to captives of war; caring for the injured and hospitality, which are part of the customary social and political code of conduct.[81]

In Uganda, among the Karamojong, the elders resolved disputes by means of discussions and debates before they worsen into conflicts.[82] In Ethiopia, among the Boran, the village council and the *Aba Olla* (village head) had far reaching political, social, economic and judicial functions including dispute settlement.[83] Likewise, amongst the Samburu in Kenya, who operated a very distinctive clan-based administration and age-set system, there is evidence of binding mechanisms which engaged the elders in dispute resolution, and maintenance of peace and order.[84]

Thus far, it has been shown that proverbs and practices from different indigenous settings in Africa exemplify the elderly as custodians of wisdom. What remains to be examined are the weaknesses in that theory and whether the concept of the wise is relevant in African post colonial experience.

2.2 The concept of the wise in post colonial Africa: Obsolete or relevant?

There are number of weaknesses which may cast doubt on the relevance and applicability of the indigenous form of the concept of the wise to contemporary challenges of Africa. First, it will seem indefensible to generalize that in all parts of Africa, age is synonymous with wisdom. This is based on the fact that there is evidence to support that wisdom can be acquired through other sources apart from age. A case in point is the Akan people who believe that one who is well travelled can also be considered as a wise person due to the experiences that he or she has.[85]

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[80] (n 79 above) 10-15.
[81] (n 79 above) 25.
[82] S Dzivenu 'The politics of inclusion and exclusion of traditional authorities in Africa: chiefs and justice administration in Botswana and Ghana' (2008) 2 1 *Political Perspectives* 1-30, 7.
[83] As above.
[84] As above.
[85] K Appiagyei-Atua 'A rights-centred critique of African philosophy in the context of African development' (2004) 10 *East African Journal of Peace & Human Rights* 55-56.

Secondly, as Wiredu argues, in traditional African societies, thoughts and wisdom came from the elderly persons and were imposed on the rest of the community.[86] Largely dominated by the male, the views of the women were either unheard or altogether excluded in the dispute settlement framework. In Somali for instance, the clan based conflict resolution system is led by male clan elders (Oday) which severely marginalise women in decision-making.[87]

Thirdly, the dispute management strategies often generated by the elders were localized and could not be generalized beyond local boundaries. These strategies, Osaghe argues, are located in ethnic groups and this, where ethnic conflicts exist, may be seen as a continuation of ethnic domination by one ethnic group of another and further aggravate conflicts.[88]

In addition to the above, with the advent of colonialism, the relevance of the institution of elders itself became dysfunctional through politicization, corruption and abuse of traditional structures. The cooption of most elders as agents of the state and their manipulation to serve partisan ends considerably reduced the reverence and respect commanded and, therefore their ability to resolve conflicts.[89]

Rather than dispensing with its necessity, however, the weaknesses in the concept of the wise are cultural and only suggest that positive changes that will refurbish and readjust the concept for contemporary use is possible. There are reasons for this optimism. First, as Afigbo argues, African's past will make sense when there is success in 'reconstructing a usable and problem solving oriented past'.[90] Secondly, the imperviousness of the African peace and security concerns to international attentions reinforces the need for inward search for culturally applicable solutions.[91] Thirdly, the need for culturally applicable solutions to African problems has also engaged the attention of international bodies such as the United

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[86] K Wiredu *Philosophy and an African culture* (1980) 2-5.
[87] J Gundel 'The predicament of the 'Oday' The role of traditional structures in security, rights, law and development in Somalia' (2006) 2-85, 21.
< http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/GundelTheroleoftraditionalstructures_1.doc >(accessed 10 September 2008).
[88] Osaghe (n 56 above) 214-215.
[89] Osaghe (n 56 above) 215.
[90] AE Afigbo *The making of modern Africa* (1986) 30.
[91] Hampson (n 40 above); Zartman (n 38 above).

Nations Educational Security Council (UNESCO).[92] Finally, threats to security and peace do not exist in a vacuum but within a social-cultural context.

Unsurprisingly therefore, post independence national constitutions of some African states create advisory roles for elders not only in governance but in the promotion of peace and security. In Ghana for instance, the Constitution provides for a Council of State which is composed of a body of elders to counsel the President in the performance of his functions.[93] Similar provision exists in the Constitution of Lesotho which allows for the creation of a Council to assist the king in the discharge of his functions.[94] In the Kingdom of Swaziland, the *Tindvuna* is a constitutional body of headmen which assists in the traditional governance of the country in areas including the hearing of complaints and advising on the tempo of the nation.[95] The Constitution of the self declared state of Somaliland also establishes the House of Elders and vests it with the power to address issues regarding the security and peace of the country.[96]

Even in some national constitutions where no mention is made about specific role for elders, institutions have been established which exercise similar influence on issues of peace and security. Article 61 of the 1995 Constitution of the Federal Republic of Ethiopia for instance establishes the House of the Federation, composed of representatives of nations, nationalities and peoples. One significant function of the House is to strive to find solutions to disputes or misunderstandings that may arise between states.[97] In Burundi, the Post – Transition Interim Constitution provides for the National Council of *Bashingantahe,[98]* whose responsibilities include giving advice on essential questions concerning unity, peace and national reconciliation.[99] A similar role is

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[92] UNESCO has argued that that culture is critical to development and that development must be engaged in the context and through the medium of human cultures. Preface to UNESCO, Recognizing Culture: A series of Briefing Papers on Culture and Development
<http://www.unesco.org/culture/development/briefings/html_eng/foreword.shtml >(accessed 9 September 2008).
[93] The 1992 Constitution of the Republic of Ghana, art 89 (1).
[94] The 1993 Constitution of Lesotho art 95(1).
[95] The 2005 Constitution of the Kingdom of Swaziland sect 235 (4).
[96] The 1997Constitution of Somaliland art 57.
[97] The 1995 Constitution of the Federal Republic of Ethiopia art 62 (6).
[98] In pre colonial times the term *Bashingantahe* was used to designate a body of men renowned for their sense of truth, justice, and responsibility for the overall good of the community. However the institution is now composed of both men and women, at community level who possess the desired attributes of wisdom, calm and a love of truth, entrusting them with the authority to arbitrate in certain disputes. <http://daga.dhs.org/urugopeace/Burundi/bashingantahe.htm >(accessed 22 October 2008) .
[99] The 2004 Post-Transition Interim Constitution of the Republic of Burundi art 269.

contemplated in the Central African Republic for the National Council for Mediation.[100]

Sub-regional bodies such as the ECOWAS and SADC have also developed institution and practices around the concept of the wise. The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security of ECOWAS (ECOWAS Protocol) creates the Council of Elders.[101] On behalf of ECOWAS, members of the Council can use their good offices and experience to address issues capable of breaching peace and security within the region.[102] The Council has been engaged in handling the crisis arising from the proliferation of small arms in the sub-region.[103] The SADC Protocol on Politics, Defence, and Security Cooperation (SADC Protocol) does not provide for a similar Council.[104] The SADC Protocol however mandates the Organ on Politics, Defence, and Security Cooperation to prevent, manage and resolve conflict by peaceful means.[105] To this end, Eminent Persons are often engaged by SADC as shown in the example of Lesotho where they were involved in post election political concerns.[106]

Most importantly, the recent efforts of Africa statesmen in mediating conflict situations in Africa, shows the belief in the elderly as an agent of peacemaking and confirms Zartman's view that even in modern times 'Africa does not lack mediators'.[107] Kofi Anan was for instance involved in mediating the electoral crisis in Kenya.[108] The former President of Mozambique, Joachim Chissano has been involved in the efforts to resolve the crisis in Northern Uganda.[109] Following the tension created over the election held in Zimbabwe, Mr Thabo Mbeki has also been involved in brokering peace between the two major participants of the election,

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[100] The 2004 Constitution of the Central Africa Republic art 104.
[101] ECOWAS Protocol art 20 .
[102] As above.
[103] The Guardian May 23 2008
<http://www.guardiannewsngr.com/news/article05//indexn2_html?pdate=230508&ptitle=Obiakor>(accessed 9 September 2008).
[104] SADC Protocol art 11 (3)(a).
[105] As above.
[106] SADC News/Press Release
<http://www.foreign.gov.ls/news/SADC_Eminent_Person_Mission.php> (accessed 9 September 2008).
[107] IW Zartman 'Inter-African negotiations and State renewal' in JW Harbeson and D Rotchild (eds)(2000) *African in World Politics: The African State System in Flux* 142.
[108] 'Kenya crisis talks end ' *Nation News* 30 July 2008 <http://www.nation.co.ke/News/-/1056/445014/-/tj26d7/-/index.html> (accessed 9 September 2008).
[109] 'Uganda: Chissano in Gulu to salvage LRA-Govt peace deal'
<http://www.irinnews.org/Report.aspx?ReportId=79868 >(accessed 20 October 2008).

namely the incumbent president, Mr Robert Mugabe and the opposition leader, Mr Morgan Tsvangirai.[110]

In introducing the Panel to the AU peace and security architecture, it does appear therefore that the African leadership is desirous of establishing an institution capable of drawing from African cultural heritage to handle its challenges relating to conflict and peace maintenance.

