

**A Critical Analysis of Chapter VIII of the United Nations Charter with a  
Special Reference to the African Union**

**By**

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## DECLARATION

I, Gomolemo Khumo Moerane, declare that the thesis, *A Critical Analysis of Chapter VIII of the United Nations Charter with a Special Reference to the African Union*, is a submission of my original work and has never been submitted either in part or whole to any institution for consideration for degree purposes.

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Signature:.....

Date:.....

## DEDICATION

I dedicate this thesis to my grandmother, Keamogetswe Bertha Moerane, and my mother, Purity Mampeye Moerane, for their continued love and support throughout my academic journey. The sacrifices that you have both made in seeing that I receive the best education and that my achievements are realised, have not gone unnoticed. I hope this thesis brings you the same level of pride that it has also brought me.

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## ABSTRACT

The thesis, *A Critical Analysis of Chapter VIII of the United Nations Charter with a Special Reference to the African Union*, interrogates how Chapter VIII of the United Nations (UN) Charter and the African Union's (AU) Constitutive Act are interpreted and implemented to promote collective security between the AU Peace and Security Council (AUPSC) and the UN Security Council (UNSC). The main research question that forms the focus of the study was, 'To what extent are Chapter VIII of the UN Charter and the AU Constitutive Act compatible or competitive in the implementation of collective security on the African continent?'

The end of the Second World War (WWII) obligated the international community to reassess its position pertaining international peace and security, as well as finding a balance between universalism and regionalism. As a result, the UN was founded from the lessons learnt from the aftermath of the WWII and the failures of its predecessor, the League of Nations, from preventing the conflict. The UN's foundation is based on the principles of maintaining international peace and security, as stipulated in Article 1 of its Charter. In ensuring the implementation of this principle, the UN Charter notes the importance of collective measures to prevent or eliminate any threat to international peace. In so doing, the UN Charter realises the importance of regional organisations in ensuring collective responses to issues of peace and security. Despite this acknowledgement, regionalism was accepted conditionally in so far as it was subordinate to universalism.

In the same light, regional organisations, especially the Organisation of African Unity (OAU) faced the same introspection following the end of the Cold War, where its role as a regional organisation had failed to prevent the scourge of conflicts, as well as to ensure socio-economic development on the continent. This change of attitude saw the advent of the AU, whose role as a promoter for peace and security on the continent was enhanced and modified by the adoption of its Constitutive Act and the AU Peace and Security Protocols amending it.

To better understand the relationship between the AU and the UN, the study provides a critical analysis of Chapter VIII of the UN Charter, which is the framework that governs the relationship between the two organisations. The study also provides an analysis of both the AU's Constitutive Act and the PSC Protocol amending it, to understand how their implementation on collective security efforts reflect the normative framework of regional arrangements contained in Chapter VIII of the UN Charter. Having considered various theories, the theoretical framework adopted by this study is collective security, given its explanatory strength pertaining the regional and universal efforts in maintaining peace and security. This study adopted the qualitative research methodology, with desktop and semi-structured elite interviews as data collection methods and Libya and Côte d'Ivoire as case studies.

In outlining the key findings of the study, this thesis addressed the similarities and differences, as well as the evolving relationship between the AU and UN, with respect to collective security as outlined by the AU's Constitutive Act and Chapter VIII of the UN Charter. A further key finding is that both the Constitutive Act and the AUPSC Protocol amending it, have convergences and divergences with Chapter VIII of the UN Charter. The study identified the historical gaps and ambiguities within the Chapter VIII, which has consequences on the consistency and fairness of the implementation of collective security efforts, especially of the AU. The conclusion of the study is that the AU plays a complimentary role to the UN as it possesses a subsidiary responsibility to the UNSC. However, this is not due to the design of the AU Constitutive Act but the structural rigidity of the UNSC, the lack of a division of labour between the AUPSC and UNSC, as well as the AU's financial dependency on external donors which often affects its collective security efforts.

The study provides recommendations to improve the relationship between the AU and the UN, which seek to align the frameworks governing the two organisations' collective security efforts. Moreover, a formal and well-defined division of labour, where the AU is not just a secondary actor but an equal participant in the implementation of collective security on the continent, would develop a stronger partnership on peace and security issues between the AU and UNSC.

**Keywords:** African Union, African Union Peace and Security Council, Compatibility, Collective Security, Peace and Security, Regional Organisations, United Nations Security Council, Multilateralism.

## ACRONYMS AND ABBREVIATIONS

A3	–	Three elected African non-permanent members of the United Nations Security Council
ACIRC	–	African Capacity for Immediate Response to Crises
AEC	–	African Economic Community
APSA	–	African Peace and Security Architecture
ASF	–	African Standby Force
AU	–	African Union
AUC	–	African Union Commission
AUPF	–	African Union Peace Fund
AUPSC	–	African Union Peace and Security Council
CEWARN	–	Conflict Early Warning and Response Mechanism
CEWS	–	Continental Early Warning System
COMESA	–	Common Market for Eastern and Southern African States
COMWARN	–	COMESA Conflict Early Warning System
CPP	–	Conventions People's Party
DRC	–	Democratic Republic of Congo
E10	–	Ten (10) elected non-permanent members of the United Nations Security Council
EAC	–	East African Community
ECCAS	–	Economic Community of Central African States
ECCSAWARN	–	ECCAS Early Warning System
ECOWARN	–	ECOWAS Early Warning System
ECOWAS	–	Economic Community of West African States
EU	–	European Union
FRCI	–	Forces Republicaines de Côte d'Ivoire
ICJ	–	International Court of Justice
IGAD	–	Intergovernmental Authority on Development
OAS	–	Organisation of American States
OUA	–	Organisation of African Unity

P5	–	Five permanent members of the United Nations Security Council
PAA	–	Pan-African Association
PCRD		Post-Conflict Reconstruction and Development
PoW	–	Panel of the Wise
RDC	–	Rapid Deployment Capability
REC	–	Regional Economic Communities
RSF	–	Regional Support Force
SADC	–	Southern African Development Community
SAMIDRC	–	SADC’s mission in DRC
SAMIM	–	SADC’s mission in Mozambique
SADCWARN	–	SADC Early Warning System (SADCWARN)
UK	–	United Kingdom
UN	–	United Nations
UNAMIR	–	United Nations Assistance Mission in Rwanda
UNOCI	–	United Nations Operation in Côte d’Ivoire
UNSC	–	United Nations Security Council
UNSG	–	United Nations Secretary-General
US	–	United States

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## **CHAPTER ONE**

### **INTRODUCTION TO THE STUDY AND CONTEXTUALISING THE IMPORTANCE OF COLLECTIVE SECURITY**

#### **1.1 INTRODUCTION**

The changing global security threats which first emanated from the Cold War bipolar system (1974-1991), followed by a unipolar system (1992-2000) which saw the dominance of the United States (US), and currently, the multipolar system (since 2001), have resulted in the shift in collective security functions (Jordaan, 2017: 161). Collective security was initially formulated to address issues at the global level, as universalism was preferred over regionalism, which resulted in the establishment of the United Nations (UN).

Changes in global affairs occasioned by the end of the Cold-War occasioned a concomitant shift in the focus of global conflicts, from inter-state to intra-state conflicts. These conflicts were based on ethnic tensions, the proliferation of weapons of mass destruction concerns, increased activities by non-state actors such as terrorist organisations and environmental and economic security issues. The rise of these conflicts provided a need for regional organisations to assume a more prominent role in the maintenance of international peace and security, as provided for by Chapter VIII of the UN Charter. However, the same Charter entrusts the UNSC that responsibility. Hence in implementing this responsibility, regional organisations require UNSC cooperation.

However, the shift from inter-state conflicts to intra-state conflicts resulted in the functions of collective security being implemented at the regional and sub-regional level to accommodate the call for regionalism (Jordaan, 2017: 161). This has resulted in the UN, although mandated with the maintenance of international peace and security, relying on regional organisations to act on collective security issues both in Africa and globally. This partnership is endorsed by Chapter VIII, Article 51-54 of the UN Charter, which indicates

provisions regarding the role of regional organisations, focusing almost exclusively on peace and security (A/47/277-S/24111).

Although Chapter VIII mandates regional organisations to settle conflicts through peaceful means, this comes with several caveats to regional organisations and the role which they play towards the maintenance of international peace and security (Henrikson, 1995: 126). Both the Charter and Chapter VIII impose severe restrictions on such interventions. In particular, such interventions require authorisation the United Nations Security Council (UNSC). In addition, only the UNSC can authorize enforcement action (De Volder, 2017: 64).

The African Union (AU) and UN recognise each other's strategic importance and comparative advantage, such as the AU's proximity to the conflict situation and its soft power capabilities in negotiating a settlement, and the UN's resources to support the means of addressing such situations (Shiferwa, 2021: 13). Therefore, both the AU and UN have identified the need to deepen the partnership of the African Union Peace and Security Council (AUPSC) and UNSC to respond to peace and security challenges on the continent (Forti & Singh, 2020: 28).

Although the partnership between the AUPSC, as a principal continental peace and security organ, and the UNSC, as a principal global peace and security organ, stresses the need for mutual respect and cooperation, there are differences in the technical and operational coordination mechanisms of the two organisations. The structural asymmetries between the AUPSC and the UNSC in the maintenance of peace and security affects progress on the more technical and operational aspects of their cooperation. These structural asymmetries pertain to challenges affecting the funding of AU-led peace support operations and the lack of permanent representation of Africa on the UNSC, which thus limit Africa's power to influence UNSC decisions. It should be noted that African countries are represented on a non-permanent basis by three African states at the UNSC. The non-permanent African states at the UNSC are referred to as the A3 and they hold the position for a two-year term, which is rotational.

## 1.2 STATEMENT OF THE PROBLEM

The changing global security threats, tactics, methods of warfare and approaches post the Cold War have led to a fundamental shift in the locus of collective security. The search for collective security initially focused to the international level as the unit of analysis. The establishment of the UN in 1945 represented this triumph over universalism in the locus of conflict from inter-state to intra-state. This has led to a concomitant shift in the locus of collective security, with regional and sub-regional organisations taking an active role, in support of the UNSC in the implementation of peace and security. This partnership is based on Chapter VIII, Article 52-54 of the UN Charter, which has provisions regarding the role of regional organisations in the maintenance of international peace and security.

While the UN has demonstrated its intention to partner with regional organisations in response to conflict situations as contained in the UN protocol, the UNSC has directly intervened in conflicts without regard for regional arrangements or positions. This was the case with the removal of President Gbagbo of Côte d'Ivoire and Muammar al-Gaddafi of Libya and the dispatching of peacekeeping missions in Africa until the recent hybrid UN-AU missions (see Pages 134-137). Many regions worldwide do not have effective security arrangements, and bodies such as the AU sometimes lack the institutional and financial capacity and political will to mobilise regional peacekeeping missions successfully. They mostly rely on the UN's support and expertise.

Both the AU and the UN have established frameworks to maintain peace and security on the continent and globally, respectively. At the international level, Article 53 of the UN Charter legitimises actions by regional organisations, hence, allowing regional mechanisms to respond to crises expeditiously. However, the AU Constitutive Act and Chapter VIII of the UN Charter contain conceptual obscurities and divergences, which impact the implementation of collective security between and by the two organisations on the African continent.

First, there is no explicit definition of how the relationship or partnership between the UNSC and regional organisations, in this case the AU, should look, as neither the AU Constitutive Act nor Chapter VIII of the UN Charter provides practical aspects or ground

rules on the relationship. The AU's Constitutive Act does not provide any clarity on the relationship between the AU and the UN, while Chapter VIII only outlines the role of regional organisations and not the relationship between the two organisations or its organs – the AUPSC or UNSC.

Second, although Chapter VIII supports regional organisations to settle conflicts through peaceful means, the Chapter provides several restrictions to regional organisations and the role they play towards the maintenance of international peace and security (Henrikson, 1995: 126). This is because the Charter only permits for the collective intervention of regional organisations through the backing of the UNSC, which holds the authority to apply military action (De Volder, 2017: 64). Therefore, this notion centralises collective security at the international level and not necessarily at the regional level. This removes the core demand for localised regional security from the regional level, where these insecurity dynamics manifest and centralise peace and security agendas at the behest of the international organisations at the international level. This has resulted in several African member states arguing that the AU's positions on issues of regional peace and security are often ignored or disregarded at the UNSC, as seen in both the Libya and Côte d'Ivoire crises (Fafore, 2020: 4).

Last, although the AU and UN recognise each other's strategic importance and comparative advantage, the AU's Constitutive Act provides a somewhat different notion of the right to intervene from that contained in the UN Charter. The Constitutive Act introduces a new concept of the AU's right to intervene – the 'threat to legitimate order', which is not listed in Chapter VIII. This thus raises the question of how the right will be implemented and what challenges will arise between the AU and the UN's cooperation if implemented.

Having highlighted these ambiguities and gaps in the interpretation of the collective security frameworks adopted by both the AU and the UN, the study has interrogated both Chapter VIII and the AU Constitutive act. Therefore, the problem which this study sought to address was the collective security partnership between the AUPSC and the UNSC, as well as the compatibility or competitiveness of their respective frameworks. In this

respect, this study investigated whether the AU and the UN's operational framework provides a common understanding on what collective security cooperation entails by referencing Chapter VIII of the UN Charter and the AU Constitutive Act.

This was analysed against the Libya (2011) and Côte d'Ivoire (2010-11) crises, which were adopted as case studies for this study. Furthermore, the study explored scenarios where the UNSC and AUPSC frameworks have impacted the cooperation of both organisations. Last, the study investigated the impediments that affect the cooperation between the two organisations and provide recommendations on how best they can be resolved.

## 1.3 RESEARCH QUESTION, AIM AND OBJECTIVES

### 1.3.1 Research Question

The research question that formed the focus of the study was, 'To what extent is Chapter VIII of the UN Charter and the AU Constitutive Act compatible or competitive in the implementation of collective security on the African continent?'

This question was cross-examined by addressing the following subsidiary questions:

- What is the role of regional organisations in implementing collective security as outlined in Chapter VIII?
- What are the similarities and differences between the collective security frameworks adopted by the AU and UN?
- How does the AUPSC and UNSC cooperation impact the effectiveness of collective security on the African continent?
- What type of reform is needed for Chapter VIII of the UN Charter to align to the changing geo-strategic dynamics?
- What are the implications of the ambiguities and gaps in the interpretation of the collective security frameworks as adopted by the AU and the UN?

### 1.3.2 Research Aim

The research interrogated the interpretation and implementation of Chapter VIII of the UN Charter and the AU Constitutive Act to promote collective security in Africa.

### 1.3.3 Research Objectives

The research objectives of the study were to:

- Explore the concept and theory of collective security
- Evaluate the rights of regional organisations as outlined in Chapter VIII in maintaining international peace and security
- Assess the mechanism used by the African Union in collective security
- Determine the benefits or lack thereof in the relationship between the UN and the AU in collective security
- Assess if Chapter VIII of the UN needs to be revived given the challenges or benefits of collective security.

## 1.4 JUSTIFICATION AND RATIONALE FOR THE STUDY

The cooperation between the AUPSC and the UNSC was formalised at the 2005 World Summit, which resulted in the approval of a ten-year AU capacity building plan by UN member states (Makubalo, 2019: 1). However, this cooperation is facing increasing pressures, as collective responses to conflict situations are being hampered within the multilateral system (Forti & Singh, 2019: 2). The changing character of security threats and widespread economic challenges, especially in Africa, has become more complex and requires an enhanced partnership between the UN and the AU. The current international situation has explained the political and financial reality that neither the AUPSC nor the UNSC can prevent to manage security challenges unilaterally (Forti & Singh, 2019: 2).

Research has been conducted on the relationship between the UN and AU in relation to their efforts to ensure peace and security in Africa (Fafore, 2020; Motjope, 2011; Muiruri, 2008). However, although there is extensive literature on the collaboration of the two organisations on peacekeeping, there is, in comparison, limited literature on other aspects of their relations, such as the mechanisms and frameworks used by the organisations in collective security. The AU's collective security mechanism entails the Peace and Security Architecture, which calls for African solutions to African problems, as well as the Ezulwini consensus, which advocates for the responsibility to protect (Fafore, 2020: 91). By critically analysing these collective security mechanisms, the study addressed the gap

in literature on the interpretation and implementation of these mechanisms by both organisations and the impact on their cooperation.

By analysing Chapter VIII, the study explained the uncertainty that exists on whether this interpretation meets the challenges of the present international system. In addition, the study provides ways in which the shortcomings in the UN collective security system could be addressed. In so doing, the study provides a policy perspective in order to better understand and to an extent transform the application of both the Constitutive Act and Chapter VIII by the AUPSC and UNSC in executing their collective security mandates.

## 1.5 LITERATURE REVIEW

Although the relationship between the UN and regional organisations has been enshrined in Chapter VIII of its Charter, the tensions of the Cold War prevented the development of a working relationship between the existing regional organisations and the UNSC at the time (Knight, 1996: 31; Rivlin, 1992: 95). As a result, regional organisations played a much lesser role than what the architect of Chapter VIII had envisaged, including peacefully resolving conflicts or enforcing action with UNSC authorisation (Volder, 2010: 12). This was mainly because the US and the Soviet Union had paralysed the UNSC through the use of the veto to prohibit the UN's involvement in regional conflicts that they themselves were either directly or indirectly involved in (Rivlin, 1992: 95; Weiss, Forsythe, Coate and Pease, 2014: 39).

Furthermore, the decolonisation of African countries (1950-1980) resulted in a change in the status of newly independent African countries, as they became members at the UN and learned to use the international organisation as a platform to advance their interests, such as decolonisation (Lehmann, 2008: 2). This is supported by literature, which proposes that the relationship between the UN and AU emanated from the background of the increasing debate on Africa's place within the geo-political order and the distortion of UN priorities focusing on the benefit of the developing countries (Adebajo, 2009; Motjope, 2011: 14; Kay, 1967: 790).

The period post the Cold War saw African states engulfed in intra-state conflicts born of tribal or ideological basis and many of which had Cold War implications (Baynham, 1994: 41). Such conflicts were in Burundi, the Democratic Republic of Congo (DRC), Liberia, Sierra Leone, Somalia and Sudan. These conflicts were due to new assertions of nationalism and sovereignty, while the state was threatened by ethnic, religious, cultural, social or linguistic differences. On the other hand, social stability was threatened by “new assertions of discrimination and exclusion” and “acts of terrorism seeking to undermine democratic changes” (Boutros-Ghali, 1992: 11). It is evident that the underlying causes of intra-state conflicts differed a bit from those of inter-state conflict, as was the case during the cold war. As a result, many of the security organisations, including the UN, were not well prepared and equipped to deal with such conflicts (Duke, 1994: 377).

This created a challenge for intervention by regional organisations, including the UN, as their efforts to maintain peace and stability had to encompass issues beyond military intervention. According to Duke (1994: 375) intra-state conflicts posed the biggest challenge to the UN post-Cold war era. As a result, intra-state conflicts faced three problems namely the willingness of UN members to intervene, the structural ability of the UN to respond and whether the traditional principles of peacekeeping should be applied (Duke, 1994: 375).

Although during the Cold War, Western and Eastern interventions in Africa were primarily motivated by geopolitical and national interests, the end of the Cold War era saw the disappearance of these strategic interventions (Baynham, 1994: 41). According to Baynham (1994: 41), the shift was not only brought by the challenges faced by the UN but also because the international community had taken note that the interests of the citizens came before the interests of the state. Furthermore, given the rise of intra-state conflicts in other countries such as Iraq and Bosnia, the focus of intervention of the West moved to these regions, leaving limited assistance to Africa (Baynham, 1994: 41).

However, since the end of the Cold War there has been debates about the roles and responsibilities, timing as well as competing interests of the intervention of the UNSC and its members in conflicts, especially on the African continent (Kode, 2016: 8). Although the

UNSC was lauded for its successes in preventing the invasion of Kuwait by Iraq in 1990, Sierra Leone in 2000 and Comoros in 2008, it failed to effectively respond and intervene in subsequent conflicts, such as those that in Somalia in 1992, Rwanda in 1994 and Darfur in 2003 due to the changing nature of conflicts from interstate to intra-state conflicts (Knight, 1996: 31, Rivlin, 1992: 95). This resulted in an increased reliance on regional organisations from the 1990s, following the UN's scaling down on its involvement in peacekeeping operations due to the Rwandan and Somalia crises at the time. The same period witnessed a launch of peace operations by regional organisations (Weiss & Daw, 2018: 7-8).

Boutros Boutros-Ghali, the then UN Secretary-General (UNSG), articulated three key principles for the future relationship between the UN and regional organisations. First, the relationship needed to be governed by the primacy of the UNSC in authorising regional organisations actions which would, in turn, support the UN's efforts. Second, there should not be any formal pattern of relationship between regional organisations and the UN, or any specific division of labour. Last, while recognising the uniqueness of each regional organisation, there was an acknowledgement that they would all be treated the same (Agenda for Peace, 1992: 36-37).

The establishment of the AU's predecessor, the Organisation for African Unity (OAU) Mechanism for Conflict Prevention, Management and Resolution in 1993, resulted in an effective peace and security cooperation in Africa. Despite the OAU's demise due to institutional weaknesses and the inability to respond to the challenges of the post-colonial states, as well as the rise in decolonised states, the formation of the AU in July 2002 resulted in AU member states embracing the move from non-interference to non-indifference (Djinnit & Wane, 2020: 9). This was a notable milestone to enhance the organisation's peace and security cooperation with the UN, given the latter's shortcomings in addressing the shift from interstate to intra-state conflicts in the 1990s (Shiferwa, 2021: 4).

Managing these "new" conflicts required a more strategic and proactive conflict mechanisms instead of the traditional peacekeeping position, which was rather static,

defensive, and tactical, and was beyond the scope of the UN (Stewart & Anderson, 2018: 165). The launch of the AU's Africa Peace and Security Architecture (APSA) in 2002 increased the AU's conflict management responsibilities by providing it with the institutional machinery to generate information and respond to these conflicts (Shiferwa, 2021: 4). According to Tiekou and Hakak (2014: 131), this provided the AU with the legal legitimacy to intervene in member states, given the need and willingness to deploy armed forces and conduct military operations, and its support from African states than the UN which created an incentive to enhance the relationship.

In addition, the AU Constitutive Act, Article 3(c) supports the idea of international cooperation within the framework of the UN Charter, while the AUPS Protocol calls for close cooperation with the UNSC in implementing peace and security on the continent (AU Constitutive Act, 2000; AU Peace and Security Council, 2003). This is an indication that although the AU recognises the supremacy of the UN, it does not consider itself as a mere implementer of the UNSC, but views its partnership as complementary (Francis, Faal, Kabia & Ramsbothan, 2005: 404).

According to Nagar and Njanje (2016: 38), many African leaders complain that the UNSC often treats AU peace and security mechanisms with contempt. The permanent five (P5) members of the UNSC, namely, the US, United Kingdom (UK), China, Russia, and France, continue to draft about 80% of the resolutions on Africa and have often decried the AU's lack of unity and decisiveness on the UN's most powerful body. This is supported by Williams and Boutellis (2014: 261), who indicate that this has resulted in significant political differences between some permanent (P5) and non-permanent (E10) members at the UNSC. Whereas African member states complain that the UNSC does not often respect the AU's positions, non-African states argue that the AU does not often have a unified voice, especially among the elected African non-permanent members (A3) and it often delays its responses to conflict situations. The political division have led to the calls for reform of the UNSC; critics posit it as an exclusive club of the P5.

According to Shiferaw (2021: 6), the call to reform the UNSC from the AU's position is based on the advantages that (i) the AU's member states give it its political legitimacy, (ii)

the AU is close to the conflict situations and has the historical background expertise, and (iii) the establishment and implementation of APSA has the capability to engage peacekeeping missions in difficult crisis situations. The AUPSC has become a critical actor in peace and security in Africa by taking an active role in responding to crises on the continent and providing leadership in the promotion and advancement of regional security, which is in line with the idea of promoting 'African solutions to African problems'. Despite this, the UN and the AU partnership has been lauded for its achievements in peacekeeping and peace enforcement. Both have collaborated in peace keeping missions in Somalia (ATMIS), Democratic Republic of Congo (MONUSCO), and the Central African Republic (MINUSA), but to name a few. However, the application of Chapter VIII of the UN Charter in the implementation of peacekeeping, peace enforcement, and military interventions is often forgotten (Chu, 2016: 1). According to Chu (2016: 1), there is a preference to authorising peacekeeping and peace enforcement under Chapter VII, which stipulates that the UNSC may take any action "necessary to maintain or restore international peace and security" (UN Charter, 1945), as it provides the UNSC with a much broader discretion in "designing the legal mandates of peacekeeping and peace enforcement activities" (Chu, 2016: 1). This is mainly because Chapter VIII provides restriction in that their military action is limited and can only be authorised by the UNSC. While peace enforcement measures carried out under Chapter VII provide the UNSC with the freedom to act and design the legal mandates of peacekeeping and enforcement activities, few peacekeeping operations and enforcement action have been authorised through the application of Chapter VIII, as they are more limited in their military scope given the requirement for authorisation from the UNSC (Chu, 2016: 1).

Given these shortcomings in the application of Chapter VIII in authorising peace enforcement action, the study provides an in-depth assessment of Chapter VIII to have a better understanding of the role envisaged for regional organisations and the impact that this has on their collective security actions.

## 1.6 THEORETICAL CONSIDERATION

Several theoretical perspectives were explored for their relevance in this study, including neo-realism, neo-liberal institutionalism, and constructivism. Although these theories provide insight on the substance pertaining the role of states within regional organisations in ensuring collective security, they have less explanatory power. Furthermore, these theories focus on the unilateral role of the state within a regional organisation, while collective security focuses on the multilateral role of a state in ensuring peace and security. It is for this reason that for purposes of this study, the theory of collective security was adopted as a framework of choice.

### 1.6.1 Neo-realism

Since nations are thought to care greatly about their relative positions, neo-realists are subdued about the possibility of international organisations. According to neo-realist, states only belong and cooperate with international organisations when it is in their best interests (Sinclair & Byers, 2006). Hence neo-realists advance the notion that it is the system of states, and not the individual state, which is the principal determinant of state behaviour. According to Kolodziej (2005: 135), this is because the system and its structure of material violence forces states to be ceaselessly concerned about their survival and security. Waltz (1990: 29) states that the anarchical nature of international organisations limit states to overcome the demands to use force and violence imposed on them by the structure of power that the international system poses. Therefore, other domains of state action such as the promotion of human rights cannot overcome the decentralisation of violence from state control (Kolodziej, 2005: 137). As a result, international organisations must permit states to act in accordance with their own interests to survive. Neo-realists discount the importance of international organisations in promoting peace and security because they believe they were formed out of state self-interest (Baylis, 2001: 257).

Neo-realists argue that regional and international organisations are the product of states interests and that is why they cannot independently function, as it is the state's interests that determine the decision of whether states cooperate or compete (Baylis, 2001; Sinclair

& Byers, 2006). It is furthermore assumed by neo-realists, that the world (at least in terms of a global scheme) operates under no real governing body or set of laws and as such we live in a global anarchical society in which each independent state must fight for its own survival and do whatever is necessary in order to ensure their own peace and security (Rugendo, 2013: 17).