2.3 Conclusion

As indicated in the introduction, the desire for an African solution to African problems underscores the need for the Panel. Evidence from proverbs and practices in different parts of Africa demonstrate the belief in the wisdom of the elderly as critical to conflict prevention and peace and security maintenance in traditional African settings. The trend has not changed in modern times as made clear in post colonial some constitutions of African states which vest similar role in the elders. It is therefore only restating the faith in the wisdom of the elderly when the African leadership introduced the Panel into the AU peace and security architecture.

Having ascertained the basis for the Panel, the next chapter will offer a close critique of the features of the Panel. This is with the view of finding out whether the Panel is effectively designed.

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[110] 'Zimbabwe crisis: Thabo Mbeki's Role'
<http://www.guardian.co.uk/news/blog/2008/jun/23/zimbabwecrisisthabombekisr >(accessed 20 October 2008).

THE PANEL OF THE WISE - FROM ESTABLISHMENT TO INSTITUTIONAL DESIGN: AN ASSESSMENT

3.0 Introduction

Whereas the preceding chapter establishes the basis for the Panel of the Wise (the Panel), it is unlikely that an institution will become effective only because it is well conceived. Bourgeoning evidence from study in international relations on peace and security institutions shows that how institutions are designed is more important than why it is necessary. There is therefore the need to discuss the Panel with the view of examining how it is designed.

This chapter begins with a brief description of the establishment of the Panel. Next, the chapter draws from the seminal work of Acharya and Johnston on institutional design in examining the features of the Panel, namely its membership, scope, rules, norms, and mandate. The chapter points out the need for amendments in the membership, scope and rules of the Panel. Among other things, it proposes the pool of eminent persons of the Economic Community of West African States (ECOWAS) as a model more preferable to the Panel. The chapter concludes that there is the need for the Panel to be redesigned to enable it performs effectively in the African Union (AU) peace and security architecture.

3.1 Establishment of the Panel

The Panel was established pursuant to article 11 of the Peace and Security Council (PSC) Protocol as a key body to support the efforts of the PSC and Chairman of the AU Commission particularly in the area of conflict prevention. In January 2007, the AU Assembly appointed a number of distinguished African personalities to the Panel for a period of three years.[111]   The Chairperson of the Commission is mandated under the PSC Protocol to put together the modalities for the functioning of the Panel subject to approval of the PSC.[112]   After an initial failure to discuss the

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[111] (n 37 above).
[112] PSC Protocol art 11 (7).

modalities as scheduled on 8 August 2007,[113] at the meeting of the Panel on 12 December 2007, the modalities for the Panel were eventually discussed and adopted.[114] Inaugurated on 18 December 2007, the Panel held its first meeting on 20 February 2008.[115]

3.2 Institutions and Design

According to Acharya and Johnston, the study of international relations has witnessed a shift from the question of whether the establishment of institutions matter to one of how they matter and how they actually work. Scholars generally referred to as institutionalists have begun to investigate the design features of institution.[116] Leading these efforts is the Rational Design of International Institutions Project (RDII) which grew out of a concern to study variations of institutions instead of how institutions matter.[117]

To date therefore, as Acharya and Johnston argue, the works on international institutions have fallen within the above institutionalist analytical framework. In explaining this framework, the writers posit that institutional design should in some way reflect the nature of cooperation problem facing the actors.[118] In their further view, ideology and identity affect institutional design. The relevance of ideology is particularly clear from the saying that liberal states particularly when dealing with other liberal states will be willing to accept a higher level of intrusion such as third party mediation even if it may offend the traditional concept of sovereignty.[119] Identity, for instance, may play an important role in the institution membership and norms where it can be used to determine who is to be included or excluded in membership.[120]

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[113] 'Panel of the Wise - Operationalising the African Union's Mediation Framework' *ISS Today* 23 August 2007.
[114] Modalities of the Panel of the Wise, adopted by the peace and security council at its 100th meeting held on 12 November 2007.
[115] AU Document EX.CL/438(XIII) The Assembly of the African Union Eleventh Ordinary Session 30 June- 1 July 2008.
[116] Acharya and Johnston (n 59 above) 12.
[117] B Koremenos, C Lipson & D Snidal 'The Rational Design of International Institutions' (Autumn, 2001) *International Organisations* 1.
[118] Acharya and Johnston (n 59 above) 17.
[119] As above.
[120] Acharya & Johnston (n 59 above) 18.

In all, Acharya and Johnston identify five major features of institutional designs[121] namely membership,[122] scope,[123] formal rules,[124] norms,[125] and mandate.[126] In the next sub-section, I use these features as a guide to make an overview of the Panel.

3.2.1 Membership: A Pool or Panel of the Wise?

The Panel is composed of five highly respected members from various segments of society who have made outstanding contribution to peace, security and development on the African continent.[127] Panel members are selected by the Chairperson of the Commission after consultations with the Member States concerned, on the basis of regional representation to serve for a renewable period of three years.[128]

The limit of membership of the Panel to five greatly undermines the relevance of the Panel. One questions the rationale behind such prescription considering the level and spontaneity of conflicts and crises in Africa. The availability of high resources of dignified women and men who can be engaged in conflicts and crises situations in Africa also suggests that the Panel can be broader. The existence of mediation teams does not remove the need for broader membership of the Panel.[129] This is because, more than any other mechanism in the system, the members of the Panel are expected to bring respected personalities to bear on issues brought to their attention.[130]

Equally, given the distinct feature of the art of mediation and negotiation which requires disputants' consent on who mediates over their disputes,[131] it is difficult to imagine how a 5 member panel can effectively satisfy this requirement within the African conflict context. An example that vividly describes this concern is the Kenya election crisis. The government, at the wake of the crisis, offered dialogue which was to be facilitated by the Ghanaian President who was also the Chairman

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[121] See generally, Acharya & Johnston (n 59 above) 21-22.
[122] This means how inclusive or exclusive are the membership.
[123] This refers to how narrow an broad are the issues that the institution is designed to handle.
[124] This entails set of rules or policies governing how decisions are made.
[125] This refers to the formal and informal ideology of the institution.
[126] This refers to the general purpose of the institution.
[127] PSC Protocol art 11 (2).
[128] As above.
[129] (n 114 above) para III (1)(f).
[130] PSC Protocol art 11 (2).
[131] W Ury 'Getting to say yes: Negotiating Agreement without giving in' (1991) 20.

of the African Union. Mr Ralia Odinga, the leader of the opposition, however, insisted that he would only agree to a mediation facilitated by international mediators.[132]   The impasse was eventually brokered by a team of international mediators headed by the former secretary general of the United Nations, Mr. Kofi Annan, a non member of the Panel.[133] The African Union's failure at brokering the Kenya crisis has been criticised as exposing the weakness of the system to act as one-stop shop for security issues in Africa.[134]   Far from being resolved, the weakness may feature again as the possibility still exists that either or both parties involved in disputes may find the personalities of members of the Panel unacceptable for mediation.