In addition, neo-realists identify the security and survival of the state as the overriding privileged aim of state action and not necessarily power. Accordingly, neo-realists argue that being the principal actor in the chaotic international arena, the state acts in a system where war is a legitimate instrument of diplomacy (Rugendo, 2013: 17). Kolodziej (2005: 137) supports this notion by stating that “conflict is endemic to state relations” and cooperation amongst states is fundamentally temporary and dependent on changing circumstances. For neo-realists, international organisations are a reflections of the interest of states and states are therefore unwilling to surrender their power. Therefore, the cumulative effect of these, constrained the independent role of international organisations (Bayeh, 2014: 348)

### 1.6.2 Neo-liberal Institutionalism

Neo-liberal institutionalism contends that states are concerned with absolute advantage instead of maximising their absolute gains from other states (Burchill, 2005: 65). This creates circumstances where states concentrate more on achieving absolute gain, making collective security possible (Boehmer *et al.*, 2004: 15). Neo-liberal institutionalism holds the view that collective security is an arrangement that compel states to cooperate in supplying security for everyone by the actions of all and against any state that may challenge the current order inside the system (Ejiwale, 2019: 17). Therefore, neo-liberal institutionalisms support collective security and contend that through international organisations, governments may focus their efforts on preserving shared interests (Niou & Ordeshook, 1991: 483).

Although neo-liberalist institutionalism agree that states act in their own interest, they also recognise that states could benefit from cooperative strategies (Keohane, 1984). Therefore, if absolute cooperation are considered then relative gains are likely to have

minimal effect on cooperation. Neo-liberal institutionalism attempts to divide the economic and security realm by stating, as argued by Mearsheimer (1995), that absolute gains can only apply to the economic realm while relative gains apply to security. However, the two cannot be exclusive of the other given the correlation that exists between economic might and military might (Whyte, 2012:3).

The neo-liberal solution to maintaining international peace and security is based on the use of four instruments: the international law, the international organisations, political integration and democratisation (Badalan, 2009:73). First, international law is a judicial mechanism, which communicates to several states by applying a series of rules that have the purpose of minimising the tension and uncertainty between states. Second, international organisations hold a greater role in solving global security issues. This is because they allow for the participation of states as contracting parts, the existence of the multilateral treaties as constitutive parts, the existence of some common objectives or means and the making of an own constitutional structure (Pirnuta & Secrenea, 2012: 105).

Third, political integration allows for the creation of new political communities and international institutions, which will force states belonging to these organisations to not attack each other. Last, with democratisation, neo-liberalists believe that conflicts can be initiated by the political systems adopted by states and therefore if states adopt democracy as a form of governance, wars will be avoidable, as wars cannot start between democratic states (Pirnuta & Secrenea, 2012: 107). Waltz supports this notion by arguing that open governance systems that are sensitive to public opinion and collective security can help prevent conflict and war (Waltz, 1979).

Based on the above, it is evident that neo-liberalist holds a positive view of international organisations and thus believe that international organisations are vital in maintain world peace and cooperation. Neo-liberalist takes into account the role that regional organisations can play in ensuring peace and security, through preventative diplomacy, mediation, post-war peace building, arms control and disarmament.

### 1.6.3 Constructivism

Contrary to neo-realists, constructivists advocate for the existence of international organisations. Constructivism identifies that many socially constructed rules shape the behaviour of states and that these very norms both constrain and enable states to act (Kolodziej, 2005: 262). According to Wendt (1995), states have constituted their relations based on shared ideas about what a state is as well as what interests they have. This therefore gives states a wide range of choices on how to relate to each other. Furthermore, Wendt posits that states are perfectly free whatever form of anarchy they please, be it “incest conflict” or “perpetual peace” (Wendt, 1995).

Constructivism views international organisations as key actors in shaping states behaviours by promoting and reinforcing social norms, ideas and identities instead of simply serving as tools for power (Mitchell, 2006). According to Finnemore (1996:134), as normative-adaptive entities, states employ international organisations to modify international norms of proper state behaviour to direct their internal institutions and policies. Additionally, constructivists point out that by limiting the states' self-interests and introducing new suitable norms, international organisations prevent states from departing from international cooperation.

Unlike neo-realists, constructivists underestimate the relevance of relative gain and thus believe that states have a more likelihood to cooperate amongst themselves (Mitchell, 2006). Constructivists argue that states can have multiple identities that are socially constructed through interaction with other states and Katzenstein (1996: 5) defines these as “a standard of appropriate behaviours for actors with a given identity”. Therefore, states that conform to a certain identity are expected to comply with the norms that are associated with that identity. Finnemore & Sikkink (1998: 891) identifies three types of such norms, namely regulative norms, constitutive norms and prescriptive norms. Regulative norms order and constrain behaviour, while constitute norms create new actors, interests or categories of action and prescriptive norms prescribe certain norms which means there are no negative norms from the perspective of those who promote them (Finnemore & Sikkink, 1998: 891).

Constructivism has an optimistic view on the role of international organisations, as they believe international organisations have the role of, inter alia, promoting democratisation of member states and encouraging member states to pursue peaceful conflict management strategies.

#### 1.6.4 Collective Security

Although the concept of collective security is complex, this term is an invention of previous centuries. Ejiwale (2019: 9) explains that collective security is a significant commitment to promoting international peace between and among states. It is also a means of managing crises in international relations, established to promote international peace since aggression or war impedes global security. According to Evans and Newnham (1997: 14), collective security ascertains that states security challenges may be accomplished through the institution of shared interests, where each state commits to unite in collective actions against anything that threatens the territorial integrity or political independence of others. Ibrahim (2008: 9) defines collective security as “the combined use of the international community’s coercive capability to combat the illegal use of force in situations that threaten international peace and security.”

Before discussing the collective security framework, it is important to note its distinction from individualism. Unlike collective security, individualism focuses on the individual rights and interest of the individual over the collective good. According to Natarajan (2023: 120), individualism seeks the protection and support of the collective while at the same time insisting on freedom for personal self-expression and action without hindrance by the collective. Therefore, in a collective security setting, the individual might be tempted to not contribute their full to the collective defence but rather rely on others to carry the responsibility while benefiting from the security provided (Natarajan, 2023).

The founding of the League of Nations and, later, the UN, was based on the concept of collective security, whose main principle is the maintenance of international peace. The international community established the idea of collective security to propose new ways of building mutual trust amongst states and resolving common security problems through acceptable methods of cooperation. Many scholars have also used the term ‘collective

security' to define a couple of phenomena, ranging from a country's alliances to regional and international organisations.

Collective security relies on a standing commitment by an alliance of states or the international organisation, bound by similar political or economic interests to deter or retaliate towards any threat against the security interests of each member state within its sphere of influence. Mwangwabi (2010: 2) ascertained "that member states would take a threat or attack on one member as an assault on all of them." However, according to Ejiwale (2019: 10), by embracing collective security, any member state is barred from engaging in a manner that could breach global peace, thereby eliminating potential conflicts. Bloomfield et al. (1993: 9) also indicate that if all governments are expected to react against a breach of international peace, they must be able to take note that a critical threshold should be achieved. The thresholds include the forbidden use of force, the failure of a party to a dispute to conform to procedural rules for dealing with the conflict, the centralisation of perception for a reason to act, and an act of self-defense by a government (Bloomfield *et al.*, 1993: 9).

Since collective security deals with the security of sovereign states, the concept relies on a dominant military power. That means that it provides for the management of global military power by the international community to create order, control the behaviours of states, and minimise security threats and maintain peace (Ejiwale, 2019; Rugendo, 2013). Mwangwabi (2010: 1) added that a peaceful and stable world order could only be maintained with the benefit of a collective security system, with the military as an integral part of that cause. This is supported by Bloomfield et al. (1993: 9), who state that collective security rests on the assumption of "all against one," so that aggression by any state is met with the combined power of the rest of the world to restore the status quo ante. Claude (1971) thus indicates that collective security relies on the premise that the deterrent effects of states with overwhelming power, whose coherence is a certainty for victory, can prevent war.

Collective security discourages individualism and thus calls for states to devote to the international community and to commit to the value of world peace. Claude (1971) argues

that states must have confidence in the collective security mechanism that is essential for them to entrust their security on the mechanism. Bloomfield et al. (1993: 10) indicate that for states to achieve such confidence in collective security as a mechanism for international peace, three things should be evident.

First, a working collective security system should not condone any unacceptable behaviour by any state and that reaction to threats is directed against all aggressors, not merely a particular enemy. Therefore, due to the complex nature of the international system and the convergence of interests, all states should be seen as potential aggressors. In so doing, the unilateral use of force would be prevented due to fear of a forceful response. Second, the importance of strength and capabilities of states as actors encourages the substantial distribution of power, with states controlling equal resources and the devoid of concentration of power in a few states. Last, the geographical location of a dispute has no bearing on the response, therefore any breach of the peace would impel a response throughout the world (Bloomfield *et al.*, 1993: 11).

According to Rugendo (2013: 25), collective security mechanisms have faced serious challenges and failures. The League of Nations as a mechanism for collective security was the first example of such a failure. The experience of the League of Nations, which saw powerful states removing themselves from the system, rendered it ineffective and diminished any hopes of its effectiveness as a collective security body in the international system (Baylis, 20001: 257). This was unfortunately confirmed by the League's inability to prevent WWII and resulted in its demise.

Second, according to Rugendo (2013: 27), the UN as the umbrella body of the collective security mechanisms has faced several challenges in the maintenance of international peace and security. The presence of the permanent five members who hold veto powers in the UNSC, the unilateral actions by powerful states due to the inability of the UN to stop them, and the unwillingness of member states to entrust their security on the system, have proved a to be huge challenge to the authority of the UN. Furthermore, the poor funding of regional mechanisms, inadequate resourcing of peacekeeping missions, and the non-cooperation of countries due to individual state interests has not been beneficial

for the system (Rugendo, 2013: 27). Therefore, due to these, governments often look at conflict in terms of their individual interests and are likely to act not according to the UN, but in a manner that protects their principal interests, which are survival and the interests of other lesser national.

Despite the various obstacles that the collective security paradigm faces, the hegemonic upkeep of a bipolar world order is responsible for the reduction in interstate conflicts in the post-WWII era. Equally, by enforcing the shared interests of the international community, the notion of collective security has been successful in assuring the maintenance of peace and security, as seen during the 1950 invasion of South Korea by North Korea in the case of or during the 1991 Gulf War which liberated Kuwait from Iraq's invasion (Rugendo, 2013: 27).

The Collective Security framework guided the study and drew from the literature on collective security, regionalism, and international organisations. Furthermore, emphasis was made on the institutional mechanisms of the UN Charter found in Chapter VIII. This theory thus assisted the study to analyse the role of regional organisations, specifically the AU and its collective security mechanism in maintaining peace and security.

## 1.7 RESEARCH METHODOLOGY

Research methodology is a systematic process of employing appropriate procedures to find a solution to the research problem by illustrating how the study will be conducted. It allows for the proper conduct of research methods (Goundar, 2012: 10). Two approaches to research are widely recognised, namely quantitative research and qualitative research.

Quantitative research refers to counts and measures of objective hard data which is statistically valid (Monfared & Derakhshan, 2015: 1111). Creswell (1994) defines quantitative research as a study which explains phenomenon through the collection of numerical data which is analysed through mathematically based methods were statistics are particularly integrated. The main aim of this method is to test hypothesis and theory, using several data collection techniques, such as field experiments, simulation, surveys and multivariate analysis. Quantitative research uses deductive reasoning, and it is seen

to provide more objective and accurate information given the use of standardised methods which can be replicated (Abdullah & Raman, 2001: 120).

The use of quantitative research has several advantages. First, it relies on facts which are assumed to be more objective thus eliminating the researchers bias in either collecting or analysing data. Second, findings obtained from quantitative research can be generalised to a larger population in different settings. Third, the data collected and analysed is reliable and less time consuming given the use of statistical software such as Statistical Package for Social Science (Xiong, 2022: 957). Despite these advantages, quantitative research also has several disadvantages which makes it undesirable for this study. First, quantitative research fails to provide understanding of underlying meaning and explanation of data which fails to contextualize details that help interpret the results. Second, results are susceptible to bias from the researcher as they (results) can be open to subjective interpretation. Third, predetermined paradigms are incorporated therefore limiting innovative and critical thinking (Xiong, 2022: 957)

Hennink et al. (2010:8) assert that qualitative research is “an umbrella term that covers a wide range of techniques and philosophies...it is an approach that allows you to examine people’s experiences in detail, by using a specific set of research method.” Therefore, qualitative research is interested in analysing texts and images rather than numbers and statistics (Flick, 2014: 542). Qualitative research is in essence more subjective than quantitative research as it uses different methods to collect information.

One of the advantages of using qualitative research, as opposed to other methods of research, is that it allows for the complete description and analysis of the research phenomenon without any constraint to the range of the research and the nature of the participants’ responses (Collis & Hussey, 2014). In addition, data methods utilised in qualitative research are often multifaceted which can provide rich information pertaining to personal perspectives. Furthermore, it provides for flexibility in the analysis of data therefore providing easy understanding of the said data (Xiong, 2022: 958).

Given the above distinction between qualitative and quantitative research, in analysing data on Chapter VIII of the UN Charter and its relationship with the AU in implementing collective security, the research methodology that the study employed was the qualitative. The use of qualitative research was appropriate as it allowed the researcher to investigate the social construct of the relationship between the AUPSC and UNSC as outlined by Chapter VIII and the Constitutive Act. Furthermore, the methodology adopted helped to better explain the situational constraints that shape the relationship between the two organisations. The research question adopted for the study required the use of qualitative data, which were obtained from human interaction, rather than measurements.

### 1.7.1 Research Design

According to Ragin (1994: 191), a research design is a process used to collect and analyse data that will allow the researcher to respond to the research question. It is a plan for collecting and analysing evidence that will make it possible for the researcher to answer the research questions posed. The design of an investigation touches almost all aspects of the research, from the minute details of data collection to the selection of the techniques of data analysis. The implementation of the research design in qualitative research should be automatic and applied throughout every step of the project (Hammersley & Atkinson, 1995: 24). The decision to select a particular research design aims to minimise or exclude any biases of the researcher throughout data collection and analysis.

The study employed the case study research design as it allowed the researcher to examine the applicability of collective security as a theoretical concept in international relations to an experienced situation in reality, that is, as a practical principle that has been implemented in global and regional security arrangements. According to Starman (2013: 29), the use of a case study in qualitative research is common, as it examines episodic occasions in a definable framework bound by time and situations. Furthermore, case studies explore and investigate contemporary real-life phenomenon through by providing contextual analysis of a limited number of conditions or events and their relationship (Zainal, 2007: 2).

Yin (2003) notes that there are three categories of case studies, namely explanatory, descriptive and exploratory. Exploratory case studies closely examine data at both a surface and deep level in order to explain a phenomenon in data. In addition, such cases are used for causal studies where pattern-matching can be used in very complex and multivariate cases, to investigate certain phenomenon. Descriptive case studies on the other hand are set to describe the natural phenomenon. According to Zainal (2007: 3), when using a descriptive case study, the researcher must begin with a descriptive theory to support the description of the phenomenon, failure to do so would result in a description lacking rigour which may create more problems during the project. Last, exploratory case studies are used to explore any phenomenon which serves as a point of interest for the researcher. Therefore, prior field work and data collection may be conducted before the proposal of a research question and hypotheses (Zainal 2007: 3).

Although case studies provide a good opportunity for innovation and challenge current theoretical assumptions, it can provide a challenge in determining a cause-and-effect connection to reach conclusions (Queiros, Faria & Almeida, 2017: 377). Furthermore, case studies are critiqued for being hard to generalise especially when a small number of cases have been used. In addition, case study as a research method is criticised for its lack of robustness as a research tool as well as its lack of scientific rigor (Zainal, 2017; Starman, 2013 and Yin, 2003).

Despite the criticism of case studies as research projects, there are several advantages to its application. First, case studies can make a unique contribution in the researchers' ability to understand otherwise complex phenomenon. Second, the detailed qualitative interpretations often derived from the use of case studies, does not only help to describe or explore data in real-life but it also helps in explaining the complexities of real-life situations (Zainal, 2017: 4). Last, given that the examination of the data is often conducted within the context of its use, the researcher observes the subject within her/his environment. Therefore, this research used the case of the Libya (2011) and Côte d'Ivoire (2010-2011) crises as the case studies., The two case studies were selected as they explicitly highlighted the impact of the relationship between the AUPSC and UNSC in

collective security as well as the challenges in the implementation of the collective security mechanism as outlined by the organisations' respective frameworks.

The adoption of the case study for this research was invaluable given that the cooperation of the UNSC and AUPSC has dealt with a handful of situations in many countries since its inception and was thus not timely possible for the researcher to investigate them all. Therefore, the case study allowed the researcher to understand the complex nature of the relationship between the two organisations through the contextual analysis of the Libya and Côte d'Ivoire crisis.

### 1.7.2 Data Collection

Data collection refers to various procedures, schemes, and algorithms used to transform research data into a topic. Research methods help researchers to collect samples and data, and find a solution to a problem. The use of a combination of data from different sources and the application of different methods in qualitative research is known as triangulation (Hammersley & Atkinson, 1995: 24). Triangulation allows for a better analysis of the phenomenon as it reduces the risk of systemic biases by limiting the use of a favourable method by the researcher (Maxwell, 2012: 245). Therefore, for the purpose of this study and the implementation of triangulation, data were collected through desktop research through examining primary and secondary sources, as well as through semi-structured interviews.

The primary sources used were Chapter VIII of the UN Charter, the Constitutive Act of the AU, the Protocol Relating to the Establishment of the Peace and Security of the AU, UNSC and AUPSC resolutions, voting records, reports, as well as both organisations' policies and speeches from their respective leaders regarding the implementation of peace and security through collective security. The justification for the selection of these primary sources is that these documents govern the relationship of the organisations and outline the roles that each should individually and collectively play in ensuring collective security. This information was accessed through the various organisations' websites. Secondary sources was collected from scholarly journal articles and books on the subject matter.

Expert interviews with eight participants were conducted with desk officers on the multilateral desk from the Department of International Relations and Cooperation in South Africa, diplomats, and academics. The experts (see Annexure D) were selected based on their knowledge and expertise on the subject matter, especially in relation to the UN and AU. Most of the interviewees are originally from Pretoria with some, at the time of conducting the interviews, based in New York, Ethiopia and Mozambique. It should be noted that access to and the availability of these individuals was a challenge, hence referrals were used in some instances.

The interviews were semi-structured in approach. Semi-structured interviews are described as a method of inquiry that is “generally based on a guide which is typically focused on the main topic that provide a general pattern of issues under investigation (Ruslin et al, 2022: 22). Although semi-structured interviews follow an interview guide, relevant sets of questions that deviate from the guide but are aligned to the topic under investigation, are permitted. Such interviews are open-ended in nature and provides for detailed discussions between the interviewer and interviewee. Pin (2023: 1) notes that epistemologically, “semi-structured interviews are a part of a scientific approach of reasoning in which fieldwork is not simply meant to verify pre-existing theories developed in the abstract but rather the basis for developing the research question and hypotheses”.

Like any data collection method, semi-structured interviews have their own advantages and disadvantages. The first disadvantage is that semi-structured may lead to reduced validity in that the interviewer may stray from the original set of planned questions. Second, given that some question will be partially improvised, this can lead to unintentional bias when asking new questions or even ask leading questions, therefore invalidating the process. Finally, semi-structured interviews can be time consuming and difficult to plan. This is because some level of improvisation may take place during the interview process, which may result in unique responses from participants therefore making thematic analysis difficult (Ruslin, 2022; Pin, 2023).

The advantage of using semi-structured interviews is that they provide flexibility given its semi-structured nature. This provides the interviewer to obtain additional information by probing the initial response, giving richness to the data. Furthermore, semi-structured interviews allow for specificity in that the researcher would address the specific points or issues of interest and is likely to get more detailed and rich responses. This is also because open-ended questions allow the interviewer to ask follow-up questions base on answers given.

The researcher used a voice recorder, with participant consent, to record the interviews. Various methods of conducting the interviews were used, depending on the availability and access of the interviewees. The interviews were conducted both in-person and through virtual meeting platforms such as Zoom, Google Meet, and Microsoft Teams. The interviews were scheduled based on the availability of the interviewees who were requested to indicate their preferred and convenient method of participating in the interviews. The interviews were conducted under anonymity, and took place in September and October 2024.

The information obtained from primary sources was used to initiate debate on the relationship between the UNSC and AUPSC, while the secondary sources assisted in identifying or supporting empirical arguments. Furthermore, in instances where information obtained from interviews may have been insufficient to address the research questions, the primary and secondary sources were utilised to either impeach or corroborate points by the experts.

### 1.7.3 Data Analysis

At the core of analysing qualitative data, the information observed should first be grouped into themes or patterns. Once achieved, data analysis for this study was done using thematic.

Maguire and Delahunt (2017) define thematic analysis as the process employed to identify themes or patterns from the data, which is essential to address the research question(s). Thematic analysis allows the researcher to make sense of similar or shared

meanings or experiences by focusing on meaning across the data collected (Braun & Clarke, 2012: 2). Given that thematic analysis is a method and not an approach used in qualitative research, it allowed the researcher transparency, accessibility, and flexibility in conducting this study, and further made the analysis more valid (Braun & Clarke, 2012: 3).

Thematic analysis can use both deductive and inductive methods (Braun & Clarke, 2006). According to Dawadi (2020: 63), a deductive approach can be adopted at the initial stage to analyse data based on the themes already identified in the literature review or the research questions adopted by the study. Moreover, the deductive approach is researcher-driven in that, the data are analysed in line with the researcher's theoretical interest (Braun & Clarke, 2006). In addition, unexpected themes that emerge through the data collection process may be considered in order to have a better understanding of the research (Dawadi, 2020: 63). On the other hand, inductive analysis places data without trying to populate it according to the themes that already exist. In essence, the data creates its own themes without linking them to pre-existing themes identified in the study. Therefore, the themes are not linked to the researcher's theoretical interest but are rather linked to the data (Braun & Clarke, 2006).

To ensure a systematic and rigorous process in using thematic analysis, Braun and Clarke (2006) proposes a six-phase approach which entails (i) familiarisation with the data, (ii) generating initial codes, (iii) searching for themes, (iv) reviewing themes, (v) defining and naming themes, and (vi) writing the report. The first step entails the researcher familiarising themselves with the data in order to identify the type and number of themes that are likely to emerge from the data. This phase is important in that it guides the appropriate steps that may need to be adopted by the researcher in analysing the data. The second step extracts data and, based on that, these are coded based on the phrases, sentences, or paragraphs that are similar (Dawadi, 2020: 64).

The third step is to identify patterns and relationships that exist between and across the data in order to search for themes (Dawadi, 2020; Braun & Clarke, 2006). According to Dawad (2020: 66), this step is the most difficult in that the main focus is on the analysis

of the broader level of themes and not necessarily the codes. The fourth stage entails bringing all the themes identified together and reviewed to check for coherence, consistency, and distinctions between them (Dawadi, 2020; Braun & Clarke, 2006). The review process also entails the merging of subthemes or themes to other themes, as well as the discarding of themes that are not necessarily relevant to the research (Dawadi, 2020: 66). The fifth step focuses on “identifying the essence of what each theme is about, and determining what aspect of data each theme captures” (Braun & Clarke, 2006: 92). The last step entails the report writing of the findings. The thematic analysis report must ensure the merit and validity of the analysis by using examples and extracts within the analytical narrative (Braun & Clarke, 2006).

The thematic analysis method was adopted for this study as it allowed the researcher to compartmentalise the information obtained through literature and interviews into different themes. These themes were obtained from the research aims and objectives and were pre-set in the research questions. This also allowed the researcher to find common viewpoints amongst the interviewees and identify the different themes that could arise from the interviews.

## 1.8 ORIGINAL CONTRIBUTION

Although several studies have been conducted on the cooperation between the AU and the UN on peacekeeping operations in Africa as indicated earlier, most of the literature has focused exclusively on the impact of military, bureaucratic, and financial aspects of peacekeeping on the continent. Therefore, there is a gap in the literature on the analysis of collective security frameworks adopted by both the AU and the UN, individually and collectively, which govern their cooperation in the maintenance of peace and security. It is against this background that this study critically analysed Chapter VIII of the UN and the AU’s Constitutive Act in order to contribute to academic and policy discussions relating to the cooperation on collective security between the AU and UN. The study can provide a transformation in the manner in which the AUPSC and the UNSC are currently constituted as well as the execution of their respective mandates. Furthermore, the study provides recommendations on how the AUPSC and UNSC can relate better by reforming

their respective collective security frameworks in an effort to strengthen cooperation on the maintenance of peace and security.

## 1.9 LIMITATIONS/DELIMITATIONS OF THE STUDY

Given that the researcher was required to obtain written approval from the AU, UN, and the Department of International Relations and Cooperation (DIRCO) prior to conducting expert interviews, such permission was only granted by DIRCO, while the AU and UN did not respond to the request. This negatively affected the commencement of data collection and also limited the interviews to experts from DIRCO and researchers. Furthermore, the access and the availability of some of the interviewees was another limitation to the study, as initially, twenty (20) participants were targeted for the interviews yet only eight (8) were available and willing to participate in the study, thereby limiting the collection of data that the study could use.

The study was delimited to the analysis of the implementation of Chapter VIII and the AU Constitutive Act to the Libya and Côte d'Ivoire crises as cases studies, and a timeframe of three years, from 2010 to 2012. It should be noted that within the framework of the UN, there exists two types of regional organisations, namely, regional defence alliances, such as NATO under Article 51 of the UN Charter, and regional organisations that focus on international peace and security in Article 52-54 of the UN Charter. It was in the interest of this study to delimit this research to regional organisations as outlined under Article 52-54 of the UN Charter.

Furthermore, it should also be noted that to distinguish the two types of regional organisations remains largely a typology, as it is contested in political and academic debates. Moreover, given that the mandate of the UNSC is, as outlined in the Charter, to maintain peace and security, and given that different roles and responsibilities may be outlined in other parts of the Charter, it was necessary for this study to only focus on Chapter VIII. However, a general examination of other sections of the UN Charter, which talks to regional organisations, were discussed, although not extensively.

## 1.10 ETHICAL CONSIDERATIONS

The researcher has the responsibility to ensure the maintenance of ethical and professional obligations throughout the research study. The researcher reliably reported information collected from various sources consulted and ensured that all sources cited in the study are acknowledged accordingly. This study was submitted for clearance to the Faculty Research Ethics Committee (see Annexure A). The researcher followed and respected all ethical standards and guidelines as stipulated by the Faculty.

Before conducting interviews, the researcher obtained ethical clearance from the University's Ethical Committee, as well as written approval to conduct interviews from DIRCO. The researcher upheld the principles of research ethics when conducting the interviews by respecting the confidentiality preferences of the interviewees, as well as ensuring that written consent was obtained from the interviewees. Consent was sought for the interviewees to participate in the study and for audio-recording the interviews. Furthermore, all the data collected will be securely stored on a hard drive and protected for a period of ten years according to University of Pretoria's Research Data Management Policy. Furthermore, the researcher ensured that all standards of integrity and transparency were met and applied throughout the data collection and analysis process.

## 1.11 CHAPTER OUTLINE

The research is structured in the following manner:

### **Chapter One: Introduction to the Study and Contextualising the importance of Collective Security**

The Chapter provides a general introduction and background to the study by focusing on the conceptualisation and contextualization of the changing role of regionalism within its political and security context. Furthermore, the chapter examines the theoretical framework, literature review and research methodology adopted in the study.

### **Chapter Two: The Normative Framework of Chapter VIII of the UN Charter**

This Chapter examines the specific normative role of regional organisations and determines the responsibilities and circumstances in which regional organisations are expected to act.

### **Chapter Three: The Operational Framework of Chapter VIII of the UN Charter**

In this Chapter, the researcher provides a critical analysis of the operational mechanisms as outlined in Chapter VIII and the collective security measures regional organisations are allowed to implement in coordination with the UN in order to ensure peace and security.

### **Chapter Four: The Difference in the Normative Framework of the OAU and the AU**

This Chapter provides a historical perspective of the security mechanism adopted by the OAU, its failures and successes, as well as developments that led to the formation of the AU. In analysing the normative framework of the OAU, a better understanding of the AU's collective security framework will be provided.

### **Chapter Five: An analysis of the African Union Mechanism in Collective Security versus Chapter VIII of the UN Charter**

This Chapter provides a critical analysis of the African Union's Constitutive Act and the powers it gives to the AU's institutions, especially the Peace and Security Council in the maintenance of international peace and security. The Chapter further provides an analysis of divergences or convergences between the AU Constitutive Act and Chapter VIII of the UN Charter.

### **Chapter Six: Data Analysis and Interpretation**

This Chapter provides an interpretation and analysis of the data collected from the elite interviews conducted.

### **Chapter Seven: Conclusion and Recommendations.**

The final Chapter provides the conclusion and recommendations based on the findings of the study.

## **CHAPTER TWO**

### **THE NORMATIVE FRAMEWORK OF CHAPTER VIII OF THE UN CHARTER**

#### **2.1 INTRODUCTION**

The end of the WWII and the failure of the League of Nations created a need for a system of organised international relations, which would effectively maintain post-war security and provide peace and security (Russell, 1958: 1). However, for this to be achieved, there was a need for a compromise between universalism and regionalism (Tsagourias & White, 2013; Simma *et al.*, 2012). The compromise emanated from the realisation by the UK, US, China, and the Soviet Union that the need for an organisation of states was better off than none and, as a result, the UN was formed in 1945.

The formation of the UN provided a framework in which the collective maintenance of international peace could be achieved post WWII through its Charter, especially through Chapter VIII. Considering this, after the UN was established, the acknowledgement or recognition of the role of regional organisations in preserving global peace and security underwent a transformation. Unlike the League of Nations, the UN not only recognised but also incorporated the role of regional organisations within the collective security space. As a result, Chapter VIII of the UN Charter, which regulates the scope/outline of the role of regional organisations, was included in the UN Charter (Abass, 2004: 3).

However, the Charter, prior to its finalisation, went through considerable detailed modification as states needed to agree not only on principle but also in relation to the wording of texts in which everyone would feel protected. This Chapter thus examines the developments and the normative framework pertaining the Charter of the UN, with a specific focus on the discussions that took place at the Dumbarton Oaks Conference and the San Francisco Conference, which formed the UN Charter.

## 2.2 FAILURE OF THE LEAGUE OF NATIONS AND LESSONS LEARNT

Through the formation of the League of Nations<sup>1</sup> and its Covenant during the Paris Peace Conference in 1919, it was envisaged that war would cease to be a normal instrument to settle international disputes<sup>2</sup> (Macmillan, 2001: 85). With 63 member states, and a unanimous approval from those in attendance, the League provided hope for a universally accepted organisations that would shape the future of international peace and security. The USA, UK, France, Italy, and Japan led the creation of the organisation, whose principal objective was to “promote international cooperation and to achieve international peace and security” (The League of Nations, 1920: A3). To ensure the upholding of the League’s principal objective to safeguard international peace, the Covenant was established based on a preamble and 26 Articles.

The Covenant imposed on its members to relinquish the right to resort to war but rather settle disputes peacefully. Member states also agreed to report all disputes to the League and abide by its decisions and to safeguard territorial integrity and political independence of all member states (Myers, 1929: 4). The covenant also required member states to voluntarily reduce national armaments in line with their domestic safety. Furthermore, the League’s Covenant also imposed on its members its oversight role to inspect all international treaties prior to their conclusion or engagements, especially those not consistent with its obligation (Benes, 1932: 69). The League was able to achieve many successes through investigations and dispute resolutions (Schlesinger, 2003: 25). For example, it resolved border disputes between Sweden and Finland, persuaded Yugoslavia and Greece from invading Albania, and convinced Greece to withdraw its forces from Bulgaria. Furthermore, the League was able to formulate a plan to revive Austria’s financial situation (Northedge, 1986 & Schlesinger, 2003).

However, the League was plagued by many problems and its vulnerabilities were reflected in the initial stages of its formation. First, the disagreements and discontent within the Covenant-making Committee created disunity and mistrust amongst its

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<sup>1</sup> The League of Nations will henceforth in this thesis be referred to as the ‘League’.

<sup>2</sup> This follows four (4) years of World War I, also known as the Great War, which was a squabble for power and influence between two coalitions namely the Allies and Central Powers.

drafters, as Great Powers<sup>3</sup> strived to advance their national agendas through the League (Crosman, 2016: 3). The US's demand to Chair the committee and to lead the drafting of the Covenant overshadowed other nations' views and advice, which resulted in the adoption of an Anglo-American draft (Walters, 1952: 33).

Second, the League failed to convince the member states, especially the Great Powers, to commit their forces to the League's activities. This thus meant that the League lacked the resources to implement any of its decision, especially in situations where force or the threat of force was required (Schlesinger, 2003: 25). Some member states exploited this weakness to full effect, as no harsh remedial action, in this case, the use of force, would be taken against them (Northedge, 1986: 80). In this regard, Walters (1952: 709), is prescient in opinion that the Great Powers were deliberate in limiting the League's capability by failing to meet the Covenant's obligations.

Third, was the commitment of its members to relinquish the right to wage wars and the Great Powers' unwillingness to devalue their national interests and sovereign rights to the League (Crosman, 2016: 3). In 1923, France was the first to contravene the League's Covenant following its invasion of Germany to effect the extraction of war reparations. Despite Germany's request for the League to assist, the organisation did nothing about it, which called into question the League's legitimacy. Emboldened by France's example, Japan also contravened the Covenant by occupying Manchuria in 1931. Similar to Germany, China requested the League to intervene, and unlike in the previous situation, the League established a Commission of Inquiry, which concluded that Japan was the aggressor and demanded that it withdraws. Instead of withdrawing, Japan departed the League and continued with its occupation. Italy followed suit in 1935 as it invaded Ethiopia, which also sought military assistance from the League. In response, the League only imposed sanctions on Italy. Further to the Great Powers' continued disregard for the League's Covenant, one member after another came forward to declare that it was henceforth "the sole judge of its own actions" (Walters, 1952:778).

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<sup>3</sup> During 1919, Great Powers at the time were the US, UK, France, Italy and Japan.

Last, the organisation failed to secure or retain the membership of certain major powers whose cooperation and participation was essential in making the League effective in preserving peace. Although the US' President, Woodrow Wilson, was an enthusiastic proponent of the League, the US never officially joined the League due to opposition isolationist in Congress (Walters, 1952: 778). Furthermore, following the League's condemnation of Japan's invasion of Manchuria and Italy's invasion of Abyssinia, the two countries withdrew their membership from the organisation. Moreover, in 1933, Germany's Chancellor, Adolf Hitler, renounced Germany's membership, which resulted in the League being powerless to prevent Germany's aggression in Austria and Czechoslovakia (Northedge, 1986: 256; Walter, 1952: 711).

These developments were an indication that member states were not willing to subordinate their national interests to their obligations to the League, further eroding the League's legitimacy (Schlesinger, 2003: 26). These aggressive acts led to WWII and inevitably led to the demise of the League in 1945, which saw the creation of a new international organisation, the UN. The League thus failed due to (i) confusing procedures for resolving disputes between states, (ii) powerlessness to prevent hostilities, as well as (iii) its failure to secure or retain the membership of certain major powers such as the US.

## 2.3 ADOPTION OF CHAPTER VIII

Following the end of World War II and the dissolution of the League of Nations, there was a need for a collective security organisation. However, there were two opposing positions between the UK and the US. On one side, the US President, Franklin Roosevelt, envisaged a centralised system that would see the US, UK, Soviet Union, and China having a dominant role. While in contrast, the UK Prime Minister, Winston Churchill, favoured a system based on separate regional bodies (Claude, 1964: 7).

However, the new organisation would need to look like it was important for it to learn from the mistakes of the League. According to Hilderbrand (1990: 2), four factors needed to be met for the organisation to be successful and this was a common position amongst

the Great Powers<sup>4</sup>. First, the Soviet Union and the US needed to be involved in any such organisation for it to be successful. Second, the Great Powers needed to have paramount authority to play an active role in the maintenance of international peace and security. Third, the organisation must have a military force at its disposal to prevent or deal with any aggression in the future. Last, the new organisation should not exhaust its resources and time on issues that did not impact global peace and security (Hilderbrand, 1990: 2).

### 2.3.1 Deliberations on the formation of a new Global Peace and Security Dumbarton Oaks Conference

The above-mentioned issues which needed to be addressed in order for the success of the universal organisation, were highlighted at the Dumbarton Oaks Conference in 1944. This was a conference attended by representatives of the US, UK, Soviet Union, and later, China, to formulate a proposal eventually titled the *Proposals for the Establishment of a General International Organisation*, for the establishment of a universal organisation (Claude, 1964: 8). The discussions were held in two phases, with the first phase held between 21 August to 28 September 1944, involving representatives from UK, US, and Soviet Union. The second phase was held between 29 September and 7 October 1944, and saw representatives of China, the US, and UK deliberate on the establishment of the international organisation. The exclusion of China from the first phase of discussions was mainly because the Soviet Union refused to sit with China in a conference, hence a meeting with China had to be deferred until the US, Soviet Union, and UK had completed their discussions. Despite this, the discussion papers were exchanged amongst all four governments (Webster, 1947: 24).

One of the major achievements reached during the discussions at Dumbarton Oaks was the decision on nomenclature of the proposed new organisation. The conference easily agreed on the main organs of the organisation, which were the General Assembly, Security Council, Economic and Social Council, Secretariat, Trusteeship Council, and International Court of Justice (ICJ) (Webster, 1947: 26). However, more discussions

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<sup>4</sup> Following the WWII the US, UK, China, France and Russia were referred to as the Great Powers given their political and economic dominance of the international arena.

pertaining the name of the organisation and the constitutional instrument were needed. The Soviet Union initially suggested “The International Security Organisation” as a possible name. However, following discussions on the organs of the organisation, it later suggested “World Union” as a possible title (Russell & Muther, 1958). Although the UK was in support of the name, the US protested that it was suggestive of a supranational state or federation and proposed that it be called the United Nations, the name which was consequently adopted by the conference.

Given the failure of the League to enforce peace, the new organisation was envisaged to be one that could maintain international peace and security, and these provisions were highlighted in a single Chapter VIII of the Dumbarton Proposal. The Chapter was divided into two sections, namely, Section A, which focused on the pacific settlement of dispute, and Section B, which highlighted the enforcement procedures.

#### *2.3.1.1 Characterising the settlement of disputes*

The US introduced the notion of security enforcement, which would be the sole responsibility of the four major powers. Although the rest of the other states were in support of security enforcement as a key principle of the new organisation, they however raised concern over the fact that the Great Powers have complete dominance in international disputes (Russell & Muther, 1958: 458).

The UK expressed reservations that smaller states would not be willing to accept UNSC enforcement decisions. In its views, the UNSC should instead have a right to decide on the methods of resolving disputes and should have powers to recommend settlement procedures. Despite the US agreeing to the UK’s suggestion, they further suggested that the UNSC should act instead as a policeman in the settlement process rather than as a judge (Russell & Muther, 1958: 459). Given the compromise by the UK and US, all the other states agreed to the suggestions and the provisions of the settlement were included in Section VIII-A. Therefore, paragraph VIII-A1 states that:

The Security Council should be empowered to investigate any dispute, or any situation, which may lead to international friction or give rise to a dispute, in order to determine

whether its continuance is likely to endanger the maintenance of international peace and security (UN Dumbarton Oaks Proposal: 1944: 6).

To empower the UNSC to police any dispute, the US suggested that any state that is a member and even non-member(s) of the organisation may report any dispute to the Security Council and even the General Assembly. This paragraph was adopted, and it formed paragraph VIII-A-2 (Dumbarton Oaks Proposal, 1944: 6). The Soviet Union proposed that should the parties fail to resolve the dispute, then they were required to refer the dispute to the UNSC, hence it was the UNSC' right to decide if the continuance of the dispute would endanger peace and security. This suggestion was adopted as paragraph VIII-A-4 (UN Dumbarton Oaks Proposal, 1944: 6). According to Russell and Muther (1958: 460), the Soviet Union raised this suggestion to keep the UNSC from being over-burdened with matters, which the parties could dispose of themselves, especially matters that do not reach a point of threatening international peace. The UNSC was authorised to also recommend "procedures or methods of adjustment" which became paragraph VIII-A-5 (UN Dumbarton Oaks, 1944: 6). Given the above, paragraph VIII-A-6 prescribed that any justifiable disputes should be referred to the ICJ, a decision left solely to the discretion of the parties. It was, however, added that the UNSC had the right to also seek advice or ask legal questions from the ICJ.

Another issue of contestation in relation to the settlement of dispute was in relation to the domestic jurisdiction of dispute settlement. The issue was initially raised by the US, which required the organisation to refrain from intervening in the internal affairs of any state. The US's argument was the need for a general safeguard, especially for member states who were part of the dispute and not permitted to vote on the issue. However, the issue was dropped, following concerns on human rights and membership (Russell & Muther, 1958: 463). The UK then proposed that a paragraph on domestic jurisdiction that reads as follows should be included in Section A of Chapter VIII:

The provisions of paragraph 1 to 6 of Section A should not apply to situations or disputes arising out of matters, which by international law are solely within the domestic jurisdiction of the state concerned (Dumbarton Proposal, 1945: 6).

Initially, the Soviet Union refused for its inclusion, as it perceived the paragraph to limit the UNSC's authority in the maintenance of peace and security. However, following discussions and the US's justification of its inclusion, the Soviet Union accepted the US's suggestion and the paragraph was adopted as the last paragraph in Section VIII-A-7. According to Russell and Muther (1948: 463), the inclusion of this paragraph under Section A was not applicable to Section B, which focused on enforcement action. Therefore, should any internal matter threaten international peace and security, the Council was authorised to respond as stipulated in Section VIII-B.

### *2.3.1.2 Enforcement action*

It was agreed by the four Great Powers that for the collective system to be successful in the maintenance of international peace and security, first, all states would need to accept that a decision regarding enforcement action by the organisation was binding. Second, the Great Powers would not avail their national forces to the disposal of the organisation, provided that they maintain an authority in the employment of those forces (Russell & Muther, 1958: 229).

In the drafting of Section VIII-A, the Joint Formulation Group decided to include a paragraph which states that:

Should the Council deem that a failure to settle a dispute.... constitute a threat to the maintenance of peace and security, it should be empowered to take all measures necessary for the maintenance of peace and security in accordance with the purposes and principles of the organisation (Dumbarton Proposal, 1945: 6).

The Soviet Union proposed that the paragraph was more appropriate under Section B of Chapter VIII, which focused on the determination of threats to peace or acts of aggression and action with respect thereto. Furthermore, the Soviet Union suggested that the paragraph should rather be omitted, as it focused on one type of threat, which was the failure of the parties to reach settlement. It proposed instead that the UNSC should:

Determine the existence of any threat to peace or breach of the peace or any form of aggression and should make recommendations or decide upon measures to be taken to maintain or restore peace (Dumbarton Proposal, 1945: 6).

Both the UK and US accepted the inclusion of both proposals into paragraphs VIII-B-1 and VIII-B-2. According to both countries, the Soviet Union's proposal made the determination of a threat to international peace the first step to enforcement instead of the last step in the settlement of disputes. Given that China did not dispute the suggestion, the paragraphs were recorded with no further discussions (Russell & Muther, 1958: 462).

Despite agreement on the inclusion of the two paragraphs, the Soviet Union raised the need to define what 'acts of aggression' and 'breaches of peace' meant. The UK argued against the need for such a definition, reminding the other parties that such an attempt had failed previously and that any attempt would limit the authority of the UNSC. China supported the Soviet Union's proposal to define aggression by providing a list of actions that could be considered as such. The US indicated that the concept of aggression had been broadened in the proposals and, if there was a need to provide a definition of a concept, it would be the concept of 'threat'. Given the US's proposal, all the states agreed that it was impossible to provide a definition for both the concepts of 'aggression' and 'threat' (Russell & Muther, 1958: 465).

The Soviet Union also proposed that the UNSC should have the authority to request the member states to apply any measure, except for force, in order to maintain international peace and security. This was included in paragraph VIII-B-3, which states that,

The Security Council should be empowered to determine what diplomatic, economic or other measures not involving the use of armed force should be employed to give effect to its decision, and to call upon members of the organisation to apply such measures. Such measures may include complete or partial interruption of rail, sea, air, postal, telecommunication and the severance of diplomatic and economic relations.

Furthermore, the Soviet Union suggested that more detail should be provided on methods that can be used in preventing and suppressing aggression. However, the UK and US argued that such an exhaustive list would limit the UNSC and rather opted to have permissive terms which were included in paragraph VIII-B-4 which states that,

Should the Security Council consider such measures to be inadequate, it should be empowered to take such by air, naval or land forces as may be necessary to maintain or restore international peace and security. Such action may demonstrations, blockade and

other operations by air, sea or land forces of members of the organisation (Dumbarton Proposal, 1945: 6).

All four states at Dumbarton Oaks agreed to the notion of the member states availing their military forces to the disposal of the UNSC for the implementation of enforcement. The Soviet Union proposed that a special obligation authorising the use of their territories for the establishment of military bases for enforcement purposes should be included in order to accommodate smaller states which did not have the adequate military forces to assist the UNSC (Russell & Muther, 1958: 468). The US, supported by the UK, strongly refused this proposal, as they viewed it as a means by the Soviet Union to control the bases in the neighbouring countries.

The US, instead, introduced the idea of special agreements, which would determine the use of member state forces for the immediate use of the UNSC (Webster, 1947: 28). The US's proposal was included as the following paragraph, which became adopted as paragraph VIII-B-5.

In order that all members of the organisation should contribute to the maintenance of international peace and security, they should undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements concluded among themselves, armed forces, facilities and assistance necessary for the purpose of maintaining international peace and security. Such arrangement or agreements should govern the numbers and types of forces and the nature of the facilities and assistance to be provided. The special agreement or agreements should be negotiated as soon as possible and should in each case be subjected to approval by the Security Council and to ratification by the signatory states in accordance with their constitutional processes (Dumbarton Proposal, 1945: 6).

Furthermore, all states agreed on the need for member states to also have readily available the contingency of their national air force for emergency use by the UNSC. This was included in paragraph VIII-B-6 (Dumbarton Proposal, 1945: 7). The UK raised the need for the creation of a Military Staff Committee. There was a lengthy discussion on this issue, but an agreement was reached pertaining the establishment of a military staff that would be responsible for maintaining peace and security, promoting agreements on armaments regulation, and employing its available armed forces (Webster, 1947: 28). Despite the agreement, issues of its composition raised contestation. The Soviet Union proposed that it should include the entire UNSC membership, while the UK wanted it to

be composed of the permanent members of the UNSC. The US did not provide its position. Despite all the contestation, it was finally agreed that UK's proposal would be adopted as paragraph VIII-B-9, with the military staff composed by the chiefs of staff of the permanent members of the UNSC (Russell & Muther, 1958: 472). In addition, it was agreed that "any member of the organisation not permanently represented on the Committee should be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibility requires that such a state should participate in its work" (Dumbarton Proposal, 1945: 7).

### *2.3.1.3 The use of regional organisations*

The use of regional organisations in the maintenance of peace and security was proposed by the US and UK. However, such organisations were to act under the authority of the universal organisation (Webser, 1947: 28). The UK thus proposed that all issues pertaining regional organisations should be secondary to the general character of the international organisation (Russell & Muther, 1958: 473).

Following the conclusion of most of the security provisions, the Anglo-American proposal on regional organisations was considered. It should be noted that according to Russell and Muther (1958: 4730), the Soviet Union did not offer any of its own proposal on the role of regional arrangements in the maintenance of international peace. The UK, on one hand, proposed that provision for regional organisations should be included in the enforcement section of the proposals, as it would be more useful for political purposes. The US, on the other hand, suggested that regional organisations would be most effective for ensuring the peaceful settlement of disputes as well as being useful in enforcing peace (Russell & Muther, 1958: 473). Both proposals were agreed upon, including by the Soviet Union, and was captured under Section VIII-C of the Dumbarton Proposal. It was agreed that the UNSC was to encourage the settlement of local disputes through regional organisations and to use such regional organisation for enforcement action where appropriate, and no such organisation would undertake enforcement action without the authorisation of the UNSC (Dumbarton Proposal, 1945: 8). This was captured under paragraph VIII-B-1 and VIII-B-2. It was also agreed that such organisations would keep

the Council informed of all their security activities, which was captured under paragraph VIII-B-3.

Despite consensus on the inclusion of regional organisations in the maintenance of peace, there was no agreement pertaining the role of regional organisations and the enemy state<sup>5</sup>, as well as the pre-approval of all regional states by the Council to be recognised as such.

Although this conference was the first step towards the establishment of a post-WWII international organisation, the conflicting positions prohibited those represented from reaching an agreement on crucial issues pertaining the roles and responsibilities of states, as well as existing regional arrangements in the maintenance of global peace and security (Butterworth, 1976: 198). Despite the disagreement, the conference agreed to defer all outstanding issues for discussion at a full UN Conference in future.

### 2.3.2 The formation of the UN Charter at the San Francisco Conference

The aftereffects of the two world wars created a political need to safeguard the peace that had been achieved. As a result, the San Francisco Conference of 1945, formally known as the UN Conference on International Organisations, was commissioned to address the security concerns at the time and formally establish the UN Charter, which was signed on 26 June 1945. The Conference was attended by 50 nations, including the Great Powers.

Given that the League of Nations did not necessarily outlaw conflict, but rather established a set of procedures aimed at constraining states that were contemplating the use of force, it failed to provide enforcement measures which would contribute to international order, hence the two world wars were carried out. Therefore, the League did not have an impact on the nature of world politics as it did not have the means of peacefully resolving conflicts. It was these failures by the League that paradoxically augured change (Weiss *et al.*, 2014: 32).

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<sup>5</sup> Enemy states were at the time of the Drafting of the UN Charter: Belgium, Finland, Italy, Japan, Romania, Hungary and Germany.

### 2.3.2.1 *The role of regional organisations*

Although the League acknowledged the validity of regional organisations in securing and maintaining peace, it never clearly limned the relationship (Claude, 1964: 9). As a result, the issue pertaining regionalism and its merits in maintaining peace and security formed part of the negotiations during the drafting of the UN Charter in San Francisco in 1945. The inclusion of regional organisations was part of a broader agreement on the relationship between such organisations and the world organisation (Russell & Muther, 1958: 659).

According to Abass (2006: 103), the inclusion of regional organisation in the UN Charter, as an instrument for collective security, came as an afterthought, as it was not part of the original discussion at Dumbarton Oaks. Chapter VIII was included due to the insistence of the Latin American countries who feared that the UNSC would have too much power and they thus wanted their already existing organisations to be excluded from the UNSC powers (Butterworth, 1976: 198). Furthermore, Latin American states also feared that the Security Council might intervene in a situation or dispute in the West before their regional organisation had an opportunity to effectively resolve the dispute (Russell & Muther, 1958: 705). The fear emanated from the fact that the Charter gave the Security Council the right to veto any action by a regional organisation. In the views of the Latin American states, a predatory state would likely attack the Americans by conspiring with one of the major powers to secure a veto against any collective regional response (Schlesinger, 2003: 175). Abass (2006: 104) describes this as a compromise between the fear of the unknown and the selfishness of some states that led to the inclusion of Chapter VIII into the UN Charter.

Chapter VIII's provisions highlight the international consensus agreed upon by states during the San Francisco Conference. Although the UN was intended to be the supreme international organisation, there was a need for it to accommodate some of the important compromises raised by several states at the Conference (Russell, 1958: 32). One of the main concerns pertained to the relationship of regional organisations, especially the existing security arrangements with the UN and the authority given to the UNSC under

Article 24 of the UN Charter (Russell, 1958: 32). The provisions of Article 24 of the UN Charter states that:

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

To accommodate these concerns, paragraph VIII-C-1 of the Dumbarton Oaks' proposal was incorporated in the Charter as Article 52 in order to allow regional organisations to have a more active role in the pacific settlement of disputes that threaten international peace and security. This issue of the role of regional organisations was an amalgamation of amendments provided by Australia, Czechoslovakia, France, Turkey, and the Latin American states during discussions at San Francisco. According to these states, regional organisations were an official resource of states in pursuing peaceful settlement and clarified the right and duty of the states to use these regional organisations for the settlement of local disputes (Russell & Muther, 1958: 703). Given the above, it was thus crucial for the sponsors of these arguments to strengthen the role of regional organisations for the maintenance of peace, while in the same breath, allowing member states the right to bring any dispute to the attention of the UNSC if they desired.

During the San Francisco debates, the question of defining regional organisations was raised with different states providing their own interpretation of what entails a regional organisation. The Egyptians first proposed defining regional arrangements specifically that a distinction should be made between permanent regional arrangements and transitory military arrangement. The Egyptians viewed the latter being seen to prevent the renewal of aggression by the enemy state and was thus covered under the transitional provisions of the charter (Russell & Muther, 1958: 705). Therefore, Egypt proposed that permanent regional organisations should be defined by their:

Geographical area, by reasons of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities, make themselves jointly responsible for the peaceful settlement of any dispute which may arise...as well as for the safeguarding of their interest and development of their economic and cultural relations (UNCIO XII, 857)

However, the US, on one hand, disapproved the inclusion of a precise definition of regional organisations, as it stated that it was impossible to cover all situations but proposed that reliance should rather be placed on regional organisations being consistent with the principles of the Charter. New Zealand, on the other hand, proposed that such organisations should not only be consistent with the purposes of the world organisation but should also be approved by it. This was rejected because such approval would delay the functioning of the regional organisations (Russell & Muther, 1958: 703). The US's proposal was supported by the French, Czech, Soviet Union, Australia, and China, who all wanted to exclude mutual assistance treaties (Russell & Muther, 1958: 706). Egypt's proposal was thus rejected, and no agreement was reached, as several states felt that by providing a definition for regional organisations, all efforts reached would be compromised and impede the future of regional organisations within the global collective security (Russell & Muther, 1958: 706).

As a result, the UN Charter, unlike its predecessor, the League of Nations, did not list any of the pre-existing organisations by name, despite their recognition. It was thus unanimously concluded by all the states participating at the San Francisco Conference that all proposed definitions for regional organisations would not be adopted (Abass, 2004: 5). It is against this background that the UN Charter interchangeably, in different chapters, refers to 'regional organisations', 'agencies' or 'arrangements'. For the purpose of this study, the researcher referred to regional organisations.

### **2.3.2.2**      *The pacific settlement of disputes*

The discussions at Dumbarton Oaks on the pacific settlement of disputes were very limited and as a result the section that addressed this issue in the Dumbarton Oaks Proposal was poorly drafted. Given the above, the participants at San Francisco proposed several amendments and additions. The consequence of including the peaceful settlement of disputes was the obligation of members to settle their disputes to not endanger peace and security (Russell & Muther, 1958: 658)

First, the Proposal had noted that parties to disputes “likely to endanger” peace and security were obligated to solve them first through peaceful means of their own choosing (UNCIO XII, 680). The Committee responsible for this section added “resort to regional agencies or arrangements” to the list of possible peaceful methods in the Pacific Settlement of Disputes. Second, the Dumbarton Oaks proposal stated that the UNSC “should call upon the parties to settle their disputes by such means” and if the parties fail to resolve the dispute, then the UNSC could investigate and respond accordingly (Russell & Muther, 1958: 661). This raised concern amongst the participants regarding the possibility of the parties not peacefully resolving their dispute, which may threaten international peace and security. This concern was resolved by (i) the Council, which could intervene at any point if the dispute seemed to reach threatening proportions, and (ii) any party, which could request the intervention of the Council only “when it deems necessary.” This was considered the most important text on the Pacific Settlement of Disputes and was put as an opening line of the chapter, which became Article 33 of the Charter (Russell & Muther, 1958: 659).