It does therefore appear that a Pool of the Wise composed of reputable personalities from different regions of Africa may be more fitting in the African context than a Panel of only five personalities. The idea of a pool is not strange particularly in the sub regional system. An example can be found in the membership of ECOWAS Council of Elders. The Executive Secretary of ECOWAS is required to annually compile a list of eminent person from various segments of society, including women, political, traditional and religious leaders. These are persons who, on behalf of ECOWAS, can use their good offices and experience to play the role of mediators, conciliators and facilitators whenever conflicts arise. The Council of Elders is constituted from the approved list to deal with specific conflict situations.[135] This has been put to use on different issues such as pre-election survey in Nigeria.[136] Members of the Council, including General Seth Obeng from Ghana have, as already mentioned, also been involved in addressing proliferation of small and light arms.[137] Therefore, the AU can follow the approach of ECOWAS in redesigning the Panel into a more promising Pool of the Wise.

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[132] 'Kenya crisis talks end in failure' *BBC News* 10 January 2008.
<http://news.bbc.co.uk/2/hi/africa/7181184.stm> (accessed 8 September 2008)
[133] 'Kenya crisis could take a year to end' *Skye News* 30 January 2008.
<http://news.sky.com/skynews/Home/Sky-News-Archive/Article/20082851302827> (accessed 8 September 2008) ; and 'Kenya crisis talks end ' *Nation News* 30 July 2008 .
<http://www.nation.co.ke/News/-/1056/445014/-/tj26d7/-/index.html > (accessed 9 September 2008).
[134] 'Kenya failure breaches African Union ambition' *Reuters* 11 January 2008
<http://www.reuters.com/article/worldNews/idUSL1171753120080111>(accessed 10 September 2008).
[135] Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security art 20.
[136] 'Gambia President Heads ECOWAS Mission to Nigeria' *Afrol News* 22 Jan 2007
<http://www.afrol.com/articles/23932 >(accessed 20 October 2008).
[137] ECOWAS Advisory Board for Small Arms in West Africa
<http://www.iansa.org/regions/wafrica/BoardECOWAS.htm> (accessed 20 October 2008).

Apart from the above model of ECOWAS, the Pool of Wise is recommendable for other reasons. First, it will accommodate an increased number of eminent personalities who can engage the mandate of the Panel. Secondly, as credentials and experiences of members may vary, a pool will enable the peace and security structure to easily compose a team around a peace and security issue. Thirdly, large membership in a pool may actually increase wider reach and help elicit cooperation for activities in areas of conflict prevention and peace promotion as well as decisions compliance. Finally, a pool of the wise will further strengthen the peace and security structure by making it accessible to a more robust collective wisdom and intelligence of respected personalities in coping with challenges facing peace and security in Africa.

3.2.2 Scope

In coordination with the PSC and the Chairperson of the Commission, and through the Special Envoys / Representatives and other emissaries, the Panel is required to carry out a number of activities. These activities include, facilitating of the establishment of channels of communication engaging parties involved in a dispute with the view of preventing such dispute from escalating into conflict. Another one of such activities is the carrying out fact-finding missions as a means of conflict prevention.[138] The Panel may also conduct shuttle diplomacy between parties unwilling to engage in formal talks; assist and advice mediation teams engaged in formal negotiations; and develop and recommend ideas and proposals that can contribute to promoting peace, security and stability on the continent.[139] The Chairperson of the Commission may also perform similar functions on his/her initiative or in collaboration with the Panel, Special representatives or envoys.[140]

Ambiguities may likely arise from the interaction between the Panel with Special Envoys/ Representatives who are also widely respected, experienced and impartial diplomats. These representatives are dispatched to travel to areas in conflict to help reduce tensions and resolve disputes. At a glance, the functions of the Panel may appear to be a duplication of the responsibilities of other mechanisms.

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[138] (n 114 above) para III (1)(a)-(c).
[139] (n 114 above) para III (1)(d).
[140] PSC Protocol article 10 (2)(b).

However, given the unimpressive contributions made by Special Envoys/Representatives mechanisms to conflict prevention in Africa,[141] greater involvement is perhaps more preferable for the Panel in conflict prevention. This preference is premised on the fact that the members of the Panel are non-partisan and independent,[142] and are best placed to perform in such role rather than diplomats as the case with the special envoys.

The Panel has so far devoted no attention to its core mandates, namely, conflict prevention and intervention. The recent press statement by the Panel indicates the decision of the Panel to undertake, each year, a thematic reflection on an issue relevant to conflict prevention. This year's reflection is devoted to election-related crises and tensions. This choice was made in response to the relevant decisions of the PSC and the Assembly of Heads of State and Government of the AU.[143] More is however expected of the Panel in view of its mandate. At the very least, one contemplates that the activities of the Panel should include an inventory of the monitoring of peace agreements reached before the Panel came into existence. In the Kenya crisis for instance, as a measure of further conflict prevention, one would have expected the Panel to follow up on the peace agreement to ensure that its terms are complied with.

3.2.3 Formal rules

There are no formal rules in the PSC Protocol to regulate the activities of the Panel. The modalities of the Panel however set out procedures for the appointment of the Chairperson for meetings and communications, agenda, quorum, recommendations and reports.[144] The Panel meets as often as the circumstances may require or at least three times a year.[145] The Panel may also sit at any time at the request of the Council or the Chairperson of the Commission.[146] It is believed that such impromptu sitting makes good sense considering the spontaneous nature of conflicts, particularly in Africa.

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[141] Zartman (n 38 above) 3.
[142] Ambassador Ramtane Lamara, AU's Commissioner for Peace and Security stamped the Panel with three seals namely, 'seals of experience, independence and hope' in 'AU's Panel of the Wise gather to discuss conflicts and peace building in Africa ' *Sub-saharan Informer* 22 July 2008. <http://www.ssinformer.com/news/africa/african_union/2008/July/18/Aup_18_08_08_001.html> (accessed 10 September 2008).
[143] Press Statement of the Panel of the Wise, 2nd meeting 17 July 2008 Addisababa, Ethiopia.
[144] (n 114 above) para IV.
[145] (n 114 above) para IV (3).
[146] As above.

The Panel holds its meetings at the Headquarters of the Union or elsewhere after consultation with the Chairperson of the Commission.[147]   This meeting arrangement is useful and convenient for the Panel that may wish to meet for urgent intervention in disputes before they worsen into conflicts situation. Meetings are held in closed sessions.[148]   Resource persons, experts, institutions or individuals, may be invited to attend a meeting in order to assist the Panel in its deliberations on specific issues.[149]   It is envisaged that the Panel will take advantage of this provision regularly as it will no doubt allow for greater dialogue between the Panel and the wider stakeholders in the public in performance of its mandate.   Most importantly, it will enable the Panel to tap from a wide variety of resource.

In accordance with its modalities, the Chairperson of the Panel is mandated to receive for inclusion in the provisional agenda of a meeting of the Panel, proposals on issues of the promotion and maintenance of peace, security and stability in Africa.[150] Such proposals are received from any member of the Panel, the Council and the Chairperson of the Commission, as well as from the Pan-African Parliament, the African Commission on Human and People's Rights and civil society groups in the context of their respective contributions to the promotion and maintenance of peace, security and stability in Africa.[151]   The individual is not included in these modalities for submission of proposals for the Panel's agenda. This is strange particularly considering the fact that political conflicts often start as dispute between individuals.[152] Most importantly, to permit individuals to submit proposal is consistent with the principle of participation and could increase the sense of ownership of the system by individuals.

The modalities guiding the Panel in its operation allow the Panel to issue a press release or a statement, or a communication in any other form it considers appropriate, on any matter under its consideration.[153]   Being some of the most viable means through which the public can become aware of the activities of the

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[147] (n 114 above) para IV(4).
[148] (n 114 above) para IV(5).
[149] As above.
[150] (n 114 above) para IV(8).
[151] As above.
[152] Examples of these include Kenya's conflict between Rilal Odinga and Kibaki ,and Zimbabawean election crisis between Robert Mugabe and Morgan Tsvangerai.
[153] (n 114 above) para VI.