Given the above, member states were obligated to refer the disputes to the Council if they failed to settle disputes that threatened international peace and security. During the discussions, concerns were raised pertaining the provision that parties to the dispute had to agree to submit the dispute to the Council (Russell & Muther, 1958: 659). The text was thus revised to indicate that if one party violated its obligation, “such failure would, in no case, affect the right of the other party so to refer it [the dispute], and the Security Council would then be wholly seized” of it (UNCIO XII, 47). This, therefore, essentially placed the responsibility on the parties to settle disputes peacefully and for the Council to act if the states failed to do so. This text was adopted and became Article 37(1) of the UN Charter.

The Dumbarton Oaks Proposal suggesting that the UNSC had the right to investigate any dispute and to determine if the continuance of such disputes may threaten international peace and security, was easily accepted by the Conference as the basis of the Pacific Settlement of Disputes. This part of the text was adopted as Article 34 without any amendments.

In relation to jurisdiction to the pacific settlement of disputes, the Dumbarton Oaks Proposal stated that any member state, whether a UNSC member or not, had the right to bring a dispute to the UNSC or general assembly. This proposal was readily adopted without any amendments. However, a clause was added, which required the Assembly to act in accordance with the provisions of the Charter. Furthermore, the rights of non-member states of the organisation to bring disputes to either the UNSC or the Assembly were restricted. Such states were only permitted to bring disputes to the attention of either organ if they were parties to the dispute and if they accepted the pacific settlement of the dispute as prescribed by the Charter. These provisions became Article 35 of the Charter (Russell & Muther, 1958: 659).

Pertaining the UNSC 'normally' referring justiciable disputes to the ICJ, as stipulated in the Dumbarton Oaks Proposal, many states were against such a proposal, as they wanted to make it compulsory for the UNSC to refer to the Court. Following numerous debates and amendments, the Conference agreed that the UNSC could not itself refer disputes to the ICJ but could only recommend to the parties to resort to it, if they had accepted the courts' compulsory jurisdiction. This was accepted as Article 36.

### **2.3.2.3      *Enforcement action***

The proposal by the Dumbarton Oaks conference on the concept of enforcement of security was generally accepted, with minimal amendments. The first amendment that was adopted was China's proposal to add a paragraph where the application of provisional measure by the UNSC may be taken, especially in circumstances where such may pause the aggravation of a situation, pending further decision on the implementation of sanctions. This was adopted as Article 40 of the Charter (Russel & Muther, 1958: 676).

Despite the decision to add this paragraph, provisions pertaining to (i) the authorisation of the Council to determine the type of sanctions implemented, (ii) the obligation of member states to carry out enforcement measures in accordance with the UNSC decision, and (iii) member states to provide the necessary assistance in sharing the burdens of enforcement, were adopted as Articles 41, 42, 46, 48, 49, and 50 respectively. In addition, the obligation on member states to assist the UNSC in any action which may

be taken under the Charter and to refrain from providing assistance to any state that is facing enforcement action, was adopted as Article 2(5) of the Charter without any changes (Russel & Muther, 1958: 676).

Although there was a consensus on the provision pertaining the Military Staff Committee, there were several submissions for consideration. The Philippines suggested that the Chiefs of Staff comprising the committee should include all UNSC member states. This was, however, opposed by the major powers, who explained that the Committee should be small, given the complexity of its duties. Given the explanation by the major powers, the Philippines' explanation was rejected. Several other proposals were brought forward by Uruguay and Peru. Uruguay proposed that there must be a division of military regions, each with a military staff, which would represent the region at the central Military Staff Committee. Peru then opposed that the general authority of the Military Staff Committee to establish regional sub-committees be qualified by a text that states that "in agreement with regional organisations." The Soviet Union opposed both proposals, but the Conference adopted the Peru proposal as a compromise, which became Article 47 of the Charter (Russel & Muther, 1958: 677).

Another issue of contestation at the San Francisco Conference concerned the autonomy of regional enforcement action. On one hand, there was concern that extensive regional autonomy would destabilise the universal system of the UN (UNCIO XII, 779), while on the other end, and as noted above, there was concern that the Permanent Five (P5) members of the UNSC might Veto regional enforcement actions (UNCIO XII, 1945: 668). Paragraph VIII-C-2 of the Dumbarton Oaks proposal stated that:

The Security Council should, where appropriate utilize such arrangements or agencies for enforcement action under its authority, but no enforcement action should be taken under regional arrangements or by regional agencies without the authorisation of the Security Council (UNCIO XII, 1945: 668)

According to Russell and Muther (1958: 690), Turkey, Belgium, and Czechoslovakia believed that, as a general rule, authorisation for regional organisations should be provided in advance in order for them to act in emergency situations, where the suspension of any coercive action before UNSC intervention may result in permanent

delays. On the other hand, France proposed “in the case of the application of measures of an urgent nature provided for in treaties of assistance concluded between members of the organisation and of which the Security Council has been advised” (Russell & Muther, 1958: 690). Butterworth (1978: 199) noted that the discussions at the Conference were driven by security concerns that emanated due to problems concerning relations with enemy states, fears by small power states over great power domination, as well as the Great Powers’ fears of other stronger states having influence in their own regions. The French government proposed the inclusion of the clause on the enemy state and that any special treaties directed against such states would not be inconsistent with the organisation (Butterworth, 1978: 199).

Following long negotiations and despite several suggested solutions to address these conflicting views, the issue was ultimately resolved by introducing Article 53 of Chapter VIII, which also added the enemy clause to the original text (UNCIO XII, 1945: 864). The inclusion of the enemy state clause emanated from fear by the Soviet Union of possible renewed aggression, particularly by Germany, post-WWII. European states feared that there was not enough protection on the right of regional organisations to take enforcement action against an enemy state without prior authorisation by the UNSC (Russell & Muther, 1958: 689). Therefore, they wanted a specific exemption from the UNSC and, as a result, paragraph VIII-C-2 which stated that nothing in the Charter would preclude enforcement action without prior authorisation from the UNSC against the enemy state, was included in the UN Charter under Chapter VIII.

Egypt, however, proposed that the paragraph on enemy state should be transferred to Chapter XII, as a provisional measure for a transitional period instead of Chapter VIII on regional arrangements. Although this made more sense, the Soviet Union opposed Egypt’s suggestion, indicating that the suggestion was an entirely new amendment, which would affect the substance of the text under discussion (UNCIO XII, 1945: 705). Therefore, unlike the League of Nations, the diplomats at the Conference agreed to make the use of force illegal, except in the case of self-defence or unless authorised by the UNSC. A further analysis of the inclusion of these two concepts is reflected in Chapter Three.

## 2.4 CONCLUSION

In this chapter, the researcher examined the specific normative roles of regional organisations with respect to the UN and determined the responsibilities and circumstances in which regional organisations are expected to act, as outlined by discussions at the Dumbarton Oaks Conference and the San Francisco Conference.

According to the researcher, it is evident that the discussions at these conferences highlighted two major issues that dominated the international security situation at the time. First, there was an urgent need to have a universal security organisation that would thwart the possibility of a third world war, given the ongoing conflicts pertaining Germany and Japan at the time. Second, there was a fear amongst the small states of an international security system, which would be dominated by the major powers at the expense of their own sovereign liberties.

Therefore, the establishment of the universal organisation was a compromise of both power and influence, wherein the Dumbarton Oaks Proposal recognised the need for both the great and small states to participate in the establishment of the UN in order to have their rights and duties reflected. Furthermore, the proposals of the Dumbarton Oaks Conference, although with some amendments and additions, were essentially accepted at the San Francisco Conference with all 50 states represented having signed the Charter without reservation. From this chapter, it is evident that these conferences envisioned the use of regional organisations in the maintenance of international peace and security as one that would develop in accordance with the needs of the universal organisation and not outshine the role of the new universal organisation.

In the next chapter, the researcher analyses whether the normative role of regional organisations has been reflected in its operational mechanisms, as outlined by Chapter VIII of the UN Charter.

## **CHAPTER THREE**

### **THE OPERATIONAL FRAMEWORK OF CHAPTER VIII OF THE UN CHARTER**

#### **3.1 INTRODUCTION**

This chapter examines the operational roles of regional organisations and determines the responsibilities and circumstances in which regional organisations are expected to act, as stipulated in Chapter VIII of the UN Charter. Although the analysis of this chapter solely focuses on the provisions of Chapter VIII, there are referrals to other Chapters within the UN Charter that either support or explain the duties and roles of regional organisations as outlined in the Charter.

The UN is a collective security system that governs the cooperation of states in the maintenance of peace and security, as outlined in its Charter. Through its principles, rules, and instruments, the UN Charter outlines the organisation's collective security constitution that prohibits the threat or use of force between states, except in situations of self-defence (UN Charter, Chapter I: Article 2(4)). Furthermore, the Charter calls for a collective response when force is threatened or used against any state (UN Charter, Chapter I: Article 2(5)). As mentioned in Chapter Two, the development of regional security formed part of the formulation of the UN Charter.

The operational framework that governs the role of regional organisations within the international collective security is the UN Chapter VIII, Article 52-54. This Chapter specifically speaks to global consensus pertaining the role of regional organisations in relation to the maintenance of international peace and security. Chapter VIII further provides a framework of the UN for a decentralised enforcement system, which permits regional organisations to settle disputes amongst their member states peacefully (Abass, 2004: 27).

This chapter discusses three Articles that regulate the relationship between regional organisations and the UN. First, Article 52 pronounces on the Pacific Settlement of Disputes and should be read in conjunction with Chapter VI of the UN Charter<sup>6</sup>. Second, Article 53 addresses the use of enforcement action, which should be read in conjunction with Chapter VII<sup>7</sup> of the UN Charter. Third, Article 54 refers to the obligations on reporting channels between regional organisations and the UN.

Chapter VIII envisioned the role of regional organisations, post-Cold War, as that of complementarity to the UN. As such, Chapter VIII outlines the roles and activities to which regional organisations are expected to adhere. Furthermore, the Chapter encourages regional organisations to support the UNSC, which is instrumental in maintaining global peace and security. This was demonstrated by the involvement of the Economic Community of West Africa (ECOWAS) in Liberia in 1990, after which the UN acknowledged the role of regional organisations like ECOWAS in collective security as providing “great service if their activities are undertaken in a manner consistent with the Purposes and Principles of the Charter, and if their relationship with the United Nations, and particularly with the Security Council, is governed by Chapter VIII” (A/47/277–S/24111).

Given the positive role that regional organisations can play in the maintenance of peace and security, the implementation of regional collective security poses a serious consequence for Chapter VIII in particular, and for the unanimity of the UN collective security in general (Abass, 2004: xx). The emergence and sharp increase in the number of regional organisations involved in collective security post-Cold War has meant an increase in the number of potential violators of Chapter VIII. This is specifically because there has been a transformation of previous defensive alliances into collective security organisations. Furthermore, the provisions of these regional organisations’ treaties may challenge or contradict the principles of the UN Charter (Abass, 2004: xx). This will further be explored in Chapter Three, which analyses the AU’s collective security framework to

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<sup>6</sup> Chapter VI: Pacific Settlement of Disputes (Articles 33-38).

<sup>7</sup> Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Articles 39-51).

determine any convergence or divergence with the UN's Chapter VIII. Although Chapter VIII is short, given that it comprises only three articles, its application has a huge impact on the relationship between the UN and regional organisations, and both their application of collective security measures in the maintenance of international peace and security.

### 3.2 THE UNITED NATIONS SECURITY COUNCIL

Before providing an analysis of Chapter VIII of the UN Charter, it is imperative that the study provides a brief outline of the UNSC, its structure, and functions in order to provide a better understanding of its role in the implementation of collective security as outlined by Chapter VIII of the UN Charter.

The establishment of the UN through the adoption of its Charter in 1945 saw the formation of the six "principal organs", namely, the General Assembly, Security Council, Secretariat, ICJ, Trusteeship Council, and the Economic and Social Council (UN Charter, 1945). Although all these organs play a fundamental role in the UN's purpose and principles, this study focuses only on the UNSC, given its mandated role in having the primary responsibility to maintain international peace as stipulated in Article 24, and also because of the legally binding nature of the decisions undertaken by the UNSC (UN Charter, 1945).

The UNSC is a 15-member Council, which is composed of permanent and non-permanent members, who each have one representative. It should be noted that although initially the UNSC was composed of only 11 members, this was increased to 15 in 1963 to accommodate the growing membership and to establish geographical representation (Rsakhow, 2022: 432). The permanent members (P5) are the US, UK, Russia, China, and France. The remaining 10 non-permanent members are elected by the General Assembly for a two-year period and may not be re-elected immediately. The Assembly is mandated to consider the members' ability to maintain international peace and security, and other purposes of the organisations, as well as to ensure equitable geographical distribution per Article 23(1) (UN Charter, 1964).

**Table 3.1: UNSC current non-permanent members and end of year term**

<b>Non-Permanent Member</b>	<b>End of Year Term</b>
Algeria	2025
Ecuador	2024
Guyana	2025
Japan	2024
Malta	2024
Mozambique	2024
Republic of Korea	2025
Sierra Leone	2025
Slovenia	2025
Switzerland	2024

Source: UNSC, 2024

According to Article 27, each member of the UNSC has one vote. However, the P5 members vote wield a veto power which can be applied to all matters that are not procedural. Furthermore, the “decisions of the UNSC on all other matters shall be made by an affirmative vote on nine members, including the concurring vote of the permanent members” (UN Charter, 1945). However, this is not inclusive of the decisions under Chapter VI and Article 52(3), which both speak to the Pacific Settlement of Disputes, as Article 27(3) calls on a party to a dispute to abstain in the voting process.

One of the major criticism of the UNSC, especially in decisions of collective security, has been the use of the veto power by P5 members, which enables any of the P5 to block a resolution that is not merely procedural in nature (Wouters & Ruys, 2005: 3). This is because the veto power has given rise to the struggle between the principle of sovereign equality of states and power. That is, the P5 uses the veto in order to push their own national and foreign policy interests at the expense of international peace and security. The use of the veto by the P5 results in the Councils paralysis which has been intensified by worsening geopolitical rivalry between western democracies and authoritarian China and Russia (Patrick, 2023: 2). According to Oxfam Report (2024: 19), in the last decade (2014-2024), the UNSC has cast around 30 vetoes on resolutions related to protracted

crises. Majority of these vetoes being used by Russia (14), China (10 which were in collaboration with Russia) and the United States (6). France and the UK have not used the veto power since 1989. Most of these resolutions were on protracted crisis related to Syria, Ukraine and Palestine.

The use of the veto does not only undermining the Council's ability to maintain international peace and security but also affects its work in ways that transcend its actual use during voting. According to Wouters & Ruys (2005: 9), another problem at the UNSC is the use of the "hidden veto". This entails the threat by a permanent members to use its veto against a draft resolution or statement should it be put for a vote, therefore resulting in the said document not being formally tabled (Nahory, 2004). The hidden veto is used mainly in closed-door informal consultations instead of official meetings. Given that these hidden vetoes takes place within a private setting, Nahory (2004) notes that by giving such hidden veto warnings, the P5 can convince other Council members to shift their position while persuading the international public of their good intentions on a particular issue.

Another critique of the UNSC is the power of the informal practice of penholdership, which allows one or more members of the UNSC to lead activities on an issue or crisis on the agenda of the Council (Loiselle, 2020: 139). Penholdership gives UNSC members the benefit of leading, negotiating and shaping Council action on its agenda. Although any member of the Council can become a penholder, the P3's (France, UK and US) permanent status on the Council, has seen their prolonged status as penholders on UNSC agenda items and also their takeover of new files when the two-year term of the E10 ends (Gregory, 2023).

In the last decade, the P3 have held the pen on two-thirds of protracted crisis therefore giving them power on the drafting, managing and tabling of resolutions, and/or preventing related discussions (Oxfam Report, 2024: 18). Pertaining to the African crises that are on the UNSC agenda, the P3 are penholders to 11 out of the 13 cases that deal with Africa. This therefore allows the P3 to effectively maintain their neocolonial influence on the continent (Adebajo, 2023: 41). For example, in 2023, the Malian government objected to

France's penholdership, arguing that France is responsible for acts of aggression, violation of Malian airspace, subversion and destabilization (Oxfam, 2024: 19).

According to Loïselle (2020), while the procedure of the penholder concentrates decision making power in the hands of the P3 and limiting the opportunity for all members to participate in the decision making of the Council, the penholdership also provides a platform to strengthen elected members influence in ways that promote the respect for international rule of law. In the last decade, the Council adopted a position of co-penholdership whereby some of the E10 members share files with the P3. In 2023, seven of the ten elected members served as co-penholders, allowing for inclusivity, burden-sharing and drawing on each other's comparative advantage (Gregory, 2023).

Although there has been a number of proposals to reform the UNSC in order to allow for the increase of the number of permanent member states and to address the issue of the veto power, nothing concrete has been achieved in implementing some of these reforms (Simma *et al.*, 2012: 14). It is against this background that the call for reforms to the UNSC remains crucial to this day to not only allow adequate regional representation, but to ensure the voices of those who are affected by such decisions, especially Africa, to play an active role in the maintenance of international peace and security.

Despite these UNSC structural reform challenges, several successful reforms on its informal working methods have been achieved to allow the Council to be more inclusive and transparent. This has been illustrated by the collaboration between the P5 and E10 in hosting meetings and drafting resolutions, broadening the range of thematic issues which the Council addresses, encouraging elected members from the same region to caucus and push issues of regional interest and priorities and last the expansion of the Council's interaction with regional and sub-regional organisations such as the AU-UN Consultative meeting or Annual Conferences (Patrick, 2023: 7)

### 3.3 REGIONAL ORGANISATIONS AND CHAPTER VIII OF THE UN CHARTER

Considering the changing nature of post-Cold War conflicts, regional organisations find themselves becoming more involved in intra-state conflict resolution. This is because the burden on the UN to provide preventative diplomacy and in peacemaking efforts, has increased yet the resources are limited. In addition, given the nature of these conflicts, which often involve non-state actors, there has been a need to seek regional organisations assistance as part of burden-sharing with the UN (Tardy, 2014: 95).

Furthermore, this has also been influenced by the preference of having regional solutions to some of the problems that are faced by a specific region. A case in point has been Africa, which sought to change its OAU to that of the AU<sup>8</sup> in order to provide African solutions to African problems and as reason for having predominance on issues affecting the continent (Security Council Report, 2024: 4). Although all these circumstances have influenced the proliferation of regional organisations, the resolve to regional collective action has often been due to political considerations of a particular situation and the geo-strategic interests at play within the international arena (Williams & Boutellis, 2014: 265).

In his 1992 Agenda for Peace presentation, the then Secretary-General of the UN, Boutros-Boutros Ghali, recommended a greater role for regional organisations in maintaining peace and security, given the burdened role of the UN, and in particular the UNSC, post the Cold War. Boutros-Ghali (1992) stated the following:

In this new era of opportunity, regional arrangements or agencies can render great service if their activities are undertaken in a manner consistent with the purposes and principles of the Charter, and if their relationship with the United Nations, and particularly the Security Council, is governed by Chapter VIII.... Under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security, but regional action as a matter of decentralization, delegation and cooperation with the United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs. ... And should the Security Council choose specifically to authorize a regional arrangement or organization to take the lead in addressing a crisis within its region, it could serve to lend the weight of the United Nations to the validity of the regional effort." (A/47/277-S/24111, paras 63-65).

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<sup>8</sup> A detailed analysis of the transition from OAU to AU is provided in Chapter Four.

Over the years, the two opposing ideologies of regionalism and universalism have been less prominent, as the status of the international arena has integrated both into a cooperative framework, which is evidenced by the UN Charter. Furthermore, the inclusion of Chapter VIII has developed into a global-regional security partnership (A/47/277-S/24111), which has resulted in the positive development of interaction and cooperation between regional organisations and the UN.

Given the rise of inter-state conflicts in the 1990s and the security void left by the UN's detachment from the continent, the OAU, its Regional Economic Communities (REC), and at times, the states, had to militarily intervene in some situations without the UNSC's authorisation. This was evidenced in the case of Lesotho, Liberia, Côte d'Ivoire, Sierra Leone, and Guinea (Sousa, 2017: 527). This resulted in the UN losing its legitimacy over regional organisations responsibility. In an effort to address the UNSC's primacy, as well as the new security actors in the form of regional organisations, the UN established inter-organisational meetings and policy reports in order to outline the roles of each organisation in the maintenance of peace and security (Sousa, 2017: 527).

However, despite its efforts, the initiatives were terminated mainly because there was consensus that the UNSC should maintain its primacy on the right to authorise military interventions and rather find mechanisms that would enable the UNSC to work better. In addition, the process of UNSC reform, through the establishment of the "Open-ended Working Group" which was essential to any international security reform, ended in 2005, although without any reforms adopted (ICISS, 2001).

In advancing the role of regional organisations, the UN in its "Agenda for Peace", identified the use of regional organisations in preventative diplomacy, peacekeeping, peacemaking, and post-conflict peace building (Agenda for Peace, 1992). Without undermining the UNSC primacy, the Agenda for Peace noted that in support of the UNSC, "regional action as a matter of decentralisation, delegation, and cooperation with the UN, could contribute to a deeper sense of participation, consensus, and democratisation in international affairs". In addition, the UN further indicated the possibility for cooperation between the UN and regional organisations in the field of diplomatic support, operational support, co-

deployment, and joint operations to maintain international peace and security (Agenda for Peace, 1992).

The relationship between the UNSC and regional organisations has received renewed significance with the current UN Secretary General's view that regional organisations that have great partnerships with the UN are essential for managing the increasing transnational security threats to international peace and security (Agenda for Peace, 2023: 12). In ensuring the effectiveness of these regional organisations, Guterres has called on regional organisations that are facing the danger of being inactive to repair their regional security frameworks, to establish them if they do not exist, and to enhance them if they can be further developed (New Agenda for Peace, 2023: 18).

### 3.3.1 Defining Regional Organisations under Chapter VIII

The UN Charter, apart from recognising the existence of and encouraging the establishment of regional organisations, does not define the latter, and there is no consensus thereon in the doctrine (Zwanenburg, 2011: 92). The lack of a definition for 'regional organisations' thus makes it difficult to determine which organisation falls under the label of regional organisation. Furthermore, this has, since the establishment of the UN, provided difficulty for relevant sectors such as scholars, legal experts, as well as international relations practitioners, to provide a clear definition of what regional organisations are, as per Chapter VIII.

Despite this omission by the Chapter VIII, several scholars have attempted to provide a definition, with some suggesting a wide or open definition, while others providing a narrow or strict view of the concept. According to Akehurst (1967: 177), the term 'agency' refers to organisations with a developed institutional structure, while the term 'arrangements' refers to organisations that lack institutions and, as a result, are less formal than agencies. This is likely to have an impact on the mandates that such organisations can or cannot carry out (Haacke & William, 2009:1). Walter (2012: 1459), on the other hand, defines 'regional arrangement' or 'agencies' as "organisations or groups which are considered politically, economically, culturally, or socially interdependent, including formal organisations of neighbouring states.

Most regional organisations that deal with peace and security are often of a regional nature, given that their members are often states that are inter-dependent. Some of these organisations include the AU, EU, and the Organisation of American States (OAS). Such regional organisations are acknowledged and supported by the UN Charter (Security Council Report, 2024: 8). There are, however, other regional organisations that deal with the implementation of peace and security that are not necessarily of a regional nature (Security Council Report, 2024: 8). The North Atlantic Treaty Organisation (NATO) is a great example of such an organisation, given that the composition of its members are not necessarily neighbouring states. Moreover, NATO's involvement in the implementation of collective security is not necessarily limited to a specific geographical location, and this is evidenced by its involvement in conflicts in Bosnia, Afghanistan, and Libya (Security Council Report, 2024: 8). Furthermore, although NATO does not consider itself as a regional organisation as outlined by Chapter VIII, its actions have often been implemented pursuant to Chapter VIII, following UNSC Resolutions. An example of this is Resolution 1973 on the Libyan Crisis in 2011, which authorised regional arrangement to use force in Libya, to which NATO used to attack Libya.

The above example verifies the argument posed by Kelsen (1964: 319), that under Chapter III of the UN Charter, "it is not required that the parties to the regional agreement be geographically neighbours. It is essential only that the actions of the organisation established by the regional arrangement be restricted to a certain area and be determined in the agreement." Therefore, in addition to the geographical area, other criteria relating to social cohesiveness, such as common culture, language, race, and historical ties should be considered when defining regional organisations. This is supported by Wouters (1969: 466), who defined a regional organisation "as a permanent, both inner- and outer-directed multifunctional association, located in a particular geographical area, serving a number of states, which are mutually interdependent and share certain interests, needs, characteristics, and loyalties."

Boutros-Ghali's Agenda for Peace highlighted the value of not having a strict definition for regional organisations because the Charter deliberately provides no precise definition

of regional arrangements and agencies (Agenda for Peace, 1992). This allows for flexibility for undertakings by a group of states to deal with a matter appropriate for regional action, which also could contribute to the maintenance of international peace and security (Agenda for Peace, 1992). Such association or entities could include treaty-based organisations, whether created before or after the founding of the UN, for example the NATO, regional organisations for mutual security defence for general regional development such as the Organisation for Security and Cooperation in Europe, or for cooperation on a particular economic topic or foundations and groups created to deal with specific political, economic, or social issues of current concern such as ECOWAS (De Volder, 2010: 17).

White (2007: 24) emphasises two decisive features of a regional organisation. First, the organisation must not be universal, and it must be a state organisation. However, Bjorn (2001) argues that it could be objected that actors other than states evidently have important roles to play in regional institutions. This is supported by Walter (2012: 1459), who indicates that “regional organisations do not necessarily have to consist of sovereign states since even federal units of a federation or other international organisations may become members if a ‘regional organisation’ or ‘regional arrangement. However, Russett and O’Neal (2001) highlight that although regional organisations may include state or non-state actors, the state today remains the gatekeeper of most regional institutions and its activity is powerful.

Based on the characterisation of regional organisations by different scholars, it is evident the term ‘regional arrangements’ or ‘agencies’ is flexible in that it can be broadly interpreted by the UN, given the recognition and acceptance of different types of organisations to act in the implementation of collective security. What has been described as a criterion for these regional organisations under Chapter VIII is that they should be responsible for peace and security at a regional level in accordance with the objectives and tenets of the UN Charter (De Volder, 2010: 16). Nonetheless, such a definition remains insufficient, as it does not provide clarity on which organisations are referred to under Chapter VIII.

Despite the lack of a definition, the distinction between regional arrangements and agencies is insignificant, as they are both used interchangeably in the Charter, given that they are bound by the same compulsions in Chapter VIII. For the purpose of this research, they shall be referred to as 'regional organisations'.

### 3.3.2 Pacific Settlement of Disputes

As stated previously, the UN Charter, through Chapter VIII, envisioned a cooperation between regional organisations and the UN that would ensure a collective response to any threat to international peace and security. As such, Article 52(1) recognises that states have the liberty to form regional arrangements, which are compatible to the UN's purposes and principles. Article 52(1) provides that,

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

As a result, Article 52(1) suggests that regional organisations are at the grassroots level or first contact to address and solve any matter which hinders the maintenance of international peace and security. Therefore, regional organisations operating under Chapter VIII should be viewed as forums of first instance in the UN's framework for collective security because they are initially intended to resolve any disputes locally and peacefully. It should be noted that nowhere in the UN Charter is the concept of 'local dispute' defined. Furthermore, Article 52(1) stipulates that the matters should be 'appropriate for regional action', without providing a definition of what this entails.

Article 52 does not describe the type of peaceful resolutions that can and should be employed by regional organisations in carrying out their responsibility to engage in the peaceful resolution of disputes. Article 33(2) in Chapter V, although not a Chapter under analysis for this study but nevertheless relevant here, states that parties to any dispute endangering international peace and security "shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice" (UN

Charter, 1945: Chapter V). Therefore, any of these shall be implemented singularly or collectively without any order of preference.

In addition, Article 52(2) may be used to explain what 'appropriate action' entails. Article 52(2) states that,

The members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

The inclusion of Article 52(2) provision limits regional organisations to local disputes and, as such, the characterisation of the dispute serves the same purpose as the characterisation of 'appropriate regional action' as stipulated in Article 52(1) (Walter, 2012: 1469). In addition, this obligation is only applicable to states that are involved in the dispute and not necessarily all members within the regional organisations (Walter, 2021: 1468). However, the Security Council Report (2024: 9) differs with Walters's notion, as it views Article 52 as broad and inclusive of all member states, in that if it was intended to be exclusive, then a narrower and descriptive term would have been used. Therefore, instead of using local disputes, they would have used terms such as 'intra-' or 'inter-state' disputes.

Limiting the interpretation of local disputes would, in essence, limit the effectiveness of regional organisations in successfully resolving disputes. In addition, given the nature of disputes in the current geo-strategic landscape, where conflicts are of an intra-state nature and, at times, involve non-state actors, efforts to peacefully resolve the disputes using regional arrangements would also likely be ineffective (Security Council Report, 2024: 9). In practice though, regional organisations' member states support the view that Article 52 is applicable to all members and not necessarily just those involved in a dispute. For example, the AU uses instruments within its APSA<sup>9</sup> mechanism such as the Panel of the Wise or the AU Peace and Security Council (AUPSC), to mediate conflicts on the continent, on its behalf (APSA, 2002).

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<sup>9</sup> See Chapter 5 for a more detailed analysis of APSA.

The referral to 'local disputes' in Article 52(2) should be understood as referring to disputes that arise amongst member states in that particular regional organisation (Security Council Report, 2024: 10). Other scholars such as Sievers and Daws (2014: 627) argue that this provision limits regional organisations to only resolve disputes within their region. However, the text does not, in any way, limit regional organisations from pursuing the peaceful settlement of non-localised disputes. This has been reflected by the European Union (EU) engaging in mediation efforts on disputes within the African continent, for example, in the Central African Republic, through UNSC authorisation (Security Council Report, 2024: 10).

In the researcher's analysis, local disputes thus refer to situations where political and security instability may threaten peace and security not only within the country, but also at the regional level. Chapter VIII also grants regional organisations the power to resolve local disputes through local means and practices, and thus excluding states or regional organisations outside of the region from the process (Hummer & Schweitzer, 2002: 692). However, this exclusion is with the exception of the UNSC, which will be explained later in the chapter. De Volder (2010: 18) argues that the term 'local disputes' does exclude third party influence but supports the necessity of some degree of territorial proximity of state, although not in the sense of a compulsory connection between all states in the region" (De Volder, 2010: 18).

Several scholars (De Volder, 2010; Burchill, 2010) argue that there are several reasons why Article 52(2) gives regional organisations the power to settle local disputes. First, given the ever-increasing disputes within the international arena, the UN has its capacity overstretched to consider practically and financially every issue that arises. Second, most disputes are better dealt with at a local level because it is more likely that the regional organisation may have a better understanding and familiarity of the circumstances and is often better placed to local norms and customs, which are to be considered in order to resolve the issues. Third, local disputes do not always necessitate external enforcement action as peaceful measures, such as mediation and negotiation, which often provide lasting solutions that all parties would have agreed on (De Volder, 2010; Burchill, 2005).

A case in point is the recent two-year (2020-2022) conflict in Ethiopia, where the AU requested the UNSC to allow it to exhaust a political solution pertaining the conflict between the Ethiopian government and the Tigray People's Liberation Front.

De Volder's arguments are also supported by Weiss et al. (2014: 39), who stipulates that regional organisations are often an appropriate focus for action because instability often poses a greater threat to them and, as a result, any inaction from them may result in a spill-over in other states, bringing instability to the whole region. They further argue that "subsidiarity" allows regional organisations that are closest to the dispute to act before involving the UNSC. According to Jachtenfuchs & Krisch (2016: 1), subsidiarity refers to the localisation of decision making, which allows for the centralisation of powers for a particular good. Petzold (1993: 41) describes the principle of subsidiarity as generally to mean that "in a community of pluralism, the larger social unit should assume responsibility for functions only in so far as the smaller social unit is unable to do so". Therefore subsidiarity plays a balancing function between providing the pursuit for a common goal which may require the intervention of a supranational institution, and the exercise of local state autonomy allowing for a level of sovereignty to be maintained (Von Staden 2006; Sibanda, 2007).

Therefore, the UNSC remains an option should regional efforts to resolve the disputes not succeed (Weiss *et al.*, 2014: 39). Weis et al. (2014:41) further state that the involvement of regional organisations is less likely to be perceived as illegitimate interference by the international community, unlike the extra regional level that they would at a global level, given that the latter has more issues that are extensive, while the former has more dire consequences if issues are not prioritised.

Given all these, it is evident that the advantages mentioned by these scholars may also be faced with several challenges within the regional organisation. First, regional organisations themselves may not necessarily have the capacity and capability to resolve local disputes. The AU, for example, faces challenges of financial capacity, consensus, and commitment from member states. Furthermore, regional organisations' member states may have conflicting interest in the disputes, which may have a negative impact

on or impede the mediation efforts of those involved as they may benefit from a specific outcome. Third, regional organisations may be used by stronger member states and other countries to highlight the power imbalances within the organisation. For example, given that Ethiopia hosts the AU headquarters, issues pertaining the country's security instability are hardly put on the organisation's Peace and Security Agenda. Stronger states may use these to influence, either economically or diplomatically, the weaker states to support their positions and interests.

Furthermore, Article 52(2) promotes the safeguarded role of regional organisations without compromising the UNSC to discharge its duties. Therefore, the activities of the UNSC, as prescribed by Article 34 which promotes the right of the UNSC to investigate any disputes which might lead to international friction, and Article 35, which relates to advance the rights of states, be it a member or non-member of the UN, refer to disputes to the UNSC. In addition, Article 33(2) provides for the UNSC to call upon all parties to peacefully resolve their disputes (UN Charter, 1945: Chapter V).

The inclusion of Article 52(4) then raises the question of who, between the UNSC, which entails its right to investigate, and the regional organisation's responsibility to peacefully resolve disputes, takes priority. The Charter is thus ambiguous in that it does not provide clarity on (i) whether the UNSC can investigate while the regional organisations are engaged in peaceful activities to resolve the dispute; (ii) or are states permitted to refer the matter to the UNSC while the regional organisations are engaged in activities to peacefully resolve the same dispute. In Walter's (2012: 1470) view, regional organisations, as stipulated by Article 52, take priority over the UNSC, in peacefully resolving disputes and that the inclusion of Article 34 and 35 should be applicable to instances where regional organisations are not engaged in any activities to peacefully resolve the situation.

Regardless of this, some scholars such as Akehurst (1967: 181) and Walter (2012: 1476) argue that in practice, this is not necessarily the case, given that the UNSC has, on several occasions, not utilised or ignored the ongoing efforts undertaken by regional organisations in resolving disputes. One case in particular which remains a source of

contention between the UNSC and the AUPSC is the 2011 Libya crisis. Given the deteriorating security situation in Libya and the threat of a civil war, the AU came up with a five-point plan AU resolution, which was announced on 10 March 2011, by the Heads of State and Government in attendance at the meeting of the AUPSC in Addis Ababa, Ethiopia. The resolution essentially sought to resolve and secure Libya peacefully. Its key elements were (i) the protection of civilians and the cessation of hostilities, (ii) the humanitarian assistance to affected populations who are both Libyans and foreign migrant workers, particularly those from Africa, (iii) the initiation of political dialogue between the Libyan parties in order to reach an agreement on the modalities for ending the crisis, (iv) the establishment and management of an inclusive transitional period, and (v) the adoption and implementation of political reforms necessary to meet the aspirations of the Libyan people.

Despite the AU's efforts to resolve the situation in Libya through peaceful means, the UNSC adopted Resolution 1973 on 17 March 2011, which was brought by the Arab League and sponsored by Lebanon. The resolution entailed "imposing a no-fly zone over Libya's military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in the Libyan Arab Jamahiriya" (S/RES/1973: 2). The resolution further authorised all member states to "take all necessary measures" to achieve the protection of all civilians (S/RES/1973: 2). The three non-permanent African countries (A3), namely, South Africa, Nigeria, and Gabon, at the UNSC, voted for the UNSC Resolution 1973, which authorised military intervention in Libya and encouraged the AUPSC to mediate in the conflict. However, the permanent three (P3), namely, France, the UK, and the US, withdrew the diplomatic solution once the resolution was adopted and rather pursued a NATO-led military operation (De Waal, 2012: 2). Subsequently, the UN-backed NATO intervention in Libya was involved in attacking the Libyan government forces and siding with the rebels.

The AU was unequivocal in its condemnation of the indiscriminate use of force and lethal weapons, and reaffirmed its strong commitment to respect the unity and territorial integrity of Libya and rejected any foreign military intervention in Libya. According to Moerane

(2019: 94), the A3 countries' vote was faced with a contradiction on two aspects. First, the vote isolated the AU's call for a resolution rejecting "...any foreign military intervention, whatever its form" (AUPSC, 2011: 1). Second, the call by the Arab League for a no-fly zone was supported by Chapter VIII, hence if they voted against it, then the A3 would be contradicting the African Agenda which advocates for the strengthening of the UNSC cooperation with regional organisations which it pioneered.

By adhering to Article 52, regional organisations play an important role in the UNSC framework of collective security (De Volder, 2010:23). It should be noted that although the peaceful settlement of disputes is required from regional organisations, it is not necessary that all peaceful means to settle disputes between parties, as mentioned in Article 33 (1) of the UN Charter, should be applied. What is required from regional organisation is that they should address mediate disputes between their member states and provide a peaceful settlement. Chapter V, Article 33(1), refers to 'peaceful means' as either "negotiation, judicial settlement, and other peaceful means of choice" (UN Charter, Article 33(1)). This thus makes it potentially easier for regional organisations to achieve although with no guarantees of success.

According to De Vos (2010: 24), the cooperation between regional organisations and the UN to settle disputes peacefully at the regional level should be considered as a multi-layered, comprehensive collective security system. The efforts of regional organisations in the peaceful settlement of disputes does necessarily take priority over initiatives undertaken by the UNSC. Furthermore, the application of Article 52 does not prevent the UNSC from investigating or using its powers in any way (Security Council Report, 2024: 3). Although the peaceful settlement of disputes is preferred, Article 52(4) states that the implementation of these peaceful measures will not impair the rights of other UN members to inform the UNSC or the General Assembly of any disputes that threaten international peace and security. However, the UNSC is only permitted to interfere in these disputes if the regional organisation is unable to peacefully settle the disputes. As much as the UNSC has a responsibility to allow regional organisations to take priority in settling disputes, regional organisations also have an obligation to report to the UNSC.

Although Article 52 recognises the existence and use of regional organisations in the maintenance of international peace and security, there are advantages and disadvantages to this acknowledgement. The first advantage is that regional organisations have, in circumstances where the UNSC has failed to act, been able to respond effectively to crises. In addition, in circumstances where the UNSC's involvement is not necessarily accepted by either the member states or region involved, regional organisations have been able to take the lead in maintaining peace and security (Williams & Bellamy, 2014: 275). However, there are also disadvantages to the inclusion of regional organisations in taking responsibility for the maintenance of peace and security. Regional organisations can, at times, be influenced by the lack of political will in responding to a crisis, which may see the situation worsening. Furthermore, some regional organisations may lack the legal institutional collective security frameworks, resources, and expertise to effectively respond to the implementation of peace and security. In addition, the over-reliance on regional organisations could result in UN efforts being undermined, especially where the UN is not necessarily actively involved (Security Council Report, 2024: 6).

### 3.3.3 Enforcement action

#### 3.3.3.1 *Defining Enforcement action*

Before analysing the prescripts of Article 53, it is important to first define and discuss what the term 'enforcement action' entails. It should be noted though that the UN Charter does not, as with many other terms, provide the definition of enforcement action and has, throughout its several chapters, used the term 'enforcement action' (Article 53 & 42) or measure (Article 2 & 41). However, there are several debates on what the term refers to and the types of measures involved. There have been opposing debates in both the academic and international law on the definition of enforcement action as stipulated under Article 53(1). It should be noted that the UN Charter does not provide a definition of the term.

There have also been opposing views on whether enforcement action refers to military or non-military action or both. For example, Abass (2004: 46) raises the question of whether non-military actions such as economic sanctions should be considered as enforcement

action under Chapter VIII. Other scholars contend that all actions undertaken under Chapter VIII are intended to be enforcement actions, given that regional organisations detract from the principle of the none-use of force and seek UNSC authorisation to do so (Gbaya, 2024; Villani, 2002; Akehurst, 1967; Kelsen, 1964). However, arguably, several situations within the international community pertaining the maintenance of international peace and security have 'proven' that enforcement action referred to in Article 53(1) does not pertain to non-military action.

According to the Security Council Report (2024: 11), the term 'enforcement action' does not include non-military action, as "it does not involve bringing physical forces to bear on something or someone." For example, in 2010 ECOWAS adopted non-military sanctions against Côte d'Ivoire by imposing economic sanctions against it and suspending its membership from the organisation (Press Release No. 188/2010). The UNSC became aware of ECOWAS' decision yet it did not request the regional organisation to obtain authorisation first as per the stipulation of Article 53(1). Therefore, non-military actions, such as economic sanctions, do not constitute as enforcement action, as the UNSC is the only one delegated to enforcement action. This is because in several instances, the UNSC does not enforce the issue of authorisation as stipulated under Article 53(1) for non-military action by regional organisations.

Several other scholars view economic sanctions and embargoes as enforced actions but contend that they are such that states can legally implement them without the authorisation of the UNSC (Simma *et al.*, 2012; Villani, 2002; Walter, 1997). This group argues that since states can implement economic sanctions and sever diplomatic relations, they do not infringe on any norms of international law nor do these actions violate Article 53(1).

Based on practice, it can be assessed that enforcement action, as stipulated by Article 53, does not refer to non-military action, as regional organisations have imposed such actions, especially diplomatic and economic sanctions, without UNSC's authorisation (Security Council Report, 2024: 11). For example, the AU has previously suspended Sudan, Niger, Mali, and Burkina Faso due to their activities to unconstitutionally change

governments which has led to, in some cases, conflicts in the country (AU Communiqué, 2019). Likewise, member states have generally complied with the adoption of non-military measures as punitive actions, despite the regional organisations not having authorisation from the UNSC (Walter, 2012: 1487).

It can thus be deduced that the term ‘enforcement action’, as outlined by Chapter VIII, refers to “coercive military measures” that are pursued without the consent of the state against which it is taken (Security Council Report, 2024: 11).

### 3.3.3.2 *The UNSC Role according to Chapter VIII*

Although Chapter VIII talks to regional organisations, it also imposes obligations on the UNSC. The UNSC has been granted the legal mandate to authorise regional organisations to enforce military actions on its behalf and this is encapsulated in Article 53 of the UN Charter<sup>10</sup>. Article 53(1) states that:

The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

Chapter VIII provides a distinctive responsibility for the UNSC in overseeing the role and activities of regional organisations within the maintenance of international peace and security. As noted already, the utilisation of regional organisation for enforcement is also a power granted to the UNSC. Therefore, it is important for the UNSC to exhaust the use of regional organisations to settle local disputes prior to the involvement of any global actor. Walter (2012: 1497) notes that the UNSC, under Article 53(1) clause 1, provides leadership, as it uses regional organisations to implement measures, which have been decided at the international level.

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<sup>10</sup> It should be noted that Articles 42 and 48 of the UN Charter also provides for clauses that could facilitate such measures.

Therefore, Article 53(1) clause 1 deals with the role of regional organisations implementing the decisions of the UNSC. However, it should be noted that although Article 53(1) clause 1 points out that the UNSC can utilise regional organisations, the regional organisations are, however, not forced to provide enforcement action. This is provided for by Article 43 in Chapter VII, which states that the “duty of member states to act is suspended provided that the agreement mentioned in that provision are not concluded” (UN Charter, 1945). As Walter (2012: 1984) stipulates, in order for regional organisations to be utilised by the UNSC under Article 53(1), they need to provide consent.

Furthermore, under Article 53(1) clause 2, regional organisations decide what type of measure they would implement to resolve local disputes. However, should such measures include enforcement action, then UNSC authorisation would be needed before implementation. In this regard, Article 53(1) clause 2 deals with the role of the UNSC in legalising enforcement action by regional organisations. Gbaya (2024: 27) notes that authorisation of the UNSC is only required for peace enforcement operations and not for peacekeeping missions. This is because peacekeeping entails the deployment of forces in support of the implementation of a ceasefire or peace agreement in order to prevent actual or potential conflict. Peace enforcement action thus entails the use of military assets to enforce peace against the will of the parties to a conflict (Gbaya, 2024: 17-18).

Abass (2004: 52) states that Article 53(1) was intended to subordinate regional organisations to the overall control of the UNSC by imposing the pre-requisite on them to obtain UNSC authorisation in order to implement enforcement action. This could be as a result of the fears by the superpowers during the drafting of the Charter, to limit the possibility of enforcement action being taken against them. Therefore, the inclusion of Article 53 allows the UNSC to act as an oversight body of regional organisations’ activities, especially pertaining enforcement action. This is a means to ensure that the regional organisations first adhere to the principles of the UN; second, they do not abuse the use of enforcement action; and third, that the UNSC does not lose its authority as the primary organ responsible for peace and security.

Therefore, according to Abass (2004: 52), the exclusion of Article 53(1) would have granted regional organisations too much liberty to use force, which would not necessarily be in self-defence. Volder (2010: 31) contends that the absence of Article 53(1) could see a deviation from international law, where the use of force would be “in the hands of individual states and, consequently, it would be in their judgement to impose forceful measures.” In the researcher’s view, the inclusion of Article 53 is necessary in that it prevents the increase of unilateral action by regional organisations which may also normalise violations of international law, leading to greater instability and unpredictability.

It is possible that the UNSC could refuse authorisation for enforcement action by regional organisations, especially if such actions are not in the best interest of the maintenance of international peace and security (Villani, 2002: 542). Abass (2004:54) argues that prior authorisation by the UNSC for regional organisations to implement enforcement action is unrealistic, as the main basis for empowering regional organisations is to allow them to expeditiously respond to crises, although with the UNSC control.

Other scholars such as Allain (2003) contend that although the Charter permits the use of regional organisations for enforcement action, there are several benchmarks that first need to be achieved prior to UNSC authorisation, which could see the timely authorisation or intervention by the UNSC. First, the UNSC must determine that the situation under consideration does threaten international peace and security (Allain, 2003: 244). Therefore, in instances where there is no threat against international peace and security, there is no reason for the UNSC to grant authorisation. Second, the decision of the UNSC to authorise enforcement action is constrained to a majority vote by the 15 members of the Council, as well as a no-veto vote by the permanent five members (Allain, 2003: 245). Therefore, should there be no majority vote or one of the permanent five members decide to use its veto power, then the authorisation may not be granted.

Allain’s analysis thus highlights how the use of enforcement action, be it as a response to grave circumstances or in a case of self-defence, is based on the complete control of the UNSC’s member states foreign policy positions. This thus raises the question of whether, given the interplay of foreign policy positions, interest, and political will of either

the P5 or non-permanent members of the UNSC, can regional organisations use enforcement action if the UNSC fails to act in a situation that threatens international peace and security.

### **3.3.3.3      *Utilisation of Regional Organisations***

Walter (2012: 1484) stipulates that Article 53 provides two divergent notions. First, the UNSC is to decide on the necessity for the implementation of enforcement action by regional organisations and employ the regional organisations to enforce such actions. Second, regional organisations may seek authorisation from the UNSC to employ enforcement measures if they have identified the necessity of such actions. However, Article 53(1) does not broaden the UNSC's enforcement powers, but rather references the powers already mentioned in Article 41<sup>11</sup> and 42<sup>12</sup> of the UN Charter (Villani, 2002: 536).

According to Villani (2002: 536), Article 53 does, however, widen the scope in which the UNSC can implement enforcement action, which is to enable the UNSC to utilise regional organisations. Villani (2002: 536) further states that Article 53 recognises that regional organisations may play a role in the maintenance of peace, albeit under the authority and full control of the UNSC. The inclusion of the requirements for the UNSC authorisation in Article 53 is, according to Walter (2012: 1484), a means by which the UNSC controls situations that are likely to contravene the prohibition of the use of force.

As a general rule, UN member states who make up regional organisations are not permitted to use force, given that they have conferred to the UNSC the responsibility to maintain international peace and security. According to the researcher's analysis, the

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<sup>11</sup> Article 41 mentions that the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations

<sup>12</sup> Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations

inclusion of this clause is to prohibit regional organisations from having organisations whose authority may threaten the responsibility of the UNSC as the custodian of the maintenance of international peace and security.

There has been another debate regarding the utilisation of regional organisations outside of the region or against member states. On one hand, some argue that the UNSC should be able to utilise regional organisations whose member states are bound by the Charter to execute the UNSC decision (Kelsen, 1964: 327).

According to Kelsen (1964: 327), Article 53(1) does not restrict the UNSC from utilising regional organisations for enforcement action only within that organisation or region. Walter (2012: 1498) argues that in the absence of a clear directive under Article 53(1), regional organisations must be guided by systematic considerations and the general purpose of Chapter VIII, which entails amongst others, the appropriateness for regional action (Article 52(1)). Walter (2012: 1499) further raises concern that should a regional organisation act outside of its region, there is no reason to conclude that such action is based on Chapter VIII.

Furthermore, Article 54 provides another requirement on regional organisations' behaviour in the maintenance of international peace and security. Article 54 stipulates that:

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

Although Article 54 requires regional organisations to report to the UNSC, the Article fails to provide the nature, scope, and timeframe in which such reporting should take place (Security Council Report, 2024: 3). However, Article 54 can be understood in conjunction with Article 51 in Chapter VII of the UN Charter, which calls on members who have used enforcement action in self-defence to immediately report to the UNSC. The timeline of "immediate" reporting can be applied to the requirement of reporting expected from regional organisations.

The reporting of regional organisations to the UNSC entails all information and details pertaining the time the disputes arises, any action taken on settling disputes, and the final resolving of the disputes (Hummer & Schweitzer, 2002: 894). This in the researcher's analysis, is a means by the UNSC to monitor the activities of regional organisation and to determine whether the dispute poses a threat to international peace and security, and as such, whether the UNSC should implement enforcement action. Regional organisations are prohibited from imposing enforcement action, which is a right only awarded to the UNSC. Therefore, as stated by Claude (1964: 5), the UN Charter intended for regional organisations' primary role in the settlement of local disputes, while retaining the norm that the UNSC should have the ultimate responsibility and unhindered competence to get involved in any situation, threatens global peace and security.

Therefore, it is according to the researcher's assessment that should regional organisations act outside of Chapter VIII, their actions could be described under other criteria within the UN Charter, such as self-defence (see Article 51).

#### **3.3.3.4      *Authorisation on the Use of Enforcement action***

According to Walter (2012: 1496), Article 53(1) does not provide any legal conditions for enforcement action. Therefore, regional organisations have the right to accept or deny the UNSC request for enforcement action. In addition, the UNSC actions to either use regional organisations or authorise enforcement action, should uphold the power granted to it (UNSC) by the provisions of Article 39 of the UN Charter, which talks to the UNSC making recommendations on what measure shall be taken in cases of threat to peace, breach of peace, or act of aggression.

Moreover, the interpretation of UNSC authorisation has, in several circumstances, been used by regional organisations or member states to push their own political and economic agendas. A case in point is the Libya situation. The UNSC Resolution 1973 (S/RES/1973/2011) which was passed by 10 votes, none against, and five abstains, authorised member states to "take all necessary measures to protect civilians and civilian populated areas under attack" (S/RES/1973/2011). In the UNSC, there was confusion and debate pertaining the understanding of the authorisation given to the member states

under Resolution 1973 (Maluwa, 2002: 87). Due to the AU Mission in New York being indecisive and lacking proper coordination, the African non-permanent members (A3) voted in favour of the Resolution. In response, the AU and its High-Level Ad Hoc panel on Libya rejected the Council's decision and accused the permanent members (P3) of deliberately interpreting Resolution 1973 as granting permission to allow NATO to use military action to enforce regime change in Libya (Maluwa, 2002: 93).

According to the researcher's analysis, although the UNSC was legitimate in its authorisation of any force, its mistake was in not providing limitations of what this action entailed. Furthermore, NATO's quick implementation of military force, despite the AU's position to engage on a peaceful resolution, suggest that Resolution 1973 was emptied of its normative objective, which was to protect civilians and obtain ceasefire. This position was also reiterated by the AU's commitment to Resolution 1973, as it expressed concern on the "dangerous precedence being set by the one-sided interpretation of the resolution in an attempt to provide a legal authority for military and other actions on the ground, which are clearly outside the scope of the Resolution" of the AU Assembly's decision on the peaceful resolution of the Libyan Crisis.

It should be noted that Article 53(1) does not provide a timeframe of when the UNSC should authorise enforcement action. According to Abass (2006: 93), the UNSC could provide authorisation at any time and in any form. Abass further clarifies that the UNSC's adoption of the resolution was praising the regional organisation's actions rather than condemnation, which can be perceived as retroactive authorisation. However, Walter (2012: 1501) argues that prior authorisation is what the UN Charter envisages, as this will ensure effective UNSC control over regional organisations' use of force. Akehurst (1967: 214) supports this notion, as he argues that there is a risk as regional organisations may be tempted to take enforcement action hoping that the UNSC would grant it permission after the fact. Therefore, Walter and Akehurst argue that prior authorisation by the UNSC should be the regular form of authorisation. By obtaining prior authorisation, regional organisations would be avoiding any detriment to themselves, but rather to the detriment of the state against which the decision of enforcement action is taken for (Akehurst 1967: 214).

The authorisation by the UNSC for regional organisations to use force is based on the notion that there is a threat to peace, breach of peace, or act of aggression, as stipulated in Chapter VII, Article 39. Therefore, as Walter (2012: 1500) states, authorisation under (Article 53(1)) legitimises actions by regional organisations, which would otherwise be characterised as breach of international law.

Given that the main purpose of the UN, as alluded to in its Charter, is the maintenance of international peace and security, the use of force should be limited. Similarly, in the researcher's analysis, given that Article 2(4) of the UN Charter prohibits states from using force or threaten to use force, the UNSC should also aim at restricting the authorisation of the use of force, but rather encourage regional organisations to engage in the pacific settlement of disputes as stipulated in Article 52(3).

The application of the pre-requisite for UNSC authorisation prior to enforcement action by the UNSC and regional organisations, has varied from time to time. First, there have been situations where regional organisations have taken military action without the UNSC's authorisation and there was no consent from the state concerned (De Wet, 2014: 360). Furthermore, there have been situations where a regional organisation has taken military action based on an invitation from a government which did not have effective control of its territory (De Wet, 2014: 360). For example, the AU mission in Somalia to assist the government with counter-terrorism activities.

These situations where enforcement action is pursued without UNSC authorisation can be aggravated by the provisions in the security frameworks of the respective regional organisations, which grant its member states the right to intervene in certain circumstances or because the very frameworks are silent on the adherence of Article 53. A case in point is the AU Constitutive Act which will be analysed in Chapter Five of this study.