Panel, it is important that the Panel makes utmost use of these communications mechanisms. The recent press statement by the Panel indicates a reason to be hopeful as already mentioned, in this statement, the Panel informs of an exchange of views on tensions and crises associated with electoral processes in Africa.[154]

3.2.4 Norms

The norms to guide the Panel can be read from article 4 of the PSC Protocol which sets out the institution's guiding principles, which are enshrined in the AU Constitutive Act, the Charter of the United Nations, and the Universal Declaration of Human Rights. In particular, the Protocol emphasises eleven principles. Principles (a) through to (i) relate to the peaceful and early settlement of disputes, non-interference, and the recognition of the territorial integrity of its members. Significantly, Principle (d) states the interdependence between socio-economic development and the security of people and states.

Principles (j) and (k), recognizes the right of the Union to intervene 'in respect of grave circumstances, namely war crimes, genocide and crimes against humanity', and the right of member to request for intervention. Principle (j) rehearses the provision of article 4(h) of the Constitutive Act of the AU.[155]

Principle (j) of the PSC Protocol contrasts with the position under the OAU. Traditionally, under the OAU, as Salim Ahmed Salim remarks, the view was held among African leaders that conflicts within states fell within the exclusive competence of the States concerned. Consequently the OAU had to stand by even where conflicts tore countries apart and caused grave afflictions on innocent people.[156] Principle (j) therefore significantly departs from the inflexible adherence of the OAU to the principle of international sovereignty which seriously undermined the maintenance and promotion of peace and security on the continent.

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[154] (n 143 above).

[155] Protocol on Amendments to the Constitutive Act of the African Union adopted in Maputo, Mozambique on 11 July 2003 . As of May 2007, the Protocol had not entered into force. The Protocol amended art 4(h) of the AU Constitutive Act to include intervention in the event of 'a serious threat to legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council.'

[156] A Salim quoted in C Peck *Sustainable peace: The rule of the UN and regional organizations in preventing conflict* (1998) 160.

Notwithstanding the above, certain ambiguities in terms of operation of the panel require clarification. It is not certain whether the Panel can intervene in the disputes involving states who, though members of the AU, have not ratified the PSC Protocol. Argument can be made in support of the proposition that the Panel can and that such position should be adopted in its modalities of operation. A reason for this is that although article 22 of the PSC provides for ratification by simple majority of the member states before entering into force, the PSC Protocol seems different from other African Protocols. These other Protocols include the Protocol on Amendments to the Constitutive Act (Amendment Protocol) and the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan – African Parliament.

While article 13 of the Constitutive Act Protocol for instance makes it clear that to be bound by the Amendment Protocol, State Parties to the Constitutive Act have to ratify the Amendment Protocol, the PSC Protocol adopts a different approach. Article 1(i) of the PSC Protocol refers to the 'member states of the African Union' and not member states of the PSC Protocol only. Article 3 (a) of the PSC Protocol goes further to support this uniqueness by stating that the objectives for which Peace and Security Council is established shall be to 'promote peace, security and stability in Africa' and not in State parties to the Protocol only. In this respect, the Protocol appears to differ from the international law of treaties and the principle of *pacta sunt servanda.*[157] The justification for this exception may well be because the PSC Protocol considers the issue of promotion of peace and security as very urgent in Africa. The promotion of peace and security may also be argued as an obligation *erga omnes,* the observance of which all states may have interest.[158]

Finally, in delineating the function of the Panel, the PSC Protocol also indicates that the Panel can on its own initiative undertake such necessary actions in support of the PSC and the Chairperson of the AU Commission.[159] These actions are 'for the prevention of conflicts, and to pronounce itself on issues relating to promotion and maintenance of peace, security and stability in Africa' and not in State parties only.[160] This shows that the PSC Protocol must have been intended to bind all AU member States. This means that the Panel is empowered to intervene

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[157] Vienna Convention on the Law of Treaties 1969 art 26.
[158] Vienna Convention on the Law of Treaties of 1969 art 53.
[159] PSC Protocol art 11(4).
[160] As above.

in disputes involving any members' states of the AU even though they have not ratified the PSC Protocol. Indeed, the PSC has in the past intervened by sanctioning countries that have not ratified the PSC Protocol. Examples of such member states include Cote D'ivorie, Guinea Bissau, and Democratic Republic of Congo in whose reconciliation processes, the PSC is involved.[161]

3.2.5 Mandate

The general purpose of the Panel is found in the PSC Protocol read with Modalities for the Panel. The combination of article 11(1), (3) and (4) of the African Charter on Human and Peoples Rights (African Charter) defines the mandate of the Panel. The mandate of the Panel is to be supportive and advisory of the efforts of the Chairperson of the AU Commission and the PSC in the areas of conflict prevention. The Panel is also required to support and advise on the promotion and maintenance of peace, security and stability in Africa. The Panel can also take initiatives and pronounce itself in respect of issues pertaining to promotion of peace, and maintenance of peace, security and stability in Africa.[162]

In carrying out its mandate as outlined above, the Panel may act either at the request of the Council or the Chairperson of the Commission, or at its own initiative.[163] It is envisaged that the Panel will routinely make use of this provision to pronounce on issues of conflicts as the moral weight carried by such pronouncements may go a long way in dousing tensions. One would for instance expect that the Panel would draw lessons from events in such places as Zimbabwe and Madagascar to assert its program of activities on election and disputes; but it has not.

3.3 Conclusion

It has been shown that in order to respond successfully to conflict prevention, promotion and maintenance of peace, security and stability, the Panel requires amendments in certain aspects of its features. The ECOWAS's model of composing its Council of Elders from a list of eminent persons appears more practical since it

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[161] Viljoen (n 46 above) 216.
[162] PSC Protocol art 11 (4).
[163] As above.

allows the Council to be composed around different issues of conflict and security. The scope of the activities of the Panel needs to be clarified to avoid clash or duplication of activities with the Special Envoys/Representatives. Shutting out individuals from the submission of proposal seems inconsistent with the ownership of the mechanism.

It does seem therefore that in order to enable it function effectively, careful thoughts should be applied to a proper re-designing of the features of the Panel particularly in terms of its membership, scope and norms. To ensure this, the ECOWAS pattern can be used as a guide. In terms of its scope, greater role particularly, in the area of conflict prevention should be carved for the Panel over and above the Special Envoys/ Representatives. The Modalities of the Panel should also accommodate proposals from individuals. The Panel can only play a pivotal role in the AU peace and security architecture if anchored on a dynamic design which can foster conflict prevention, promotion and maintenance of peace, security and stability in Africa.

CHAPTER FOUR

FROM PEACEFUL INTERVENTIONS TO PEACE AND SECURITY PROMOTION: THE PROSPECTIVE ROLE OF THE PANEL OF THE WISE

4.0 Introduction

The last chapter has examined the features of the Panel of the Wise (the Panel). In analyzing the scope and mandate of the Panel, although reference was made to the functions of the Panel, these were not discussed. This chapter explores the prospective role of the Panel more closely. The chapter divides the roles of the Panel into two namely, peaceful interventions, and peace and security promotion. Under peaceful interventions, it highlights the part of the Panel in pro-democratic and humanitarian interventions. The discussion on responsibility of the Panel in the promotion of peace and security is followed by the possibilities that the Panel can engage in anchoring the internalization of peace in Africa.

This chapter concludes that the Panel can act as an agent of peaceful interventions through means such as negotiation, good offices, conciliation and mediation. Finally, the chapter identifies possibilities at the national, sub-regional, regional and global levels by which the Panel can engage in promoting the internalization of peace in Africa.

4.1 The roles of the Panel of the Wise

The Peace Security Council (PSC) Protocol outlines seven functions of the PSC which the Panel can assist the PSC and the chairperson of the AU Commission in performing.[164] Arguably, these are expressed in terms of peaceful interventions and promotion of peace and security. In respect of peaceful interventions, identifiable functions of the Panel are in terms of article 6 (b) early warning and preventive diplomacy (c) peace–making, including the use of good offices,[165] mediation,[166] conciliation,[167] and enquiry.[168]

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[164] PSC Protocol art 6.

[165] Good offices are the services of a neutral agent, trusted by the disputing parties. The neutral agent transmits messages between both sides who may not wish to see each other. The agent might be a third party, a prominent individual, only if the offer is accepted by both parties. See LB Sohn 'The role of international institutions as conflict-adjusting agencies' (1961) 28 2 *The University of Chicago Law Review* 205-257.