Although the application of Article 53 has differed in several circumstances, this does not mean that there is lenience on the requirement for regional organisations to seek authorisation from the UNSC prior to taking enforcement action.

### 3.3.3.5 *Enemy State*

The concept of 'enemy state' is mentioned for the first time in Article 53(1) clause 2, which states that:

The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional agencies without the authorisation of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article

Therefore, Article 53 grants regional organisations the exception to use enforcement action against enemy states without UNSC authorisation, should the enemy state threaten international peace and security. Before providing an analysis of this clause, it is important to provide a background analysis on the concept of 'enemy state'.

The concept emanated from the war agreements between the major allied powers, namely the US, UK, and the USSR, concerning WWII and the characteristic of a post-war world order (Walter, 2012:1511). Article 53(2) defines an enemy state as "any state which, during the Second World War, has been an enemy of any signatory of the present Charter" (UN Charter, Chapter VIII: Article 53 (2)). The enemy states included Belgium, Finland, Italy, Japan, Romania, Hungary, and Germany. Following the end of WWII, peace treaties were reached with Italy, Bulgaria, Romania, Hungary, Finland, and Japan. While the state of war with Germany was ended through the signing of the Two Plus Four Treaty between the two German states – German Democratic Republic and Federal Republic of Germany, which were later unified into one state – Germany, and the US, Soviet Union, UK, and France on 12 September 1990 (Wood, 2006: 2).

Furthermore, Article 53(1) provides conditions for granting regional organisations such privileges. The Article states that,

provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

The privileges granted to regional organisations, according to Article 53(1) clause 2, were only permitted based on two conditions. First, these regional organisations needed to be either mentioned in Article 107, as contained in Chapter XVII, which talks to the measures taken by the governments as a consequence of WWII. Second, the regional organisations needed to be acting in the interest to prevent the renewal of aggressive policy under Article 53. Although Article 53(1) provides this exception to regional organisations as mentioned above, according to Ress and Brohmer (2012: 1506), the UNSC still maintains its authority, as Article 53(1) clause 2 does not transfer such authority to regional organisations. Therefore, the UNSC may, and should, examine whether the requirements of “threat to peace, breach of peace, or act of aggression” (UN Charter, Chapter VII: Article 39), prior to allowing the exception, are fulfilled.

The inclusion of Article 53(1) clause 2 is a transitional provision, as it does not provide a timeframe for when regional organisations can enjoy the privilege to act against an enemy state without the UNSC authorisation (Wood, 2006: 2). Furthermore, Article 53(1) does not provide any direction in the situation that an enemy state becomes a member of the UN. According to Schmidt (1958: 333), given that Article 107, which appears in Chapter XVII of the UN Charter, refers to Transitional Security Arrangements, it can be concluded that should a treaty by a former enemy state come into effect, then Article 107 will remove the status of an enemy state on the said country.

Despite this, it should be noted that no country currently has the status of ‘enemy state’, as all those countries have signed peace treaties and are all members of the UN, and thus enjoy the same rights and responsibilities as all UN member states. This, therefore, makes Article 53(1) obsolete and inapplicable in the current global collective security mechanism. It is in the researcher’s view that, as part of the debate around the UN reforms, this Article should be omitted, as it does not apply to the current geo-strategic dynamics of international peace and security.

### 3.3.4 Reporting to UNSC by regional organisations

Article 54 calls on regional organisations to, at all times, keep the UNSC fully informed of the activities in contemplation or being undertaken for the maintenance of international peace and security (UN Charter, 1964).

Compliance to the requirement of regional organisations reporting its activities to the UNSC, as stipulated by Article 54, have, in practice, been inconsistent (Security Council Report, 2024: 13). This is because different regional organisations have taken different approaches in reporting to the UNSC. In addition, in cases where reporting is taking place, not all activities, especially those in the planning stages, are reported to the UNSC (Walter, 2012: 1531). For example, the Southern Africa Development Community (SADC) Mission in the DRC (SAMIDRC) has, since its deployment in December 2023, not provided a formal report on its activities to the UNSC.

## 3.4 CONCLUSION

The intention of this chapter was to critically analyse and examine Chapter VIII of the UN Charter on the operational mechanisms and the measures that regional organisations are allowed to implement in coordination with the UN to ensure peace and security. It is evident that Chapter VIII of the UN Charter is a regulatory framework that governs the relationship between the UN and regional organisations. The Chapter further encourages regional organisations to take on an active role in finding solutions to local disputes amongst its member states and within its respective regions prior to referring them to the UNSC. Despite the Chapter noting the role that regional organisations can play in the implementation of international peace and security, it also restrict their role. Regional organisations are permitted to act, provided that their actions are consistent with the purposes and principles of the UNSC; they must not use enforcement action without UNSC authorization; and they must always keep the UNSC informed of their activities.

Despite the positive role(s) that regional organisations play in collective security, there are challenges to which regional collective security poses to the implementation of Chapter VIII, in particular, and the unanimity of the UN collective security, in general

(Abass, 2004: xx). This means that, given the increase in the number of regional organisations involved in collective security post the Cold War, there is an increased risk of regional organisations violating the principles of the UN Charter through activities that are not consistent with the Charter. This is specifically based on the provisions of the regional organisations' treaties, which challenge or contradict the principles of the UN Charter. This will further be explored in Chapter Four, which will analyse the AU's collective security framework to determine any convergence or divergence with the UN's Chapter VIII.

The researcher has also identified weaknesses of Chapter VIII. First, Article 51 only talks to the pacific role for regional organisations, hence the Chapter and the entire Charter, neglect to address the peace enforcement role that regional organisations can play outside of their respective regions. Second, Article 52 provides limitations in that regional organisations cannot act outside of their region, and should they do so, it would be at the request on behalf of the UNSC. Therefore, their implementation of collective measures would either be out of self-defense or Chapter VIII competencies.

The continued presence of Article 53 on enemy state is redundant and serves no purpose to the current global collective security dynamics, as has previously been mentioned, and should thus be considered to be removed. It is, therefore, in the researcher's view that Chapter VIII's shortcomings fail to address many of the issues affecting the current global collective security and, as such, recommends that the UN Charter, especially Chapter VIII, should be reviewed and amended accordingly.

Furthermore, Chapter VIII's and the Charter's failure to provide definitions of some of the terms used in it, leave room for regional organisations to provide their own interpretation of what is meant by those terms. This is often done by regional organisations to justify their actions, which signifies serious consequences for Chapter VIII. The researcher notes that the lack of a clarified definition may be problematic, as some regional organisations, whose mandate is not peace and security, may use this to their organisation's benefit and justify their actions under the UN Charter, with specific reference to Chapter VIII. In

addition to this failure, there is a gap on whether economic sanctions constitute enforcement action or not.

Last, Chapter VIII falls short on addressing the current global trend in regional collective security, which has seen an increased involvement of regional organisations in the maintenance of peace and security. Regional organisations have found themselves assuming the competence of the UNSC, which is to determine the existence of the threat to peace, breach of peace, or act of aggression. This departure often manifests in regional organisations' respective security frameworks, which, in some instances, contradict or challenge some of the tenets outlined in Chapter VIII of the UN Charter. It is against this background that Chapter Four of this study will provide a critical analysis of the AU's Constitutive Act to determine whether it support or challenges Chapter VIII of the UN Charter.

## CHAPTER FOUR

### THE DIFFERENCES IN THE NORMATIVE FRAMEWORK OF THE OAU AND THE AU

#### 4.1 INTRODUCTION

Having discussed the normative framework of the UN and the operational roles of regional organisations as outlined by Chapter VIII of the UN Charter in the previous Chapter, it is imperative to analyse the differences in the normative frameworks of the OAU and the AU to better understand the organisations' collective security mechanisms which will be discussed in Chapter Five. Since the end of the Cold War, as previously mentioned, regionalism, especially for the maintenance of international peace and security, has been promoted. Africa took advantage of this and established a security system that would be responsible for the prevention, maintenance, and resolution of conflict on the continent (Sousa, 2017: 521).

The formation of both the OAU and, later, the AU, was a culmination of Pan-Africanist ideology, which first emanated from the first Pan-Africanist Conference held in London in 1900 and later found its way to Africa through the assistance of great African leaders (Adi, 2018: 22). While the creation of the OAU in 1963 brought with it high expectations of solving Africa's problems, especially the liberation of the continent from the effects of colonialism and apartheid, its lack of interference in resolving conflict situations and the challenges of globalisation, as well as the failure to realise the socio-economic development needs of the continent, brought it to its demise (Maluwa, 2012: 96).

The coming into force of the Constitutive Act in 2001 emanated from the collapse of the OAU and established a new organisation, the AU (Mathews, 2018: 20). Unlike its predecessor, the creation of the AU took into consideration the challenges of the continent as a whole and, as a result, aimed to promote not only sustainable political and socio-economic development, but also to address the conflicts on the continent (Mathews,

2018: 20). The importance of this lies in the fact that there could be no development without peace and stability on the continent.

To better understand the collective security mechanism of the AU, it is critical that a normative framework of the OAU and the AU is provided. Therefore, this chapter begins by providing a historical perspective of Pan-Africanism as a world movement, originating in Europe and America, and moving to Africa. Furthermore, this chapter demonstrates how the quest for African unity, as advanced by Pan-Africanism, emerged through three phases, namely, (i) the events that led to the formation of the OAU in 1963; (ii) the political and security events during the OAU; and (iii) the evolution of Pan-Africanism that led to the establishment of the AU. In addition, this chapter discusses the security mechanism adopted by the OAU, which fundamentally resulted in the weakness of the organisation and ultimately led to its demise. Last, the chapter examines the developments that led to the creation of the AU.

## 4.2 ADVENT OF THE OAU: THE PAN-AFRICAN QUEST FOR UNITY

### 4.2.1 A World Movement

To better understand the emergence of the AU, a historical perspective of the Pan-Africanist movement on the continent, which saw the establishment of the OAU, is needed. The quest for the African Unity emanated from the Pan-Africanist movement of the 18<sup>th</sup> century and gained momentum during the 19<sup>th</sup> and 20<sup>th</sup> centuries (Maluwa, 2012: 96). This resulted in the formation of the OAU on 28 May 1963 in Addis Ababa, Ethiopia. The establishment of the OAU emanated from the idea of strong and unified African countries in order to eradicate colonisation and apartheid, and to coordinate cooperation in order to improve the lives of the African people (OAU Charter, 1963).

This was, however, not the first attempt for African unification and development, as African leaders became aware of the need to unite Africans for their own benefit. To have a better understanding of the formation of the AU from the OAU, it is important to first understand the evolution of the Pan-Africanist movement, which paved the way for these two organisations. It should first be noted that there is no single definition for Pan-

Africanism, as the term has historically been expressed in different ways. For instance, Murithi (2007: 1) points out that, “there has been as many ideas about pan-Africanism as there are philosophers on pan-Africanism”, precisely because “Pan-Africanism has taken on different forms at different historical moments and geographical locations” (Adi & Sherwood, 2003: vii). Despite the lack of one definition for Pan-Africanism, there is a common understanding that it involves the unity for political or socio-economic equality and freedom between Africa and the diaspora (Murithi, 2007: 1). As a result, Pan-Africanism began as a global project before finding itself a base on the African continent.

In 1897, Henry Sylvester Williams formed the African Association in London in order to encourage Pan-African unity by allowing Africans and those within the diaspora a forum to address issues of common interest (Tondi, 2005; Adebajo, 2020: 22). The president of the Association at the time was Bishop Alexander Walter, with the vice president, Henry B. Brown, and its secretary-general, Sylvester-Williams. The Association’s aim was to lobby the British government and the public to oppose the violence of European colonial rule in America, economic exploitation in the Caribbean, as well as the assassination of black men in America (Adebajo, 2020: 22-24)

The first Pan-African conference was convened by Henry Sylvester William in London, UK from 22 to 25 July 1900 (Adi, 2018: 22). The conference was attended by 30 delegates mostly from America, the Caribbean, and European diaspora, with the aim of persuading world leaders that the principle of self-determination should be applied to the African continent (Murithi, 2007: 2). The conference attracted international attention and raised awareness on the term ‘Pan-Africanism’ within the international community. W.E.B Du Bois was one of the distinguished participants at the conference who subsequently became the most prominent advocate for Pan-Africanism (Adi, 2018: 22). Of importance from this conference was the formation of two committees. The first committee drafted an ‘Address to the Nations of the World’, pleading for the US and the Europeans to condemn racial oppression in the US and Africa, as well as demand self-governance for colonies. The same letter was sent to Queen Victoria of England, bringing to her attention the conditions of her colonies (Adejumobi, 2008).

The second committee was responsible for planning the formation of a permanent Pan-African Association (PAA) based in London, with branches globally. The PAA was chaired by Bishop Walter and its executive included Sylvain, Williams, Archer, Coleridge-Taylor, Loudin, and Anna J. Cooper (Adi, 2018: 22). Despite all these efforts, the conference made little to no influence on world leaders who colonised Africa (Adejumobi, 2008). In 1902, the Second Pan-African Conference was held in the US, while the third conference was held in Haiti in 1904. However, despite all these efforts and a global tour to America and the Caribbean and South Africa advocating for the end of colonialism and the betterment of the lives of Africa, the PAA collapsed, and no further conferences were held.

Following the end of the WWI in 1918, Du Bois sought to revive the Pan-African movement. This coincided with the Peace Conference in Versailles, France, where world leaders who were victorious in WWI were discussing the future of colonial Africa (Adejumobi, 2008). Du Bois proposed to the world leaders that the principle of self-determination should be applied to Africa and demanded moderate reforms for colonial Africa. However, Du Bois failed to garner support from the US and Britain and, instead, hosted the first Pan-African Congress in 1919 in Paris, supported by Blaise Diagne, a member of the French Parliament from the West African colony of Senegal (Adi, 2018: 45).

The Congress was attended by 60 delegates from Africa, America, and the Caribbean who were mostly based in France. The Congress had three major resolutions, namely, (i) that a law for the protection of native Africans should be drafted; (ii) the League of Nations should enforce the implementation of this law by colonies in order to protect the political, economic, and social well-being of natives; and (iii) demand that Africans and those in the diaspora should be governed by these principles (Adi, 2018; Adejumobi, 2008). According to Adi (2018: 45), the Congress was unable to ensure lasting influence but was able to re-establish a formal pan-African movement. Several Congresses were held until the beginning of WWII, where the war and the financial crisis at the time resulted in the suspension of the Pan-African Congress. However, the Pan-African movement was not entirely eliminated.

In 1945, the Pan-African movement was revived and a post-war pan African Congress, the Fifth Pan-African Congress, was held in October 1945 in Manchester, Britain. This conference marked a turning point for the movement, as it was described as the apex of Pan-Africanism (Bujra, 2002; Adi, 2018). The congress was, for the first time, attended by prominent figures from Africa, including Kwame Nkruma from Ghana, Jomo Kenyatta from Kenya, and Nnamdi Azikiwe from Nigeria. These African individuals helped to inspire the formation of the OAU.

The Fifth Congress had three resolutions. First, it called for an end to colonial rule and demanded independence for Africa, and called on those who are colonised to consider using force to achieve freedom. Second, it called on colonial workers, farmers, and intellectuals to be at the forefront of the fight against political, economic, and social imperialism by boycotting and striking in order to put pressure on colonial powers. Third, a memorandum was drafted to the UN calling for the inclusion of designated representatives from African colonial people in the deliberations on the formation of the UN (Bujra, 2002; Adi, 2018).

According to Adi (2018: 127), the Fifth Pan-African Congress was held at a time when colonialism was already under attack, given the formation of a new world organisation through the formation of the UN, as well as the weakening of the colonial power by the WWII. For the first time, the Pan-Africanist movement was able to gain attention from world leaders, as well as those who were struggling in the colonies, which increased the demands for the end of colonial rule.

#### 4.2.2 Pan-Africanism: From the world to Africa

According to Muiruri (2008: 150), it was only in the 1950s and 1960s that Pan-Africanism moved from an international to an afro-centric continental movement, which saw the movement consolidating itself on the African continent. Of importance to the movement on the continent was the 1941 elections in the Gold Coast that saw a landslide victory for Kwame Nkrumah's Conventions People's Party (CPP), which was described as a 'first victory for the ideology of Pan-Africanism' (Adi, 2018: 135). The Pan-Africanist movement

was strengthened when the Gold Coast gained independence in 1957 and was renamed Ghana. Although Libya had gained independence in 1951 and Morocco, Sudan, and Tunisia in 1956, Ghana's independence was the zenith for African independence (Adi, 2018: 143).

A year after Ghana's independence, Nkrumah hosted the First Conference of Independent African States in April 1958 in Accra, Ghana. Delegates from Ethiopia, Libya, Tunisia, Morocco, Liberia, Sudan, and the United Arab Republic attended. This was the first time that African leaders met on the continent with the aim of uniting for solidarity against the colonial struggle (Leonardo, 2006; Adi, 2016). According to Leonardo (2006: 1147), this was the first real attempt at creating an African continental organisation, a vision that Nkrumah strongly advocated for. The conference also agreed to establish a permanent All-African People's Organisation and secretariat in Accra, with the aim of fast-tracking the liberation of all Africans from colonial imperialism. The delegates also agreed that the conference would be held every two years (Adi, 2018: 146).

Follow-up conferences were held, in which Nkrumah's aspirations of a united Africa were articulated. The second All-African People's Conference was held in January 1960 in Tunis, Tunisia. The discussions during this conference focused on the condemnation of imperialist countries such as France, Portugal, and South Africa as well as to settle colonialism in South West Africa and Central African Federation. The conference recommended the establishment of economic integration through a Common African Market, and also agreed to convene a Festival of African Youth in Conakry in 1961 (Adi, 2018: 146). The third Conference was held a year later in Cairo, Egypt, in 1961, where the same issues were discussed.

Despite these positive developments, tensions and differences emerged amongst African leaders on the strategy that would be adopted for African unity (Burja, 2002: 112). According to Burja, the division was about whether continental unity should be realised immediately or be a long-term objective in order to first create and consolidate independent states and then establish sub-regional blocks (Burja, 2002: 112). The former school of thought was adopted by the Casablanca group, also referred to as the radical

group, which advocated for an immediate political union amongst the newly independent states. The group consisted of Ghana, Mali, Guinea, the United Arab Republic, and the Algerian Provincial Government, and was led by Nkrumah, who actively called for the formation of the United States of Africa (Sesay, 2008: 10).

However, the Casablanca group contrasted the ideas of the Monrovia and Brazzaville groups, referred to as the moderate or conservative group, who advocated for a more gradualist approach to the implementation of African unity. The Monrovia group consisted of Senegal, Togo, Nigeria, Ivory Coast, and Cameroun, and was led by the President of Liberia, William Tubman (Sesay, 2008: 10). The Brazzaville group consisted of Somalia, Sierra Leone, Ethiopia, Libya, and Tunisia, and was led by the Nigerian Prime Minister, Abubakar Tafawa Balewa. These groups favoured a union based on cooperation in social, economic, and cultural integration rather than a political one (Sesay, 2008: 10).

These ideological divisions led to an ideological impasse pertaining the type of continental body that would be created to advance the Pan-Africanist movement on the continent. However, the need to address and resolve the challenges facing the continent at the time prevented the two schools of thought from reaching a compromise (Sesay, 2008: 10). It was only through the major intervention of Ethiopia's Emperor, Hailey Selassie, that the gap between the two groups were resolved. Selassie welcomed the idea of economic cooperation but also emphasised the necessity for political unity. He further asserted that Ethiopia considered itself as a member of one group, which was the African group and thus urged the others to involve all independent African states (Adi, 2018: 152).

Selassie's words became influential and, as a result, became a significant factor in encouraging African unity on the continent. However, it was Kwame Nkrumah's work and those who initially supported the Pan-Africanist movement on the continent that created the conditions for the conference in Addis Ababa in May 1963. It was at this conference were the OAU was formed and its Charter was adopted with both aspirations for African unity and solidarity (Adi, 2018: 152).

## 4.3 TOWARDS A UNITED AFRICA

### 4.3.1 The Advent of the OAU

The signing of the OAU Charter by representatives of 32 countries<sup>13</sup> led to the formation of the OAU on 25 May 1963, as previously indicated. This was an achievement for the decolonisation of the continent and socio-economic independence of African states (OAU Charter, 1963). According to Sesay (2008: 10), the compromises that led to the formation of the OAU, its mandate, as well as its performance were already compromised by the prevailing international system, the Westphalia system, in which it was founded. This is because the essential principles of state autonomy, territorial integrity, and non-interference that the Westphalia system advocated for, provided grounds for states to have exclusive rights to govern their domestic affairs without foreign interference (Kehinde, Olanrewaju, Uzugwu & Kehinde, 2023: 177). Furthermore, events within the international arena which were dominated by the bipolar system, including the US and Soviet Union, had a significant consequence for the Pan-Africanist body (Sesay, 2008: 10).

The formation of the OAU was based on five objectives, which are articulated in Article II of its Charter. The objectives of the OAU were:

- a) To promote the unity and solidarity of the African states;
- b) To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;
- c) To defend their sovereignty, their territorial integrity and independence;
- d) To eradicate all forms of colonialism from Africa;
- e) To promote international cooperation, having due regard to the Charter of the UN and the Universal Declaration of Human Rights (OAU Charter, 1963).

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<sup>13</sup> Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo Brazzaville, Congo (DRC), Dahomey (Benin), Egypt, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, The Sudan, Tanganyika (Tanzania), Togo, Tunisia, Uganda, Upper Volta (Zambia) and Zanzibar.

The objectives of the OAU also influenced the organisation's principles, which were:

- a) The sovereign equality of all member states.
- b) Non-interference in the internal affairs of States.
- c) Respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence.
- d) Peaceful settlement of disputes by negotiation, mediation, conciliation, or arbitration.
- e) Unreserved condemnation, in all its forms, of political assassination and subversive activities on the part of neighbouring states or any other states.
- f) Absolute dedication to the total emancipation of the African territories, which are still dependent.
- g) Affirmation of a policy of non-alignment with regards to all blocs (OAU Charter, 1963).

Both the objectives and principles had an influence on the powers of the organisation, which was to see to the coordination and harmonisation of policies that would govern the member states. As a result, it was agreed that the organisation would accomplish its purpose through the Assembly of Heads of State and Government, the Council of Ministers, the General Secretary and the Commission of Mediation, Conciliation and Arbitration (OAU Charter, 1963). Furthermore, the member states agreed to coordinate and support African Liberation movements through the creation of a Coordinating Committee for Liberation of Africa, which was based in Dar-es-Salaam, Tanzania (Adi, 2018: 155). The committee, which provided political, diplomatic, and some financial support, was comprised of Algeria, Congo, Ethiopia, Guinea, Nigeria, Senegal, Tanzania, and Egypt as its members (Burja, 2002; Adi, 2018).

The inclusion of these tenets was important for confidence building measures aimed at diminishing the superpowers' influence and manipulation on African countries and for the OAU and its member states to prevent the meddling of the Great Powers in African national or inter-state affairs (Sesay, 2008: 11). Furthermore, this inclusion promoted unity and solidarity amongst member states, which encouraged them to continue to fight for those who were still under the colonial rule, such as was the case in apartheid South

Africa and colonial Portugal and Rhodesia. Given the fears of independent states that their safety was also dependent on the total eradication of white supremacy on the continent, the OAU concerted its efforts to overthrow the regimes through peaceful or forceful means with the assistance of the international community (Sesay, 2008: 11).

Furthermore, the OAU adopted the Cairo Declaration of 1964, which supported the principle of inviolability of inherited boundaries (Sesay, 2008: 12). This principle allowed states to accept the inherited territorial demarcations from the colonial rule and was able to limit the possibility of any destabilisation and/or several conflicts that could have potentially resulted from the redrawing of the inherited border demarcations (Sesay, 2008: 12).

According to Bujra (2002: 110), the OAU went through three main phases of evolution. The first phase, which was from 1963 to 1980, focused on the protection of fragile sovereignty of the newly independent states and to assist those countries who were still under colonial or racial rule to gain their independence (Bujra, 2002: 111). According to the author, during this period, the OAU was not necessarily focused on the economic development of the continent despite it being included in its Charter. Instead, the OAU was concerned by the several inter-state conflicts that took place during this period, as well as the fight to eradicate colonial and racial rule in southern Africa (Bujra, 2002:111).

During the 1970s, the OAU was negatively affected by the Cold War, with countries influenced by superpower rivalries. The continent was marred by ideological clashes, which affected the developmental agenda of the continent, as well as the member states' external relations (Packer & Rukare, 2002: 367). The Cold War did not make the OAU largely inactive but with the end of the war, it created a more marginalised organisation which struggled to define its role in the new global order as it was facing serious economic problems. It was under these circumstances of the economic crisis that the OAU began taking the agenda on economic development seriously (Packer & Rukare, 2002: 367).

The second phase, which commenced from 1980 to 1990, focused on Africa's economic recovery programme which was initially devised between 1977 and 1980, resulting in the

progressive Lagos Plan of Action (LPA) adopted in April 1980 (Bujra, 2002: 112). The LPA was to be implemented for over 20 years and it provided practical strategies and a framework for implementing development programmes. It gave primacy to the development of agriculture, industrialisation, mining industry, human resources, and science and technology (Packer & Rukare, 2002: 365).

The Final Act of Lagos of 1980 provided political decisions which promoted development between African states through integration that would be achieved by a common market for the region in the form of an African Economic Community (AEC) by the year 2000. This was later transformed into the Abuja Treaty of 1991 (Packer & Rukare, 2002: 366), which affirmed the principles stipulated in the LPA and provided a detailed process for achieving the AEC in successive stages over 34 years. Despite all these developmental strategies, Africa witnessed strong interventions by Western powers in its economic strategies during the 1980s, which were done through the World Bank and the International Monetary Fund, using aid and debts as instruments of leverage within the African continent. Therefore, by the 1990s, foreign aid had become the dominant developmental assistance in most African countries (Bujra, 2002: 115).

The third phase, which was between 1990 and 2002, imposed on the OAU the need to change direction, given the unprecedented consequences of the end of the Cold War (Bujra, 2002: 117). In the early 1990s, most of the African countries had gained independence and colonialism had also been ended in Namibia and South Africa. With the end of Apartheid and the inauguration of a democratically elected government in South Africa in 1994, the continued existence or purpose of the OAU was questioned, as it was viewed to have achieved its primary mandate of liberating the continent from colonialism (Adi, 2018: 207).

#### 4.3.2 OAU's Peace and Security Approach

The OAU Charter's approach to peace and security was characterised by its provisions of (i) "non-interference in the internal affairs of member states, and (ii) respect of the sovereignty, territorial integrity, and independence of its member states" (OAU Charter 1963). By adopting these provisions, the OAU's capacity to effectively manage and

resolve conflicts was limited, as these provisions hindered the continental body from intervening in internal conflicts of member states (Nash, 2021: 126).

According to Nash, the OAU recognised the possibility of conflict on the continent and the danger that it posed. However, this was perceived as a lesser threat than the encroachment on the sovereignty and territorial integrity of states, as well as the continued existence of colonisation on the continent (Nash, 2021: 79). As a result, the OAU, during its inception, hardly prioritised institutions to assist with addressing conflict on the continent. Instead, it took a year before formulating the first institution to deal with conflict management. The OAU established the Commission of Mediation, Conciliation and Arbitration on 21 July 1964 to support the principle of the settlement of disputes by negotiation, mediation, conciliation, or arbitration, which is enshrined in Article III of the OU Charter (Nash, 2021: 79).