On the other hand, promotion of the peace, security and stability mandate involves article 6 (a) promotion of peace, security and stability in Africa; (d) peace support operations and intervention, pursuant to article 4(h) and (j) of the Constitutive Act; (e) peace building and post–conflict reconstruction; (f) humanitarian action and disaster management. Article 6(g) permits any other function as may be decided by the Assembly. Similar functions appear summed up in article 10 of the PSC Protocol dealing with the role of the Chairperson of the Commission.[169]

The subsections which follow examine the role of the panel under the two identified heads namely peaceful interventions and peace and security promotion.

4.1.1 Peaceful interventions

The prospective roles of the Panel under peaceful interventions are discussed under pro-democratic and humanitarian interventions

I. Pro-democratic interventions

Underlying the litany of African's problems is bad exercise of political power in managing national affairs.[170] This is often reflected in incidents such as *coup detat*, reluctant recognition of the opposition parties, electoral disputes and resource-based agitations which have featured prominently in the African political landscape since independence. Apart from underscoring the interdependency of peace,

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[166] In mediation, a third party does not only ensure that disputing parties meet, it suggests to parties possible solution to disputes.; see Convention (1) on the Pacific Settlement of International Disputes of 1899; Convention (2) on the Pacific Settlement of International Disputes of 1907 (Hague Conventions) art IV.

[167] In reconciliation, a third party makes proposals not only with respect to 'an equitable and mutually satisfactory solution of the questions submitted to it,' but also 'with a view to obviating any future differences of opinion between the two Parties on the said questions . See Conciliation Convention between Germany and the Union of Soviet Socialist Republics, Jan. 25, 1929, art 5. <http://64.233.169.104/search?q=cache:fQ3bs_xcbakJ:untreaty.un.org/unts/60001_120000/16/19/00030916.pdf+Conciliation+Convention+between+Germany+and+the+Union+of+Soviet+Socialist+Republics&hl=en&ct=clnk&cd=1> (accessed 10 October 2008).

[168] This often relates to disputes on points of fact. A third party may feature for instance in the form of a commission of enquiry 'to facilitate a resolution of these disputes by elucidating the facts by means of an impartial and conscientious investigation'- Hague Conventions of 1899 and 1907 art IX

[169] PSC Protocol art 7.

[170] World Bank , Sub-Saharan Africa: From crisis to sustainable growth , Washington, DC, World Bank 1989 60; P Slinn, 'Constitutional orders and sustainable development: the Southern African experience and prospects' in Ginther, Denters and de Waart *Sustainable Development* 165.

security, stability, political and economic governance in Africa, these incidents offer the possibilities for peaceful interventions by the Panel.

The obligation for pro-democratic interventions is bolstered by Article 4(h) of the Constitutive Act of the AU which empowers the AU to intervene in respect of grave circumstances including a serious threat to legitimate order. This position is also accommodated under article 4(j) of the PSC Protocol. Further reinforcing this position are other instruments that prescribe interventions, particularly where there is serious threat to legitimate order. Significant examples can be found in the OAU Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (Lome Declaration)[171] and the Charter on Democracy and Unconstitutional Change of Government (Charter on Democracy).

Article 23 of the Charter of Democracy defines unconstitutional change of government as situations which include (1) military *coup d'etat* against a democratically elected government ; (2) intervention by mercenaries to replace a democratically elected government; (3) replacement of democratically elected governments by armed dissident groups and rebel movements; (4) refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections; and any amendment of or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government. Once diplomatic initiatives have failed, article 25(1) of the Charter empowers the PSC to suspend the said party from the exercise of its right to participate in the activities of the region.

Nowrot and Schabacker argue that intervention in the interest of democracy has traditionally been explained in terms of use of force to assist oppressed populations in attaining the right of democratic government.[172] In particular the concept entails the use of military interventions by third states to restore democratic government overthrown by a *coup detats*.[173] However, as the means of intervention are not stated under the PSC Protocol, it appears unduly restrictive to hold the view that intervention can only happen through the use of force.

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[171] Lome Declaration , AHG/Decl.5 (XXXVI) 2000.
[172] K Nowrot & EW Schabacker 'The use of force to restore democracy: International legal implications of the ECOWAS intervention in Sierra-Leone' (1998) 14 *American University International Law Review* 378 ; C Ryngaert 'Pro-democratic Intervention in International Law' (2004) 53 *Institute for International Law Working Paper* 50.
[173] As above.

The above may explain why interventions to restore constitutional or democratic order have taken different shapes as shown from the activities of the AU Peace and Security Council lately. For instance in 2005 the PSC suspended Togo from participating in the activities of all the organs of the AU 'until such a time when constitutional legality is restored'.[174] Different measures of interventions are also noticeable in Burundi, Comoros, Liberia, the Democratic Republic of Congo (DRC), Guinea-Bisau, Sudan and Cote d'Ivoire.[175] In Burundi, the PSC spearheaded the Constitutional Referendum of 25 June 2006 and multi-party elections for the National Assembly in November 2006.[176] The PSC played a crucial role in the elections in the DRC, Mauritania and in the reconciliation process, which contributed to the holding of the April-May presidential elections in the Comoros.[177]

Therefore, in assisting the PSC and the Chairperson of the African Commission or acting on its own initiative, the Panel can be utilized to investigate and suggest practical solutions for addressing democratic challenges. This could happen when the Panel acts as a medium of either early warning or preventive diplomacy or through peace–making, including the use of good offices, mediation, conciliation and enquiry.

II.   Humanitarian interventions

Traditionally, the term humanitarian intervention describes the threat or use of force by a state or group of states, designed to compel a sovereign to respect fundamental human rights in the exercise of its sovereign powers.[178] Therefore to quality as 'humanitarian', the sole objective of the intervention must be to either end or prevent human rights violation.[179] The idea of humanitarian intervention has been argued and expanded to cover interventions designed to ensure the safe delivery of humanitarian assistance to a populations in dire need particularly where it is necessary to avert mass starvation or other immediate threats to life.[180]

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[174] AU Doc PSC/PR/Comm(XXV), 25 February 2005, para 3. Communiqué of the 25th meeting of the PSC.
[175] AU Doc Assembly/AU/Decl.3(VI), Declaration on the Activities of the Peace and Security Council of the African Union and the State of Peace and Security in Africa.
[176] Viljoen (n 46 above) 210.
[177] AU Doc Communique PSC/PR/Comm.(XVII), 20 October 2004.
[178] DJ Scheffer 'Toward a modern doctrine of humanitarian intervention' (1992) 23 *University of Tol Law Review* 264.
[179] Nowrot & Schabacker (n 172 above) 369.
[180] RE Gordon 'Humanitarian intervention by the United Nations: Iraq, Somalia, and Haiti' (1996) 31 *Texas International Law Journal* 43-44.

Through effective early warning mechanisms, the Panel can on its own initiative alert the PSC and the Chairperson of the African Commission to deserving situations in Africa before they escalate into humanitarian crises. This seems needful particularly in addressing issues such as poverty, resource based agitations before they lead to humanitarian crises. The Panel can therefore play a crucial role in identifying these as indicators of conflicts and suggesting the step forward. As Kindiki argues, the intervention of the Panel in situations of armed conflicts where massive violations of human rights are taking place may be helpful in reconciling warring parties given the Africans respect for elders.[181]

In order to enable the Panel perform its interventions mandates, a permanent monitoring and collection of information on the security situation in the Africa from national, international networks, private, national and international organisations and institutions is most crucial.

4.1.2   Peace and security promotion

The role of the Panel in relation to peace and security promotion is encapsulated in the PSC Protocol and its Modalities.[182] There are however other normative provisions of the AU which emphasise these important aspects. The African Charter on Human and Peoples' Rights (African Charter) for instance provides that 'all peoples shall have the right to national and international peace'.[183] Also in establishing the Conflict Management Mechanism, the Cairo Declaration enunciates the promotion of peace and security in Africa as a matter of necessity. This is because 'no single internal factor has contributed more to the present socio–economic problems in the Continent than the scourge of conflicts in and among our countries'.[184] The UN Secretary General's report of 1998[185] deals with promotion of durable peace in Africa. Similarly, as a demonstration of its commitment to peace,

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[181] Kindiki (n 45 above) 116.
[182] PSC Protocol art 6.
[183] African Charter art 23.
[184] Declaration of the Assembly of Heads of State and Government on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management and Resolution (1993) Adopted by the 29th Ordinary Session of the Assembly of Heads of State and Government held in Cairo, Egypt from 28 to 30 June 1993 (AHG/Decl.3/(XXIX)). Available online at: http://www.africa–union.org/root/au/Documents/Decisions/hog/3HoGAssembly1993.pdf (accessed 10 October 2008).
[185] UN Secretary–General's Report on the Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa (1998) Adopted by the UN General Assembly on 16 December, 1998 (Res. 53/92). < http://www.un.org/ esa/africa/reports.html >(accessed 10 October 2008).

security and stability, the OAU Ministers Grand Bay Declaration of 16 April 1999 acknowledges that observance of human rights is a key tool for promoting collective security, durable peace, and sustainable development.[186]

In terms of its mandate, the AU Constitutive Act requires the AU to promote peace, security and stability on the continent.[187] The right of member states 'to live in peace and security'[188] and the right of every member state to request for intervention from the AU in order to restore peace and security are also highlighted in the AU Act.[189] The need for promotion of peace and security is also a component of the 2003,[190] and 2004,[191] reports of the Chairperson of the AU Commission and form part of its strategic program of actions.[192] There are also statements of support for peace and security promotion from other regional bodies such as the G8[193] and the African Caribbean Pacific Group of States.[194]

Peace and security are however not a straightforward concepts. With respect to peace, there is a Latin maxim that states, 'Si vis pacem para bellum' ('if you want peace prepare the war'.[195] Throughout history, many other aphorisms have been used, most of which are coherent and seem to encapsulate what peace really is and how to get it. The same contradictions have emerged strongly in Western societies over the past few years, dividing public opinion into two major groups. These are

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[186] Grand Bay (Mauritius)Declaration and Plan of Action, adopted by the First OAU Ministerial Conference on Human Rights in April 1999 preambles.
[187] AU Constitutive Act art 3 (f).
[188] AU Constitutive Act art 4(i).
[189] AU Constitutive Act art 4 (j).
[190] Reports of the Chairperson of the African Union Commission Delivered at the 7th ordinary session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Heads of State and Government Level in Addis Ababa, Ethiopia, on 4 February 2003 (Central Organ/MEC/AHG/2 (VII)) para 28-180.
[191] Report of the Chairperson of the Commission on the Establishment of a Continental Peace and Security Architecture and the Status of Peace Processes in Africa (2004) Delivered at the launch of the Peace and Security Council in Addis Ababa, Ethiopia on 25 May 2004 (PSC/AHG/3 (IX)).
[192] Commission of the African Union: 2004 – 2007 Strategic Plan Volume 2 <http://www.africa-union.org/AU%20summit%202004/volume%202%20final%20-%20English%20-%20June%202004.pdf > (accessed 11 September 2008) 13 -14.
[193] The G8 Summit held in Gleneagles, UK from 6 to 8 July 2005, renewed its commitment to Africa and support for NEPAD. Available online at <http:// www.g8.gov.uk/servlete_operations> (accessed 20 August 2008).
[194] Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one Part, and the European Community and its Member States, of the other Part (Cotonou Agreement) (2000) Signed in Cotonou, Benin in 23 June 2000. Article 10(5) emphasises that broadly based policies to promote peace and to prevent, manage and resolve violence conflicts shall play a prominent role in the dialogue of the partnership.
<http://europa.eu.int/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100> (accessed 12 September 2008).
[195] Paraphrased from Vegetius, quoted in M Sarrica & A Contarello 'Peace, War and Conflict: Social representations shared by peace activists and non-Activists' (2004) 41 5 *Journal of Peace Research* 549.

namely those supporting and those against military interventions to enforce or keep peace.[196]

Traditionally too, national security is defined in terms of the ability of a state to protect its interests from external threats and conflicts.[197]   There is however a growing debate on the need to expand the traditional notions of security to address the nontraditional threats and so develop a more comprehensive approach to security.[198] The trend now is an expansion of the security paradigm to address the rapidly growing nontraditional threats to security including, 'the struggle for resources embedded in the pursuit of energy, security, and environmental degradation. Other threats include forced migration, international terrorism, insurgency, ascendancy of non-state actors in drugs, arms, money laundering, and financial crime organization.[199]

Whether the concept of peace is construed as supporting or against military interventions to enforce or keep peace, the Panel should play the role of ensuring that force is employed as a matter of last resort when all peaceful modes have failed. This can be achieved by involving the members of the Panel not only in peacemaking and building efforts but also in peace enforcement measures. In the latter, the Panel should be interested in likely disputes or agitations that may emerge from the application of force, or the threat of its use, to maintain or restore peace and order.

In addition to involvement in disputes, the Panel should also be engaged in addressing, or at the very least pronouncing, on the issues of nontraditional threats to security before they occasion mass migrations.[200]   Even where migration of people becomes inevitable, the Panel should play a significant role to negotiate, where appropriate their proper treatment. Experience in Africa has shown serious violations of the rights of refugees. In time past, Nigeria had expelled refugees from

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[196] Sarrica & Contarello (n 195 above) 549.
[197] K Bajpai 'Human security: concept and measurement' John B Kroc Institute *Occasional Paper* no 19 August 2000 <http:// www.nd.edu/~krocinst/ocpapers/op_19_1.PDF >(accessed 15 October 2008).
[198] B Buzan 'People States and Fear: An agenda for International security in the post cold war era' (1991) 96-107; Human Development Report: New Dimensions of human security.
<http://hdr.undp.org/en/media/hdr_1994_en_overview.pdf >(accessed 15 October 2008)
[199] D Banerjee 'Security studies in South Asia: Change and challenge' (2000) *Manoha* 50
[200] PSC Protocol art 11.

Chad.[201] Kenya and Zimbabwe failed to protect Somali and Mozambique refugees, respectively.[202] Senegal did not recognise Mauritanian expellees as refugees.[203] More recently South Africa treatment of people fleeing hardship from Zimbabwe is not impressive.[204] This is notwithstanding the provision of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention).[205]

Article 11(1) of the OAU Refugee Convention enjoins states 'to use their best endeavours …to receive all refugees'. A major shortcoming of this instrument is that it provides no monitoring mechanism. In promoting a dignified treatment not only of the refugees but internally displaced persons, the Panel may in this regard leverage on the respectable personalities of its members to intervene by entering into political dialogue with non-cooperative states. This can be achieved by working together with the Special Rapportuer on Refugees, Asylum and Displaced Persons in Africa. This, no doubt is consistent with the mandate of the Panel which allows it to complement the efforts of other AU emissaries in facilitating political dialogue among parties as a measure of conflict prevention.[206]

With respect to terrorism and the role of the Panel, relevant normative framework includes the OAU Convention on the Prevention and Combating of Terrorism (Anti-Terrorism Convention), AU Declaration against Terrorism,[207] and a 'Plan of Action for the Prevention and Combating of Terrorism.[208] These instruments afford the PSC a wide mandate for combating and preventing terrorism which the Panel in its advisory role may utilize in promoting regional peace and security. The PSC is for instance given the mandate to 'co-ordinate and harmonise continental efforts in the prevention and combating of international terrorism.[209] Its other functions include the monitoring of the implementation of the Anti-Terrorism Convention.[210]

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[201] Lawyers Committee for Human Rights, African Exodus: Refugee Crisis, Human Rights and the 1969 OAU Refugee Convention (New York: Lawyers Committee for Human Rights, 1995) 87-9.
[202] As above 64-71, 78-80.
[203] As above 54.
[204] 'The Zimbabwe Situation' <http://www.zimbabwesituation.com/oct21a_2008.html >(accessed 25 October 2008).
[205] OAU Doc CAB/LEG/24.3 adopted 10 September 1969, entered into force 20 June 1974.
[206] (n 114 above) para III (1)(e).
[207] M Ewi & K Aning, 'Assessing the Role of the African Union in Preventing and Combating Terrorism in Africa' (2006) 15 (3) African Security Review 32, 38.
[208] AU Doc Mtg/HLIG/Conv.Terror/Plan.(I), 11-14 September 2002.
[209] PSC Protocol art 3(d).
[210] PSC Protocol art 7(1)(i).