The Commission was only permitted to mediate disputes between states, provided that both states willingly agreed to submit themselves to its jurisdiction. Furthermore, the Commission was limited in its function in that it did not have a mandate to prevent conflicts but to address conflicts post the break-out of violence. Therefore, this approach by the OAU promoted state security and sovereignty by adopting a non-interference conflict management policy (Nash, 2021: 81). Furthermore, the Commission for the Mediation, Conciliation and Arbitration faced operational challenges, making it to be under-utilised and unsuccessful in implementing its mandate. African leaders chose to appoint ad-hoc Commissions in lieu of the Mediation, Conciliation and Arbitration Commission to address conflicts on the continent (Nash, 2021: 25). In effect, the OAU had limited security provisions with military intervention by either member states or the organisation being limited to participate through consensual observer missions. Furthermore, the OAU relied on the UN's assistance in situations where the peace and security of the continent were threatened (Sousa, 2017: 530).

In addition to operational challenges, the commission also faced financial challenges. The OAU failed to provide the funds for the Commission to operate and this had an impact on its functioning. Furthermore, the member states who were involved in the conflict and had

agreed to the Commission's assistance were responsible for the financial expenses of the commission during its mediation efforts, in order to decrease the OAU's expenses. This approach thus discouraged states from utilising the Commission, as the burden to carry the financial obligations of the Commission became heavy for states that were already facing violent conflicts (Nash, 2021: 83).

Despite these challenges, the OAU tried on numerous occasions to reform the Commission. However, such efforts failed to attract uniform support (Nash, 2021: 25). Following the end of the Cold War, the OAU acknowledged its unsuccessful role in addressing conflicts on the continent due to its limited mandate by the principle of non-interference and, in 1993, it adopted the Mechanism for Conflict Prevention, Management and Resolution (AU Decision AHG/DECL.3, 1993).

By establishing the Mechanism for Conflict Prevention, Management and Resolution, African leaders aimed to expand the OAU's role in managing conflicts, as its primary objective was to anticipate and prevent conflicts. In situations where conflict has already erupted, the Mechanism is mandated "to undertake peace-making and peace building functions in order to facilitate the resolution of these conflicts" (AU Decision AHG/DECL.3, 1993). However, member states agreed that the Mechanism would be guided by the principle of non-interference in the internal affairs of another state, respect for sovereignty and territorial integrity, and the peaceful settlement of disputes. The inclusion of non-interference as one of the principles for the Mechanism was bound to cripple its effectiveness in resolving conflicts on the continent. Furthermore, it is evident that African leaders still had fear and mistrust in the organisation taking a central role in managing conflicts, as they viewed this as a threat to their control of power.

In addition, the Mechanism was permitted to function, provided there was consent and cooperation by the parties to the conflict (AU Decision AHG/DECL.3, 1993). The provision of these tenets, like the Commission for Mediation, Conciliation and Arbitration, also limited the effectiveness of the Mechanism in preventing conflicts on the continent during the 1990s (Murithi, 2007: 3).

Given the above, it was evident that, although the OAU had realised the importance of having peace and security mechanisms in place, it was, however, ineffective in preventing and resolving disputes on the continent such as the Ethiopia-Eritrea Conflict, Rwanda, Burundi, and Lesotho. The OAU's limitations to ensure peace and security on the continent were not only limited by policy but also by the ineffectiveness of its conflict management institutions (Nash, 2021: 25).

### 4.3.3 The OAU and the UN

The OAU's Pan-Africanist position has always been to enhance inter-state cooperation in Africa. However, this was extended to the multilateral for a, especially at the UN, in order to promote a common African position on issues affecting the continent (Ayebare, 2018: 58).

It should be noted that African states' interaction with the UN did not only start post the inauguration of the OAU but rather prior to that. In 1958, when the first conference of independent African states was held, Africa was represented by only eight countries at the UN, but by 1963, the number had increased to 32 (Ayebare, 2018: 63). In 1963, independent African states adopted a resolution calling for African states to formulate a more collaborative and effective African Group at the UN (AU Decision CIA/PLEN2, 1963). The resolution further called on the African Group to establish a permanent Secretariat in order to have a more coordinated approach on issues of common concern, especially pertaining to Africa's equitable representation, particularly at the UNSC and Economic and Social Council (AU Decision CIA/PLEN2, 1963).

In December 1963, the Africa Group was able to convince the UN to amend its Charter to give Africa appropriate representation on the UNSC and other organs of the organisation (Nash, 2021; Ayebare, 2018). This led to the UNSC increasing its seats from 11 to 15, which increased the rotating seats from six to 10. Furthermore, the Group also lobbied and increased the membership of the Economic and Social Council from 18 to 27. These changes allowed for more participation by African regions, which were not represented at the founding conference of the UN (Nash, 2018: 86). According to

Ayebare, this initiative by the African Group is what planted the seed for Africa to call for the reform the UNSC, often referred to as the Ezulwini Consensus (Ayebare, 2018: 59).

The African Group was also instrumental in advocating for the decolonisation and independence of African states by mobilising the UN to put these issues on its agenda (Nash, 2021; Ayebare, 2018). In 1974, the African Group succeeded in promoting the OAU's sanctions against South Africa, which led the UN's General Assembly to revoke South Africa's credentials. This meant that South Africa was not permitted to take a seat, vote, speak, or make a proposal at the UN. The group was also instrumental in achieving the independence of Zimbabwe and Namibia (Nash, 2021: 87). In order to assert the norm of regional priority, the African Group monitored the African issues that the UN put on its agenda. Following the disaster on the UN peacekeeping mission in Congo in the early 1960s, several African governments were hesitant to allow the UN's involvement in conflict resolution in Africa. Therefore, the African Group used its influence to prohibit the UN discussion on African conflicts, unless there was unanimous agreement amongst African countries to permit its involvement (Nash, 2021: 87).

Unlike other security mechanisms of the OAU, the African Group was the most effective body of the continental organisation, as it managed to achieve noticeable results (Nash, 2021: 86).

#### 4.4 SUCCESSES AND FAILURES OF THE OAU

The primary role of the OAU was to see the total independence of all African states and, as a result, throughout its existence, it strived and succeeded to remove colonial and apartheid rule on the continent. Against colonial apartheid rule on the continent, the OAU was able to provide political support and mobilise international awareness for the struggles of freedom in settler colonies. Therefore, for almost 40 years of its existence, the OAU had managed to liberate every African state, except for Western Sahara, although it was a member of the continental body (Sesay, 2008: 12).

Despite these successes, the OAU had its own failures, as it was unable to manage violent conflicts, poor governance, political corruption, as well as economic

mismanagement of their member states (Murithi, 2007: 2). Although the continent had experienced several inter-state conflicts, the severity and intensity of these conflicts in the 1990s were not anticipated. This was because autocratic regimes on the continent faced resistance from political insurgents who wanted to overthrow them. Despite the Mechanism for Conflict Prevention, Management and Resolution being in place, the Rwandan Genocide of 1994 took place while the mechanism was operational (Murithi, 2007: 3).

Furthermore, the period also saw the collapse of the state of Somalia and conflicts in Sierra Leone, Liberia, Angola, DRC, and Sudan, which led to the death of millions of Africans, as well as a dire humanitarian situation on the continent (Murithi, 2007: 3). Given the principle of non-intervention of the OAU, member states and the organs of the OAU could not intervene in the intra-state conflicts, as they needed to be invited by the parties to the disputes. As a result, the OAU was rendered ineffective and powerless during these violent conflicts (Murithi, 2007: 4).

Apart from these conflicts, the OAU was also faced with the challenge to address new concerns of the post-Cold War, such as globalisation, respect for human rights, good governance, and free and fair elections, something that the OAU had not anticipated or even prepared for. In addition, was the “unprecedented integration of the global economy under the auspice of the World Trade Organisation (WTO)” (Sesay, 2008: 14).

Therefore, given all these challenges and the fact that the OAU’s primary mandate of liberating African countries had been achieved, it was inevitable that the organisation would have to find a new *raison d’être* or become extinct. As a result, a new continental body was needed to address these challenges and find its place in the new world order (Sesay, 2008: 14).

#### 4.5 TRANSITION FROM THE OAU TO THE AU

Given the need to address the challenges faced by the continent, the Pan-Africanists of the 1980s and 1990s called for the re-interpretation of Africa’s needs, especially

pertaining the ending economic bondage and democratic stagnation that had marred the continent. This new demand of Pan-Africanism called on the continent to take its own efforts in improving the continent's social, economic, and political conditions. It also acknowledged the importance of good governance, democracy, stability, human security, and international cooperation for Africa's development (Mathews, 2018: 20).

The OAU Assembly of Heads of State convened for the Fourth Extraordinary Summit in September 1999 in Sirte, Libya, at the invitation of the Libyan government (Sirte Declaration, 1999). The purpose of the Summit was to amend the Charter of the OAU in order to increase the continental body's effectiveness and capacity in dealing with the new millennium challenges that it faced. Of significance to the continent at the Summit was the adoption of the Sirte Declaration on 9 September 1999 by the African leaders (Sirte Declaration, 1999). This Summit emanated from the decision by the Assembly of Heads of State and Government during the 35<sup>th</sup> Ordinary Session of the OAU Summit in July 1999 in Algiers, Algeria, to "discuss ways and means of making the OAU effective so as to keep pace with political and economic developments taking place in the world" (Decision AHG/Dec. 140, 1999).

Despite having taken the need to "effectively address the new social, political, and economic realities in Africa and the world," African Heads of State and Government unanimously decided to "establish an African Union, in conformity with the ultimate objectives of the Charter of our Continental Organisation and the provisions of the Treaty establishing the African Economic Community" (Sirte Declaration, 1999). The leaders also decided to "accelerate the process of implementing the Treaty, establishing the African Economic Community, in particular; shortening the implementation periods of the Abuja Treaty; and ensuring the speedy establishment of all institutions provided for in the Abuja Treaty" (Sirte Declaration, 1999).

The Declaration also decided to strengthen and consolidate "the Regional Economic Communities as pillars for achieving the objectives of the African Economic Community and realising the envisaged Union" (Sirte Declaration, 1999). The Declaration finally "mandated the Council of Ministers to take the necessary measures to ensure the

implementation of the above decisions and, in particular, to prepare the constitutive legal text of the Union, taking into account the Charter of the OAU and the Treaty Establishing the African Economic Community” (Sirte Declaration, 1999). The Council of Ministers were directed to submit its report to the 36<sup>th</sup> Ordinary Session of the Assembly for appropriate action.

Following the 4<sup>th</sup> Extraordinary Summit, the OAU legal department drafted the Constitutive Act of the African Union, which was interrogated in a meeting of legal experts and parliamentarians, as well as at a ministerial conference held in Tripoli, Libya, in June 2000. Nigeria, South Africa, and Libya played a leading role during the negotiations of drafting the AU Constitutive Act. The President of Nigeria, Olusegun Obasanjo, was instrumental in proposing reforms that shaped the security approach of the continental body from a state security approach to a human security approach (Mathews 2018: 20; Tiekou, 2004: 256).

South Africa’s then President, Thabo Mbeki, advocated for a union that would transform Africa’s international image to attract investment and development on the continent. Mbeki suggested reforms that would see the continental body advancing democratic institutions, and bring to end authoritarian governments (Tiekou, 2004: 256). Muammar Gaddafi of Libya wanted to revive Pan-Africanism and, as a result, called for a United States of Africa, which would see the continent having “a United Sovereign Independent Nation embracing all African states based on the principle of equality” (Adi, 2018: 214).

The Draft Constitutive Act was approved and adopted on 11 July 2000 by the OAU Assembly at its 36<sup>th</sup> Ordinary Session in Lomé, Togo. During the Summit, 27<sup>14</sup> Heads of State and Government signed the Constitutive Act (AU Decision AHG/Dec. 2000). The Constitutive Act provided for the AU to create unity and solidarity amongst the member states; defend sovereignty, territorial integrity, and the independence of member state; promote democracy, peace, and security on the continent; and increase the political and socio-economic development and integration of the continent (Mathews, 2018: 21).

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<sup>14</sup> This included Algeria, Benin, Burkina Faso, Burundi, Cape Verde, the Central African Republic, Chad, Djibouti, Ethiopia, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea-Bissau, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Nigeria, Sahrawi Arab Democratic Republic, Senegal, Sierra Leone, Sudan, Togo and Zambia.

The Constitutive Act of the AU, which is described above as the founding constitution of the new continental body, defines the purpose and objectives of the continental body. The AU's objectives, as contained in Article 3 of the Constitutive Act, are more comprehensive unlike those of the OAU. The Constitutive Act also provided for the structure of the AU, as well as its organs to achieve its purpose and objectives. Similar to its predecessor, the AU's Heads of State and Government is the decision-making body of the continental body. The Executive Council coordinates and drafts decisions for the Assembly's consideration, while the Pan-African Parliament implements the policies decided upon. The Act also provides for various institutions, including the Court of Justice, the Commission, the Permanent Representative Committee, the Peace and Security Council, as well as the financial institutions, which are inclusive of the African Central Bank, the African Monetary Fund, and the African Investment Bank (AU Constitutive Act, 2002).

On 1 March 2001, following the 5<sup>th</sup> Extra-Ordinary Session of the OAU Assembly in Sirte Libya, it was announced that all the remaining African states had signed the Constitutive Act and unanimously declared the establishment of the African Union (AU Decision EAHG/Dec. 2001). The OAU Assembly also decided that the Constitutive Act would enter into force "30 days after the deposit of the instruments of ratification by two-thirds of the Member States of the OAU" as per its Article 28 (AU Decision EAHG/Dec. 2001). On 26 May 2001, the AU's Constitutive Act came into force after Nigeria became the 36<sup>th</sup> member state to deposit its instrument of ratification on 26 May 2001 (Nash, 2021: 179).

In July 2001, the OAU held a summit in Lusaka, Zambia, to endorse a roadmap that would see to the transition from the OAU to the AU. The Summit agreed to a transition period of one year, with the option of being extended as necessary, while the member states engaged in consultations to prepare for the inaugural meeting of the new continental body (AU Decision AHG/Dec1). The Lusaka Summit also adopted the New Partnership for Africa's Development (NEPAD). The AU was officially launched at the 1<sup>st</sup> Assembly of Heads of State of the African Union, in Durban, South Africa, in July 2002 (Matthews, 2018: 22).

## 4.6 CONCLUSION

The history of Africa's regional organisation stems from a global Pan-Africanist perspective that invigorated an African perspective as illustrated by the two periods, namely, the OAU period from 1963 to 2002, and the AU period from 2002 to present. Pan-Africanism on the continent has evolved over the decades. With the end of colonialism, African leaders, through the OAU, focused on protecting independent states, their solidarity, as well as liberating other states. However, as globalisation intensified, African leaders adopted a Pan-Africanist approach sought to unite the continent to promote human and economic development through the creation of the AU.

Although these two organisations emanate from a Pan-Africanism perspective, their approach to the commitment of African liberalism is different, as they adopted different approaches, especially pertaining peace and security. The OAU committed to enhance the sovereignty and territorial integrity of member states by adopting a policy of non-interference in the internal affairs of member states. The adoption of this policy primarily led to the demise of the continental body, as it made it powerless in effectively addressing violent conflicts at the time. On the other hand, the AU has been instrumental in carrying Pan-Africanism forward by establishing structures and mechanisms to increase the political, social, and economic development of the continent. Therefore, to an extent, the AU has procedurally achieved more than its predecessor, although with its own challenges.

Although the AU's creation was an outcome of a long process to address the challenges of globalisation faced by its predecessor, it advocates for a broad vision for the continent. The next chapter will provide a critical analysis of the AU mechanism in collective security versus Chapter VIII of the UN Charter.

## CHAPTER FIVE

### AN ANALYSIS OF THE AFRICAN UNION MECHANISM IN COLLECTIVE SECURITY VERSUS CHAPTER VIII OF THE UN CHARTER

#### 5.1 INTRODUCTION

This chapter provides an analysis of the AU's Constitutive Act and the powers and responsibilities it gives to the Union's institutions in the maintenance of peace and security on the continent. The AU's inauguration, from the OAU in 2002, provided a new era of institution-building for the continent, especially in relation to peace and security. It marked a major achievement for Pan-Africanism in the 21<sup>st</sup> Century, as the transformation of the OAU to the AU entailed that the continental body would take a leading role in the promotion and the maintenance of peace, security, and stability on the continent (AUPSC Handbook, 2023: 1).

It could be argued that, through the establishment of frameworks and institutions, which promote regional integration and cooperation in order to address the violent conflicts that mar the continent, the AU is promoting the ideal of Pan-Africanism. It is acknowledging that it can no longer remain indifferent to the plight and suffering of the citizens of its member states (Murithi, 2009: 94). The first AU Commissioner for Peace and Security, Said Djinnit, noted that "Africans cannot.... watch the tragedies developing in the continent and say it is the UN's responsibility or somebody else's responsibility. We have moved from the concept of non-interference to non-indifference. We cannot as Africans remain indifferent to the tragedy of our people" (Powel, 2005: 1).

This, therefore, means that the legal and policy documents of the AU, unlike its predecessor the OAU, adopted a non-indifference position, departing from the non-interference and non-intervention security position adopted by the OAU (Ani, 2016: 1). The inclusion of Article 4(h) in the Constitutive Act of the AU provided a paradigmatic shift in the role of the AU as a continental peace and security organisation. This move was advocated for by the former Chair of the AU Commission, President Alpha Oumar Konare, who stated that "we cannot afford to be passive while large scale human rights abuses

are committed on the continent.... the implementation and respect of good governance, democracy and non-indifference” are principles adopted by the AU member states (United Nations, 2004). By adopting this policy, the AU is normatively equipped to manage violent conflicts on the continent, although still restricted by financial and capacity constraints (Murithi, 2009: 92).

According to Maluwa, the AU was forced, given the events of the 1994 Rwandan genocide, to include principles of intervention, as failure to do so would have rendered it redundant to Africa’s peace and security aspirations (Maluwa, 2001: 12). Therefore, unlike its predecessor, the AU gives priority to the respect of human security over the OAU’s state centric security principle (Ani, 2016: 1). Furthermore, the AU was established to assist in accelerating the integration of the continent to create conditions for socio-economic development (AU Constitutive Act, 2002). This is reflected in the 17<sup>15</sup> institutions of the AU, as opposed to the three organs of the OAU, namely, the Assembly, Executive Council, and the Commission (OAU Charter, 1963). However, while all these 17 institutions remain important to the functioning of the AU, this chapter will focus only on those that are central to the maintenance of peace and security on the continent.

The evolution of the AU’s peace and security design suggests a paradigm shift from a conservative interpretation of sovereignty and reflects the AU’s commitment to leading conflict resolution on the continent. Furthermore, the AU’s institutional design could be attributed to the need to redefine the relationship between the AU and the UN. Considering this, the chapter also assesses the AU’s collective security mechanisms to determine any linkages with the UN’s Chapter VIII. The AU’s institutional security design, especially as echoed in its norms and principles, is reflected by the organisation’s security architecture, which is guided by its Constitutive Act.

Moreover, the chapter gives a critical analysis of the AU’s Constitutive Act and the AU Peace and Security Council Protocol, which was annexed into the Constitutive Act, in

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<sup>15</sup> These comprise: the Assembly of Heads of State, the Peace and Security Council, the Commission, the Executive Council, the Pan-African Parliament, the Court of Justice, the Permanent Representatives Committee, seven Specialised Technical Committees, the Economic, Social and Cultural Council as well as the African Central Bank, the Monetary Fund and the Investment Bank.

relation to Chapter VIII of the UN Charter. These two documents have set the foundations for the continent's conflict management mechanism, also referred to as the African Peace and Security Architecture (APSA). Although APSA is composed of other bodies, which will be described below, this research does not provide an analysis of these bodies but will, at times, refer to them throughout the research. This assists in answering the wider question on whether there are convergences or divergences between the AU's Constitutive Act and Chapter VIII of the UN Charter in the implementation of collective security on the continent.

## 5.2 THE AFRICAN UNION PEACE AND SECURITY ARCHITECTURE

As part of its collective security mechanism, the AU adopted the APSA, which was established following the amendment of the Constitutive Act, through the adoption of the Peace and Security Protocol. The establishment of APSA emerged due to the need for an operational structure that would implement decisions made as per Article 5(2) of the Constitutive Act (AUPSC Department, 2010: 13). The APSA is envisaged as a means by which Africa can take a greater role in managing peace and security, with the objective of finding African solutions to African problems (Fafore, 2020: 91).

APSA's main objectives are to provide early warning, conflict prevention, peace-making, peace support operations, peace-building, post-conflict reconstruction and development, promotion of democratic practices, good governance and respect for humanitarian action, and disaster management (AUPSC Protocol, 2002). The APSA also embodies and constitutes an institutional shift from state security to human security, which has widely been accepted at the continental level. From a human security perspective, this entails prioritising the protection of citizens and not the state, whether its sovereignty and/or territorial integrity (Makinda & Okumu, 2022: 385).

In addition, the AU adopted the Ezulwini consensus as part of its collective security mechanism. The Ezulwini consensus is a common African position, which promotes the Responsibility to Protect (R2P) as a mechanism to prevent mass atrocity crimes such as war crimes, genocide, ethnic cleansing and crimes against humanity (Fafore, 2020: 92).

This consensus acknowledges the importance of collaboration between regional and international organisations on the prevention of inter-state and intra-conflicts, conventional weapons, transnational organised crimes, peace enforcement and peacekeeping capacity, all aimed towards R2P (Fafore, 2020: 92).

The PSC Protocol Article 2(2) stipulates that the APSA would be composed of several bodies, each with a particular conflict management role (AUPSC Protocol, 2002). The bodies composing the APSA include the AU Peace and Security Council (AUPSC), the Panel of the Wise (PoW), the Continental Early Warning System (CEWS), the African Standby Force (ASF), the Military Staff Committee, and the Peace Fund, which are committed to the promotion of collective security (AUPSC Handbook, 2023: 218). For better understanding of the AU's collective security mechanism, this chapter provides a brief description of these bodies and their functions.

### 5.2.1 Peace and Security Council

At the heart of the APSA is the AUPSC, an organ that is dedicated to the promotion and maintenance of peace, security, and stability on the continent (AUPSC Department, 2010: 13). The Peace and Security Council Protocol pursuant to Article 5(2) of the Constitutive Act established the AUPSC, which was launched in March 2004, and is envisaged to be a collective security and early-warning organ to facilitate efficient and timely responses to conflict and crisis situations on the continent (AUPSC Protocol, 2002).

The objectives of the AUPSC include the promotion of peace, security, and stability on the continent; anticipating and preventing conflicts; promoting and implementing peace-building and post-conflict reconstruction activities; coordinating and harmonising continental efforts in preventing and combatting terrorism; developing a common defence policy for the AU; promoting and encouraging democratic practices and good governance; and the respect for the rule of law and protection of human right (AUPS Protocol, 2002).

Unlike its predecessor, the OAU, the AU's Constitutive Act had not made provisions for such an organ, despite emerging out of the need to reform the OAU's Mechanism for Conflict Prevention, Management and Resolution (AUPSC Handbook, 2023: 4). This is

mainly because, following the adoption of the AU Constitutive Act, the OAU<sup>16</sup> decided to “incorporate the OAU’s Central Organ of the Mechanism for Conflict Prevention, Management and Resolution as one of the organs of the AU” (AUPSC Handbook, 2023: 4). However, during the process of reviewing the OAU’s Central Organ, member states decided that the new continental body’s peace and security objectives would be better achieved through the establishment of a new body which would replace the OAU Central Organ (AUPSC Handbook, 2023: 4). Therefore, the PSC was established as a successor of the OAU’s Central Organ of the Mechanism for Conflict Prevention, Management and Resolution.

The AUPSC’s composition was replicated from that of the UNSC, as it also consists of 15 member states who serve on a rotational base, but without permanent membership and the veto power (AUPSC Handbook, 2023: 4). The membership of the PSC is rotated amongst the continent’s five regions, with five states, one per region, elected for a three-year term; and the other ten, two per region, elected for a two-year term. According to Article 5(2) of the PSC Protocol, the election of the membership is on the principle of equitable regional representation and rotation (AUPSC Protocols, 2002).

Furthermore, those member states to be elected should meet the following criteria: commitment to uphold commitment to the AU’s principles of respect for constitutional governance, rule of law, and human rights; contribution to the promotion and maintenance of peace and security on the continent; and capacity and commitment to shoulder the responsibilities entailed in membership, which is inclusive of regional and continental conflict resolution initiatives and commitment to financial contribution to the Peace Fund and/or Special fund (AUPSC Protocol, 2002).

Despite Article 5 stipulating the distribution of seats amongst the five regions, the current distribution of seats in the AUPSC is as follows:

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<sup>16</sup> The decision was made at the 37<sup>th</sup> Ordinary Session of the OAU held in Lusaka, Zambia in July 2001.

**Table 5.1: AUPSC distribution of seats**

<b>Region</b>	<b>No of 3-year seats</b>	<b>No of 2-year seats</b>
North	1 (Morocco)	1 (Egypt)
East	1 (Djibouti)	2 (Tanzania & Uganda)
Central	1 (Cameroon)	2 (Equatorial Guinea & DRC)
West	1 (Nigeria)	3 (Côte d'Ivoire, Gambia & Sierra Leone)
South	1 (Namibia)	2 (Angola & Botswana)
<b>TOTAL</b>	<b>5</b>	<b>10</b>

Source: AUPSC Secretariat

Based on the table, it is evident that the West African region, which is composed of 14 member states, is allocated three seats, while North Africa, with only seven member states, has two seats. This is mainly because the West African region gave one permanent seat to Nigeria, given its economic and political influence in the region, while the other two seats are open for contestation by other countries in the region (Etyang *et al.*, 2024: 3). Despite the AUPSC Protocol stipulating the allocation of AUPSC seats per region, a temporary agreement was previously entered into between North and West Africa, when North Africa failed to fill their second seat. However, since then, West Africa has not yet returned the seat back to North Africa.

Article 2(1) of the PSC Protocols entrusted the PSC as a decision-making organ for the prevention, management, and resolution of conflict on the continent (AUPSC Protocol, 2002: 4). It further indicates that the PSC “shall be a collective security and early-warning arrangement to facilitate timely and efficient responses to conflict and crisis situations in Africa” (AUPSC Protocols, 2002: 4). Similarly, member states are obligated by Article 7(2) of the PSC Protocol agree to accept that the PSC “acts on their behalf” and, therefore, “agree to accept and implement the decisions of the AUPSC in accordance with the Constitutive Act”, as stipulated in Article 7(3) of the PSC Protocol (AUPSC Protocol, 2002: 11).

Furthermore, member states are required to provide “full cooperation to, and facilitate action by the AUPSC for the prevention, management and resolution of crises and conflicts, pursuant to the duties entrusted to it” (AUPSC Protocol, 2002: 11). Therefore, in the researcher’s assessment, the AUPSC Protocol mandates the PSC and its decisions as legally binding amongst all its member states. However, this does not necessarily seem to be the case in practice, as some of the resolutions undertaken by the PSC end up not being implemented or followed through on (Etyang *et al.*, 2024: 5). For example, in relation to the AUPSC’s response to unconstitutional changes to government, it has been efficient and consistent in the suspension of member states, as per the prescripts of Article 7(g) of the AUPSC Protocol where, since 2019, the Council suspended six countries, namely, Sudan, Mali, Guinea, Burkina Faso, Niger, and Gabon. Despite the sanctioning of these member states, the AUPSC has not followed through to restore constitutional order in these countries (Etyang *et al.*, 2024: 5).