A crucial step to ensure the above functions was the establishment in 2004 of the African Centre for the Study and Research on Terrorism as a structure of the AU Commission and the PSC to conduct studies and provide training related to terrorism in Africa.[211] It is envisaged that the Centre will provide useful information that the Panel can use in making informed pronouncement in line with its modalities which may guide the application of the Anti-Terrorism Convention.[212]

The Panel may also engage in other non-traditional conflict issues involving age long violations of rights, particularly socio-economic rights such as land, water and healthy environment. In line with its mandate, the Panel can conduct fact-finding missions to such nations where violations are rampant.[213] Visits of such nature will go a long way to complement not only the activities of other AU emissaries. Such visits can also be used to sponsor further discussion and debate; guide the Panel in its pronouncements; and thereby promote peace and security in Africa.

In the following sub-section, I identify and discuss the possibilities that may assist the Panel in promoting peace and security in the African region.

4.1.3 Internalizing the promotion of peace and security in Africa: Possibilities for the Panel

The Modalities of the Panel empower it to develop and recommend ideas and proposals that can contribute to promoting peace, security and stability in the continent.[214] The Assembly, the PSC, the Chairperson of the Commission or other relevant organs of the Union may also invite the Chairperson of the Panel to address them on matters relating to the promotion and maintenance of peace, security and stability in Africa.[215] The possibilities which the Panel can exploit to push the internalization of the promotion of peace and security in Africa are discussed below.

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[211]AU Doc Mtg/HLIG/Conv.Terror/Decl.(II)Rev.2 13-14 October 2004.
[212] (n 114 above) para II (3) and VI.
[213] (n 114 above) para III(1)(c).
[214] (n 114 above) para III (1)(h).
[215] (n 114 above) para VII(2).

I. National Constitutions and Peace education

Promoting a culture of peace at the national level seems to be the real challenge. This is because threats to peace and security often start from the national level. If there are problems with peace at the national level, they will be compounded at the sub-regional and the regional. While there are significant contributions that the Panel can make to peace promotion, these may remain elusive unless a necessary framework exists for that purpose. The constitutional framework of states must therefore, at the very least, reflect the aspiration of states towards peace.

The importance of peace education as an important tool for peace and security promotion has been the subject of several official documents of United Nations organization such as UNESCO in 1974,[216] 1980,[217] 1994/95,[218] 1996,[219] 2000,[220] UNICEF in 1996, 1999 and the United Nations General Assembly 1978,[221] 1995,[222] 1996,[223] 1999,[224] and 2002.[225] The UN Declaration on Culture of Peace and its programme encourage member States to take actions for promoting a culture of peace at the national level as well as at the regional and international levels action.[226] The African Charter equally guarantees the right of individual to national and international peace.

Although most Constitutions of African nations do express the general intention of building peaceful and secured societies, none of these Constitutions codifies peace as a human right. This does not serve to provide or advance appropriate framework to encourage peace education as a means of building culture of peace.

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[216] Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms. Paris: UNESCO.
[217] World Congress on Disarmament Education: Final Document and Report. Paris: UNESCO.
[218] Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy. Declaration of the International Conference on Education, Geneva, 1994, endorsed by the General Conference of UNESCO in 1995. Paris: UNESCO.
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Therefore, it is envisaged that the Panel will engage in initiatives with the view of facilitating appropriate framework for peace education in the AU member states. These initiatives may include recommendations and proposals to the Assembly, the PSC, and Chairman of the AU Commission.[227] Discourse can also be initiated to explore the role and best practices for Non-Governmental Organizations in terms of peace education. Most importantly, the Panel may assist in influencing an audit of the constitutions of member states to guarantee appropriate framework for peace education.

II.   Sub-regional and Regional possibilities

Most sub-regional organizations in Africa were established to address economic and social issues. Many of these organizations have, however, revised their mandates to incorporate pervasive challenges facing Africa in the area of peace and security. This trend became prevalent in the 1990s as regional and sub-regional organizations embarked on expanding and restructuring their capacity, membership and mandate to accommodate new functions in the field of conflict management, resolution and prevention.[228] Evidence of this is to be found in documents of ECOWAS, the IGAD, and SADC.

Article 21 of the ECOWAS Protocol creates the Council of Elders. The IGAD,[229] at least in terms of its principles support the peaceful settlement of inter - and intra-State conflicts through dialogue; and maintenance of regional peace, stability and security.[230] The mediation of the Zimbabwe crisis under the platform of SADC also shows the capacity and interest of that organization in the promotion of peace, stability and security.

The Panel can closely cooperate with similar initiative in these sub-regional organizations to further the promotion and maintenance of peace and security within the AU architecture. This can be achieved by either incorporating such personalities at the sub-regional level as part of the pool of the wise of the

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[227] (n 114 above) para IV(8).
[228] The Infrastructure of Peace in Africa Assessing the Peacebuilding Capacity of African Institutions *A Report submitted by the Africa Program of the International Peace Academy to the Ford Foundation* (2002) 23
[229] Adopted by the Assembly of Heads of State and Government in Nairobi, Kenya on 21 March 1996. Available online at< http://www.igad.org/about/agreement_establishing_igad.pdf >(accessed 8 October 2008).
[230] (n 229 above) art 6(a) and (c).

architecture. It may also mean involving them in the early warning system and the fact finding missions of the Panel. This is particularly necessary if the AU and the RECs are to form single security architecture, as envisioned in the PSC Protocol.

In addition to the above, the Modalities of the Panel envisage a relationship between the Panel and other organs of the AU. These organs are: The Assembly, Pan-African Parliament (PAP) and African Commission on Human and Peoples' Rights (African Commission) which in their respective ways contribute to the promotion and maintenance of peace, security and stability in Africa.[231]   Though not specifically mentioned in the Modalities, possibilities do also exist for the Panel to relate with other program of the AU such as the African Peer Review Mechanism (APRM).

Upon invitation by the AU Assembly,[232] the Panel may draw the attention of the Assembly to pertinent issues in Africa capable of escalating into conflict and make recommendations on how they can be curtailed. In the exercise of its deliberation and oversight functions, the PAP may embark upon fact finding missions followed by resolutions and recommendations. In that respect, the Panel may build on such recommendations by following up on issues relating to the mandate of the PAP as envisaged in the PSC Protocol or using such issues in setting its agenda.[233]

When entertaining inter-states communications, the African Commission is mandated 'to reach an amicable settlement.[234] Based on article 60 of the African Charter, similar means have been used in settling individual Communications.[235] The African Commission, Viljoen argues, does not generally initiate amicable settlements.   In the case of individual Communications, it only assists in transmitting a reconciliatory response of a state to the complainants.[236] It appears therefore that a window of opportunity exists for a referral from the African Commission to the Panel, of serious issues which are consistent to the mandate of the Panel on mediation.

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[231] (n 114 above) para VII (2).
[232] As above.
[233] PSC Protocol art 18.
[234] African Charter art 52.
[235] African Charter art 60.
[236] Viljoen (n 46 above) 330 ; Communication 44/90, Peoples' *Democratic Organisation for Independence and Socialism v The Gambia* (2000) AHRLR 104 (ACHPR 1996) (Tenth Annual Activity Report).

The establishment of the APRM to pursue the provisions of the Declaration on Democracy, Political, Economic and Corporate Governance (2002) also offers a possibility of increased efforts in restoring stability, peace and security in the African continent.   Important features of this process include the technical assessment undertaken by a member of the Panel of the Eminent Persons of the APRM,[237] the report of the Country Review Mission (CRM)[238] and the dissemination of the report.[239]   Before the dissemination of the report, the Panel can contribute proposals into the APRM process. The report from the APRM process is required to be tabled in the REC to which the state belongs, the African Commission, the PAP and the PSC.[240] Once disseminated, the Panel can use information from the report to inform its program of action on conflict prevention in respect to a particular state.

III.   Global Partnerships

Most international conferences on African development have constantly advocated that 'ownership' by African countries of their development processes and 'partnership' by the international community in support of such ownership.[241] The G8 expressed intention to support Africa's efforts to build a peaceful and stable Africa.[242]   Similar sentiments have been expressed by the European Union - African, Caribbean and Pacific Group of States Partnership.[243] The Panel should explore these expressions of goodwill for the development of its capacities and publicize its activities. The later will not only help in raising the level of awareness of its efforts to the larger world, most importantly, it will help make its voice become a moral force and consequently project the relevance of its involvement in the cause of peace and security promotion in Africa.

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[237] APRM Base Document (2003) paras 6-12.
[238] APRM Base Document (2003) para 19.
[239] APRM Base Document para 25.
[240] As above.
[241] TICAD Tenth Anniversary Declaration (TICAD III) (2003) Adopted at the Third Tokyo International Conference on African Development held in Tokyo, Japan from 29 September to 1 October 2003. Available online at <http:// www.ticad.net/decla ration2003.pdf> (accessed 20 September 2008)
[242] The G8 Summit held in Gleneagles, UK from 6 to 8 July 2005, renewed its commitment to Africa and support for NEPAD. Available online at <http:// www.g8.gov.uk/ servlete_operations/> (accessed 20 September 2008) para 8.
[243] Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one Part, and the European Community and its Member States, of the other Part (Cotonou Agreement) (2000) art 10(5).

4.2 Conclusion

It has been shown in this chapter that the Panel can act through the means of diplomacy, mediation and conciliation in carrying out peaceful interventions, and peace and security promotion. Peaceful interventions can take the form of pro-democratic ground initiatives by the Panel to proffer solution for addressing democratic challenges in Africa. Peaceful interventions can also be in the form of measures taken by the Panel to avert humanitarian crises.

The role of the Panel in the promotion of peace and security includes engaging the Panel in various phases of conflict resolution namely, peacemaking, peace building and peace enforcement. The role also extends to early intervention in non-traditional conflict issues such as violations of rights to land, resources and healthy environment before they escalate to conflict situations. Possibilities that the Panel can engage in enhancing the promotion of peace are national constitutions, sub-regional and regional institutions or programs and global partnerships. In all, a broad understanding of the possibilities of the Panel are required if it will perform significant role in the African peace and security architecture.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

This study set out to investigate whether the Panel of the Wise (the Panel) can make a difference in the African peace and security architecture. Although only recently established, embarking on such investigation cannot be premature. This is in view of the fact that well- conceived is different from well-implemented. Besides, there are potential and real conflicts and crises in Africa that may benefit from a timely and functional Panel.

What conclusions and recommendations can we draw from the study? This chapter sets out what emerges as a summary of the conclusions drawn from the entire study together with recommendations that will assist the Panel to make a difference in the African peace and security architecture.

5.1. Summary and Conclusion

This study adduces evidence from different parts of Africa to demonstrate that the concept of the wise is exemplified in the elders and useful in the areas of conflict prevention, maintenance of peace and security in most indigenous settings of Africa. The study establishes that in contemporary times, the national constitutions of African States such as Ghana, Swaziland and Lesotho create bodies or institutions which seek to tap from the wisdom of the elderly in governance matters and reconciliation. Therefore, the introduction of the Panel into the African Union peace and security architecture is a renaissance of the concept of the wise in most indigenous African settings.

In examining the design of the Panel, weaknesses are highlighted in terms of its membership, scope and norms. Limiting the membership of the Panel to five seems to fly in the face of the spontaneity of conflicts and potential crises in Africa. It also contradicts the vast resource of dignified women and men in Africa who can be engaged in preventing conflicts and promoting peace in Africa. The scope of the activities of the Panel needs to be clarified to avoid clash or duplication of activities with the Special Envoys/ representatives. Among other things, considering that individual and 'peoples' are the object of rights in the African human rights system,

excluding individuals from submitting proposals to the Panel, may not help the ownership of the mechanism by individuals.

As shown in this study, the mandates of the Panel is divide into peaceful interventions, on one hand, and peace, security and stability promotion mandate on the other. Two types of Peaceful interventions are identifiable namely, pro-democratic and humanitarian intervention. Pro-democratic intervention by the Panel may take the form of investigating and offering practical solutions for crises relating to democracy and governance. Effectively, it can also, on its initiative alert the PSC and the Chairperson of the African Commission to deserving situations in Africa before they escalate into humanitarian crises.

The role of the Panel in relation to peace and security promotion is reinforced by the provisions of the African Charter on Human and Peoples' Rights (African Charter) and the Constitutive Act of the AU. These instruments respectively guarantee the right to peace and mandate the AU to promote peace and security. Whether considered in the sense of traditional notion of security or the non-traditional construct, the role of the Panel cannot be overemphasised. Where nations are embroiled in conflicts, the Panel can be involved in peace making, peace building, and peace enforcement measures. The Panel also has an important role in addressing issues around the growing non-traditional threats to peace and security. For instance, the Panel can set the discourse and pronounce on issues around the struggle for resources, forced migration, international terrorism, insurgency, ascendancy of non-state actors in drugs, arms, money laundering, and financial crime organization.

The Panel can initiate the promotion of the internalization of peace and security in Africa. In that respect, the Panel's power to make recommendations and proposals before key institutions of the AU can be useful. It may promote national Constitutions which encourage and advance peace education as a means of building culture of peace in Africa. By cooperating with similar bodies at national and sub-regional levels, the Panel can share best practices with these regional bodies or incorporate them in its program. Doing so will further strengthen the promotion and maintenance of peace and security within the architecture.

Opportunities exist for the Panel to relate with organs/programs within the AU that can be tapped in the promotion of peace and security. The Panel may use invitation by the AU Assembly to draw attention to peace threatening situations. It may also follow up on issues arising from the resolutions and recommendations of the Pan-African Parliament which implicate on peace and security. The African Commission on Human and Peoples' Rights (African Commission) may refer deserving issues amenable to amicable settlement to the Panel. Proposals can be contributed by the Panel on a country under the APRM process. Information that is generated from the process can also be used by the Panel to inform its program of action on conflict prevention in respect to a particular state.

Global partnerships can help publicize and raise the level of awareness about the activities of the Panel. This will help make its voice become a moral force and consequently project the relevance of its involvement in the cause of peace and security promotion in Africa.

5.2 Recommendations

In the light of the above, to enable the Panel make a difference in the African peace and Security architecture, the following specific recommendations are suggested:

1. The Panel should be re- designed and operated in a way that will allow it to function as a pool of the Wise. In designing a pool of the wise, lessons can be drawn from the ECOWAS model.

2. The Modalities for the operation of the Panel should clearly permit individual persons to submit proposal for inclusion into the agenda of the Panel.

3. To enable the Panel carry out timely intervention into conflicts, a permanent data monitoring and collection system which interplays with stakeholders, including non-state actors, in national, regional and international institutions should be available for the service of the Panel.

4. The potential overlap of duties between the special emissaries, representatives, envoys and the Panel should be well addressed by the AU Commission. A better approach is to depend more on the Panel for initiative on conflict prevention and mediation.

5. It is necessary for the Panel to be proactive about its pronouncement and publicity. More than anything else, this remains the effective way by which the Panel can make its presence known to the stakeholders whose interest it is meant to serve.

6. The Panel should initiate efforts aimed at encouraging national Constitutions to establish institutions and mechanism similar to the Panel. This will afford the Panel a ready resource to work with in the event of dispute deserving its attention. It will also serve the purpose of serving as a platform for the promotion of peace and security.

7. Vast resources to gauge the tempo of peace and security in Africa perhaps exist in the activities of other organs/programs of the AU. The Secretariat of the Panel should therefore follow up on the activities of organs/programs such as the PAP, African Commission, and APRM to inform its agenda.

8. It is important for the Panel to encourage the participation of Non-Governmental Organizations in all its activities open to the public. This will greatly help in fostering a partnership much needed for promoting culture of peace in Africa.

In all, attempt has been made in this study to answer the questions set out in the introduction. There is no gainsaying the fact that for the Panel to function effectively, it is important that the above recommendations be followed. It is only when these recommendations are followed that it can be safely concluded that the Panel of the Wise will make a difference in the African peace and security architecture of the African Union.

 Word count - 14,184 (Excluding table of contents and bibliography).

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