Moreover, the implementation of sanctions and the suspension of member states have not deterred the reoccurrence of coups and conflicts on the continent, and this can also be attributed to the fact that the AUPSC has selective decision-making (Etyang *et al.*, 2024: 5). A case in point is the failure of the AUPSC to sanction Chad in 2021 following the death of the then President, Idriss Déby. Following Déby’s death, the Chadian military stepped in to take over power, suspending the Constitution, and dissolving the government and parliament (Ideas Indaba, 2024: 1). As per AU norms, such action by the Chadian military constitutes an unconstitutional change of government and, as a result, should be subjected to sanctions. However, given the fragility of the security situation in Chad and the region, the AU was cautious in taking decisions that would further fuel the instability (Ideas Indaba, 2024: 1). It is, therefore, evident that the AUPSC has, at times, not been effective in preventing and maintaining peace and security on the continent, as it lacks coercive power, resulting in the AUPSC being operationally ineffective (Etyang *et al.*, 2024: 6).

### 5.2.2 Panel of the Wise

The concept of the PoW was initially propounded during the OAU, with the establishment of the Council of the Wise which formed part of the Central Organ of the Mechanism for

Conflict Prevention, Management, and Resolution. It draws from Africa's tradition of entrusting the elders with the responsibility of peacemaking due to their wisdom. Therefore, by appointing distinguished and eminent personalities from the continent, those appointed are able to provide wisdom on solutions to African problems relating to peace and security (AUPS Department, 2010: 53). According to Apuuli, (2018: 159), the PoW is part of the AU's preventative framework for peace and security on the continent. Article 11 of the AUPSC Protocol notes that the main function of the PoW is to support the efforts of the PSC and Chairperson of the AU Commission, particularly in the area of conflict prevention (AUPSC Protocol, 2002). Therefore, the PoW's contribution to the preventative diplomacy of the AU is to alert and advise the AUPSC and Commission of emerging issues relating to the prevention of conflict (Albuquerque, 2016: 12).

The formation of the PoW is endorsed by Article 11 of the PSC Protocol and officially came into effect in December 2007, following the agreement on its modalities for its functioning. The PoW is mandated to support the efforts of, and advise, the AUPSC, as well as the Chairperson of the Commission, on issues of conflict prevention (AUPSC Protocol, 2002). It is composed of five eminent personalities, who have contributed to the cause of peace, security, and development on the continent. These eminent persons are selected, based on regional representation, by the Chairperson of the Commission after consultation with the member states concerned and are appointed by the Assembly to serve for a period of three years (AUPSC Protocol, 2002). PoW members are prohibited from holding active political offices during their tenure and are permitted to serve for a second term (Modalities of the Panel of the Wise, 2007). By including the clause, it is assumed that the Panel members would have the autonomy to carry out their responsibilities in a free and fair manner (Gardachew, 2020: 190).

The current Panel, elected in 2022 for a three-year term, which will end in 2025, is comprised of the following members:

**Table 5.2: Current PoW elected members (2022-2025)**

<b>NAME</b>	<b>REGION</b>
H.E Domitien Ndayizeye (Former President of Burundi)	Central Africa
Lady Justice Effie Owuor from Kenya	East Africa
H.E Amre Moussa (Former Foreign Minister of Egypt)	North Africa
Prof Babacar Kante from Senegal	West Africa
H.E Phumzile Mlambo-Ngcuka (Former Deputy President of South Africa	Southern Africa

Source: AUPSC Handbook, 2023

Albuquerque (2016: 11) notes that although there is a misconception of the PoW being a mediation body, its main role is to advise the AUPSC and Commission on all issues regarding the promotion and maintenance of peace, security, and stability on the continent. The misconception emanates from the APSA Roadmap 2016-2022, which suggests that the PoW should take on a more mediation role, given the ad-hoc responsibilities often given to some PoW members as mediators to a conflict (AU APSA Roadmap, 2015: 31). Despite their role not being mediators, PoW members can be requested to assist a conflict mediator appointed by the AU (Albuquerque, 2016: 11). A case in point is the appointment, in September 2022, of Phumzile Mlambo-Ngcuka, as a high-level member of the Ethiopia Peace Process, supporting former President, Olusegun Obasanjo, who is the High Representative for the Horn of Africa in mediating peace talks between the Federal Government of Ethiopia and the Tigray People's Liberation Front, following a two-year conflict in Ethiopia.

The work of the PoW is mainly focused on two areas, namely, thematic reflections, and preventative missions (AUPSC Handbook, 2023: 116). In terms of the former, the PoW focuses on thematic issues which include, but are not limited to, election disputes and political violence; peace, justice, and reconciliation in Africa; mitigating vulnerabilities of women and children in armed conflicts on the continent; and strengthening political governance for peace, security, and stability in Africa. The PoW produces a report on its

reflections pertaining these thematic issues, which is submitted to the AUPSC. In relation to the latter, the PoW undertakes missions to a number of countries, often in the context of elections, although not exclusively (AUPSC Handbook, 2023: 116).

Furthermore, the PoW is mandated to pronounce itself on issues relating to the promotion of peace, security, and stability. In carrying out its responsibilities, the PoW may act either at the request of the AUPSC or the Chairperson of the Commission or at its own initiative (AUPSC Protocol, 2002). The Panel relies on the CEWS, which will be discussed subsequently, and fact-finding missions in order to advise or warn the AUPSC (Nathan *et al.*, 2015: 55).

To enhance its efforts in preventative diplomacy, the PoW, created in 2013, corresponds with institutions at the regional level through the creation of the Pan-African Network of the Wise (PanWise) (Genes *et al.*, 2014: 188). The AUPSC Protocol also recommends the establishment of a similar structure of the PoW in the Regional Economic Communities. The creation of PanWise is aimed at harmonising efforts between the Panel and Regional Economic Communities (REC)'s on issues of preventative diplomacy (Albuquerque, 2016: 12). However, this has not necessarily materialised, given that the Panel has not been able to coordinate preventative diplomacy at the continental nor regional level due to its oftentimes overlapping yet separate initiatives addressing the same conflict (Nathan *et al.*, 2015: 56). For example, while the PoW is mandated to be involved in conflict prevention, its role, conceptually, is not clearly defined. In addition, although the PoW's establishment is catered for in AUPSC Protocol, it does not appear in the structure of the AU Commission, thus creating budgetary, ownership, and sustainability issues (Nathan *et al.*, 2015: 56).

### 5.2.3 Continental Early Warning System

The CEWS is one of the structures mandated by Article 2 of the AUPSC Protocol to support the AUPSC in implementing its mandate. The CEWS is established, according to Article 12(1) of the AUPSC Protocol, to assist the AUPSC to implement its key responsibilities relating to the anticipation and prevention of conflict, namely, those

specified in Article 3(b), 4(b), 6(b), and 7(a) of the AUPS Protocol (AUPSC Handbook, 2023: 105).

The CEWS was implemented in 2006 following the adoption of the Framework for the Operationalisation of the CEWS. Like the PoW, the CEWS is a preventative mechanism of the AUPSC's collective mechanism framework, and its foundation emanates from the OAU's Central Organ of the Mechanism for Conflict Prevention, Management, and Resolution (AUPSC Handbook, 2023: 17). The main objective of the CEWS is to provide the Chair of the Commission with information timeously, advise the PSC on potential conflicts and threats to peace and security on the continent, and recommend the best course of action to be undertaken (AUPSC Protocol, 2002). This entails the CEWS collecting and analysing relevant data to provide early warning on looming conflicts or the possibility of escalation and/or changes in existing crises.

The CEWS works through a monitoring and observation centre, known as the Situation Room, as well as the monitoring and observation units of the Regional Mechanism linked to the Situation Room (AUPSC Protocol, 2002). Both these systems are used to monitor information and collect data on potential, emerging, actual, and post-conflict situations on the continent, from open and privileged sources, the AU's Liaison Office and field missions, and sub-regional organisations (Gardachew, 2020: 186; AUPSC Handbook, 2023: 106). The CEWS, through the Commission, is also expected to collaborate with the UN and its agencies in order to facilitate the effective function of the EWS (AUPSC Protocol, 2002).

At the regional level, the EWS has been functional. This has been reflected in the operationalisation of the Conflict Early Warning and Response Mechanism (CEWARN) of the Intergovernmental Authority on Development (IGAD); ECOWAS Early Warning System (ECOWARN) of the Economic Community of West African States (ECOWAS); COMESA Early Warning System (COWARN) of the Common Market of Eastern and Southern Africa States (COMESA); ECCAS Early Warning System (ECCSAWARN) of the Economic Community of Central African States; and the SADC Early Warning System (SADCWARN) of the SADC (AUPSC Handbook, 2023: 107).

The CEWS, through its Situation Room, produces several reporting mechanisms. These include daily news highlights compiled from open-source information, a daily field mission report which uses data received from AU field missions, a weekly update of political and military developments, flash reports which provide immediate early-warning on crises situations, and updates on potential and present conflict situations with in-depth early warning reports for decision-makers (AUPSC Handbook, 2023: 108).

According to Gardachew (2020: 186), the CEWS at the continental and the EWS at regional level have both made significant progress in implementing their mandate of monitoring, analysing, and providing warning of potential conflicts on the continent. Gardachew (2020: 187) further purports that this has been achieved because the CEWS and EWS have ensured the use of necessary and functional infrastructure, methodology, and systems through the assistance of the UN Situation Centre and donors. As a result, the AUPSC, at its 360<sup>th</sup> session, decided to undertake a periodic review, biannually, of the state of peace and security on the continent, using horizon scanning approaches based on the updates received from the CEWS (AUPSC Handbook, 2023: 110).

Despite the significant progress of CEWS, there are several challenges to its complete success in ensuring conflict prevention on the continent. First, the uneven development of EWC at the regional level limits the system's ability to obtain information, analyse, and provide early warning of potential conflict in their respective regions and on the continent. Second, there is a gap between early warning and early response to crisis on the continent, mainly because of a lack of a political will at the AU level to take any preventative action, despite the availability of information and forewarning by the CEWS (Gardachew, 2020: 187).

#### 5.2.4 African Standby Force

During the inauguration of the AU through the adoption of the Constitutive Act, the AU failed to ensure a mechanism that would assist in carrying out its right to intervene or manage conflict on the continent. Therefore, the adoption of the AUPSC protocol provided the AU with a conflict management tool known as the ASF (Albuquerque, 2016: 16). The

ASF was established through Article 13 of the AUPSC Protocol and came into force in 2003. It was envisaged to “enable the PSC to perform its responsibilities with respect to the deployment of peace support missions and interventions pursuant to Article 4(h) and 4(j) of the Constitutive Act” (AUPSC Protocol, 2002).

According to Apuuli (2018: 93), the ASF was intended by the AUPSC Protocols to be a mechanism that provided the most hope for the provision of continental collective security, since it was envisaged to provide the AU with a continental rapid deployment capability. As noted by Dersso (2010: 6), the ASF was intended to enable the AU to deliver on its mandate of intervention in order to protect civilians in situations of grave circumstances and to provide a rapid response to manage and resolve African crisis. The need to have an ASF emanated from the failure of the UN to effectively respond to the Rwanda genocide of 1994, given that 19 countries that had pledged to have standby troops for the UN Assistance Mission in Rwanda (UNAMIR) failed to deploy for the mission (Apuuli, 2018: 165). Article 13(3) of the PSC Protocol mandates that the ASF should provide observation and monitoring missions; other types of peace support missions; interventions in member states; preventative deployment; peace building, which is inclusive of the post-conflict disarmament and demobilisation; humanitarian assistance; and other functions mandated by the AUPSC or the AU Assembly (AUPSC Protocol, 2002).

The ASF is composed of a standby multidisciplinary contingency, from the five regions of the AU called the Regional Support Forces (RSF), which comprises of 25 000 military, police and civilian component (Tchie & Ani, 2022: 5). These includes the Central African Standby Force, East African Standby Force, North African Regional Capability, Southern Africa Standby Force, and the ECOWAS Standby Force (Tchie & Ani, 2022; AUPSC Handbook, 2023). The ASF practices the ‘non-resident in base’ approach, where the RSFs are based in their country of origin and should be ready for rapid deployment at appropriate notice by either the AU or the UN (AUPSC Protocol, 2002). Although the RSF was intended to deploy outside their respective regions, the current deployment of the RSF is exclusively limited to deployment within the jurisdiction of their respective RECs (AUPSC Handbook, 2023).

Similarly, Article 43 of the UN Charter calls on member states to avail armed forces and other items necessary for use by the UNSC to maintain peace and security (UN Charter, 1963). Despite the request by the Charter, such forces are not provided to the UNSC on a permanent basis but rather on an ad hoc basis, hence, like the AUPSC, this results in the UNSC being dependent on the political will of member states (Allain, 2003: 243)

It is important to note that the AUPSC Protocol is silent on the need for the ASF to obtain authorisation from the UNSC prior to its deployment or intervention in fulfilling its obligation to prevent or maintain peace and security responsibilities. Instead, Article 13(5) of the AUPSC Protocol states that any mission of the ASF and details of its modus operandi shall be considered and approved by the AUPSC upon recommendation of the Commission (AUPSC Protocol, 2002). Despite this, Article 13(4) notes that the ASF, in undertaking its functions, “shall, where appropriate, cooperate with the UN and its Agencies, other relevant international organisations and regional organisations, as well as with national authorities and NGOs” (AUPSC Protocol, 2002).

To guide the operationalisation and implementation of the ASF, a Policy Framework for the Establishment of the ASF and Military Staff Committee, was adopted by the AU Assembly in May 2003. The Policy Framework outlined six conflict scenarios, where the ASF is mandated to deploy.

**Table 5.3: Conflict scenarios for ASF deployment**

<b>Scenario</b>	<b>Description</b>	<b>Deployment Timelines</b>
1	AU/regional Military advice to a political mission	30 days
2	AU/Regional observer mission co-deployed with UN mission	30 days
3	Stand-alone AU/Regional observer mission	30 days
4	AU/Regional peacekeeping force for Chapter VI and preventative deployment mission	90 days

5	AU peacekeeping for complex multidimensional PK mission-low level spoilers	90 days
6	AU intervention e.g. genocide situations where international community does not act promptly	90 days

ASF Policy Framework (2003)

The development and operationalisation of the ASF was intended to be achieved through a three-phase implementation process. The first phase which was adopted in 2005, from the period of June 2006 to March 2008, was intended to develop the capacity to manage scenario 1 to 3. The second phase, which was aimed at developing the capability to manage the remaining scenarios, was adopted in April 2008, from the period of April 2008 to December 2010. The third phase, which was adopted in 2010, which was aimed at seeing the full operationalisation of the ASF, was only concluded at the 14<sup>th</sup> Extraordinary Session of the AU Assembly on Silencing the Guns in Africa on 6 December 2020, which declared the ASF fully operational (AUPSC Handbook, 2023: 125).

The Policy Framework also calls for the establishment of a Rapid Deployment Capability (RDC), in order to respond to situations of grave circumstances as indicated by Scenario 6 (AU Policy Framework for establishment of ASF, 2003). The RDC is designed to be a part of all five regional standby forces and should consist of units that can be deployed across the continent within 14 days, unlike the ASF, which has a deployment timeframe of 30 days (Tchie & Ani, 2022: 10). According to Muiruri (2008: 209), the deployment of the RDC in Scenario 6 permits the AU to intervene in a member state, without necessarily gaining consent from the said country nor without prior authorisation from the UNSC. This is supported by Article 13(3)(c) of the AUPSC Protocol, which provides for the ASF to intervene in a member state in respect of grave circumstances (AUPSC Protocol, 2002).

Despite the RDC of the ASF being a conceptually good proposal, the framework faces significant constraints, which has impacted its full development. This is mainly because of the uneven capacities among the member states within the five regions. This led to the creation of the African Capacity for Immediate Response to Crises (ACIRC) in 2013 (Tchie & Ani, 2022: 10). Albuquerque (2016: 15) is also critical of the concept and claims that the mandate of the RDC is too ambitious, considering the resource challenges. Given

that the ASF is not an army of the AU, but is rather composed of standby forces from the five RECs, the deployment of these forces may not necessarily be available on demand, given the possibility of other national responsibility engagements. Therefore, the deployment of the ASF troops, despite the pledge by the member states, is dependent on the national security situation or political will of a member state (Albuquerque, 2016: 15). This thus provides challenges for the deployment of the ASF, especially in situations of a need for a rapid response, as members states own security needs would take precedence over that of regional interest. There is a need, therefore, to restructure the contribution of member states' troops to the ASF, in order to provide for a more permanent stand-by force, whose deployment would be under the direct authority of the AUPSC and not necessarily member states.

According to Tchie and Ani (2022: 2), despite the ASF facing several challenges, it has been operational, evidenced by its deployment by the AU through the RECs. The first deployment of the ASF was in 2017, when ECOWAS deployed to the Gambia to force Yahya Jammal to concede defeat in the elections, as well as the SADC's deployment to Lesotho in order to thwart Lesotho's military involvement in the political turmoil in the country. More recent deployment consist of SADC's mission in Mozambique (SAMIM) in 2021 and the EAC's deployment to eastern DRC in 2022, in line with ASF framework (Tchie & Ani, 2022: 2). Although regional organisations have been previously deployed through the ASF framework, the AU only formally recognised these deployments in 2020, as ASF operational deployments (Tchie & Ani, 2022: 2).

### 5.2.5 Peace Fund

In order to fund the activities of the APSA, the AU, through the adoption of Article 21(1) of the AUPSC Protocol, provides for the establishment of the AU Peace Fund (AUPSC Protocol, 2002). The Peace Fund is aimed at financing three stabilisation windows, namely, mediation, and preventive diplomacy; peace support operations and institutional capacity building; and readiness of other APSA structures (ISS PSC Report, 2024).

According to Article 21(20), the Peace Fund shall receive financial appropriations from the regular budget of the Union, including arrears of contributions and voluntary

contributions from member states and from other sources within the continent, which is inclusive of the private sector, civil society, and individuals (AUPSC Protocol, 2022). The Article further permits the Chairperson of the Commission to raise and accept voluntary funds from sources outside the continent, provided that it is in conformity with the Union's objectives and principles (AUPSC Protocol, 2022).

Historically, the Peace Fund has been neglected in the process of operationalisation of the APSA. This is mainly because states failed to finance their assessed contributions for peacekeeping. In addition, there was no reimbursement for states that had contributed contingents to the peace support operations, as prescribed by Article 21(7) of the AUPSC Protocol. However, since 2015, efforts have been made by the Union to revitalise the Fund (AUPSC Handbook, 2023: 132). First, the AU established governance and operational structures and agreed on modalities for the use of available funds. These structural changes comprise a high representative, which the AU is responsible for by ensuring political endorsements, a secretariat which executes the day-to-day operations of the fund, and the Board of Trustees responsible for providing governance, financial, and administrative oversight of the fund. Other structures include the Executive Management Committee, the Fund Manager, and an Independent Evaluation Group (AUPSC Handbook, 2023: 132).

Second, progress has been made in mobilising resources for the Fund, which was evidenced through the launch of the Innovative Mechanisms for Financing Peace on the sidelines of the mid-year AU and Regional Economic Community Coordination meeting in Accra, Ghana, on 20 July 2024. The fund was able to achieve its objective of raising US\$400 million through the mobilisation of private sector and individuals' contributions (ISS PSC Report, 2024).

The achievements reached in ensuring the good governance of the Fund has enabled private sector confidence, which will bolster the citizen driven entity that was intended by the AUs inauguration. In August 2024, the Fund team held engagements with private entities across five member states, namely, Kenya, South Africa, Egypt, Nigeria, and Cameroon, representing the regions of the AU. As a result, the Fund team was able to

garner financial commitments from over 40 stakeholders, such as Kenya Airway, Afreximbank, Development Bank of Southern Africa, and Africa Finance Corporation (AU Peace Fund Press Release, 2024, 2-3). Despite these successes, the AU still has more to achieve in securing enough funds to resolve the continent's peace and security challenges.

## 5.3 THE CONSTITUTIVE ACT AND ITS POSITION ON COLLECTIVE SECURITY

### 5.3.1 Duty to Prevent and ensure Peaceful Resolution of Conflicts

The AU's Constitutive Act introduced the foundation for the peace and security system of the AU, where its preamble proclaims its "consciousness of the fact that the scourge of conflicts in Africa constitute a major impediment to promote the socio-economic developments of the continent and of the need to promote peace, security, and stability" of the continent (AU Constitutive Act, 2002). Therefore, member states emphasised "the need to promote peace, security, and stability as a prerequisite for the implementation of the continent's development and integration agenda." Accordingly, Article 3(f) of the Constitutive Act noted the promotion of peace, security, and stability on the continent as one of the key objectives of the AU (AU Constitutive Act, 2002).

Similar to Chapter VIII of the UNSC, the Constitutive Act of the AU calls for the peaceful resolution of conflicts between member states in Article 4(e). The Article further mandates the AU Assembly, which is, according to Article 6(2), the supreme organ of the Union, to decide on appropriate means to resolve the conflicts. However, the Constitutive Act falls short of identifying what these appropriate means are. In the researcher's assessment, this can be explained by Article 4(f), which prohibits the use of force or threat amongst member states (AU Constitutive Act, 2002). Like Chapter VIII of the UN Charter, it is important for the AU to provide a definition for the term in order to avoid the same challenges of ambiguities in its interpretation and the application of the Article.

In line with Article 52 of Chapter VIII of the UN Charter, which notes the responsibility of regional arrangements as first respondents to dealing with matters relating to the

maintenance of international peace and security, the AUPSC has been mandated by several Articles in its Protocol to prevent conflicts on the continent. Article 3(b) of its Protocol stipulates that in a case where the Council fails to ‘anticipate and prevent conflicts’, the AUPSC “shall have the responsibility to undertake peace-making and peace-building functions for the resolution of conflicts” (AUPSC Protocols, 2002). Furthermore, Article 4(b) calls on the AUPSC to initiate early responses to contain crises in order to prevent them from developing into full-on conflicts. In addition, Article 7(1a) authorises the AUPSC to ‘anticipate and prevent disputes, conflicts, and policies that may lead to genocide and crimes against humanity’ (AUPSC Protocol, 2002).

The AUPSC is empowered by Article 6(b) to use “early-warning and preventative diplomacy” or Article 9(1) through ‘initiatives and actions that it deems appropriate concerning situations of potential conflict’ (AUPSC Protocol, 2002). In addition, Article 9(2) of the PSC Protocol allows the PSC, in its efforts of anticipating and preventing conflict, to act through “the collective intervention of the Council itself, through the Chairperson of the Commission and the PoW or in collaboration with Regional Mechanism” (AUPSC Protocol, 2002). In cases where conflict has ensued, the PSC shall, according to Article 6(c), ensure peacemaking, including the use of good offices, mediation, conciliation, and enquiry. Furthermore, the AUPSC has a responsibility to ensure peace building and post-conflict reconstruction.

However, the responsibility of conflict prevention does not only lie with the PSC, as the member states also have an obligation to prevent conflicts. This responsibility is reflected under Article 12(b) of the PSC Protocol, where the member states have assumed specific legal obligations to cooperate with the PSC pertaining conflict prevention by “committing themselves to facilitate early action by the Peace and Security Council and the Chairperson of the Commission based on early warning information (AUPSC Protocol, 2002).

Forti and Sing (2020: 7) note that while the AU has put in efforts to achieve a more uniform approach towards conflict management, there are divergent perspectives that have been adopted by member states, which pose a challenge to the entire process. According to

these authors, two issues inform these different approaches amongst member states. First, the extent to which the AU Commission should directly engage in specific peace and security initiatives, which has an impact on the extent to which it can be involved in conflict prevention; and second, some member states have prioritised political and security interventions that undermine the approval and oversight of both Councils (Forti & Signh, 2019: 2).

In a situation where the AUPSC is not able to prevent conflicts on the continent, the AUPSC is also mandated to undertake peaceful resolutions of conflicts. Both Article 3(b) and 7(1b) mandate the PSC to undertake peacemaking and peace building functions for the resolution of these conflicts. Furthermore, the Constitutive Act of the AU also supports the peaceful resolution of conflicts amongst member states, through appropriate means decided upon by the Assembly (AU Constitutive Act, 2002). Although the Constitutive Act falls short of mentioning what these appropriate means are, as noted above, the AUPSC Protocol, Article 8(5) stipulates that the PSC “may establish subsidiary bodies as it deems necessary for the performance of its functions”, which may include “ad-hoc committees for mediation, conciliation, or enquiry, consisting of an individual state or group of state” (AUPSC Protocol, 2002).

However, the AUPSC is not the only AU organ involved in conflict prevention and resolution. The Department of Political Affairs<sup>17</sup> has been instrumental in contributing to the emergence of a political environment, where both member states and international role-players are involved in conflict prevention and mediation. The department provides support in conflict prevention through the development and dissemination of legal and policy frameworks on governance, political, peace, and security issues, as well as through mediation and dialogue interventions (Van Nieuwkerk, 2011: 173).

However, it is evidenced that Article 7(3) and 7(4) are not necessarily being adhered to, particularly by member states who are in political transition. For example, a case in point has been the transitional agreement reached between the warring parties in Sudan and

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<sup>17</sup> It should be noted that in 2018, during the Eleventh Extraordinary Session of the AU Assembly, a decision was taken to merge the Department of Political Affairs as well as the Department of Peace and Security into one Department now referred to as the Political Affairs, Peace and Security (PAPS).

the AUPSC, to see the transfer of power from a military government to a civilian one, which did not happen and, as a result, saw the country fall into another conflict in December 2023 (AUPSC, 2019). This undermines collective security efforts on the Continent as the AUPSC finds itself not having the capacity to enforce the implementation of its decisions, which entailed the transfer of power from military to civilian rule in Sudan. However, unlike Chapter VIII of the UN Charter, and the UN Charter itself, Article 30 of the Constitutive Act provides for the suspension of a member state from all activities of the AU following an unconstitutional change of government. In the case of Sudan, the failure of the Transition Military Council to hand-over power to a civilian-led Transitional Authority resulted in the suspension of the country as a member of the AU (AUPSC, 2019).

According to Forti and Singh (2019: 4), this demonstrates a flexible and legal political tool, which offers the AUPSC comparative advantage, as well as advantage in its ability to expeditiously engage on a political crisis unlike the UNSC. Van Nieuwkerk (2011: 170) also posits that the implementation of the AU peace and security architecture has been inadequate in relation to its capacity to prevent or resolve conflicts on the continent, a case in point being the crisis in Libya. Although this may be attributed to shortcomings in the AU's peace and security architecture, Forti and Singh (2019: 5) note that the prevention of conflicts on the continent are, at times, due to the divergent perspectives between the AUPSC and the UNSC. For example, pertaining the Libyan crisis, the divergent views between the two Councils were evidenced by the disagreement over the 2011 UN Resolution 1973, which has been explained in previous chapters.

Despite efforts by both the AU and the UN to develop a joint strategy for the Libyan crisis, the political interest of UNSC member states and the un-unified position of the AUPSC member states have prevented the resolution on the situation (Fabricius, 2019). This has further been illustrated by the disagreements over the AU's proposal for a joint AU-UN Special Envoy for Libya, where the UNSC has shown no political will to see to its implementation (AUHLC Conclusion on Libya, 2019: 3). As a result, given the increasing divisions between the two Councils over the Libyan issues, the UN Secretary-General and the AU Commission Chairperson agreed for the need to have "a single roadmap for

Libya, while acknowledging the complementary roles of both organisations and regional actors” (Joint Communiqué of the Third AU-UN Annual Conference, 2019).

### 5.3.2 The AU’s Right to Intervene

The AU’s Constitutive Act, like its predecessor the OAU, supports the principle of domestic sovereignty and territorial integrity, where Article 3(b) stipulates that states have the right to defend sovereignty, territorial integrity, and independence. This is further supported by Article 4(g), which reaffirms the principle of non-interference by member states in the internal affairs of another. However, unlike the OAU, the AU’s move from the principal of non-intervention to that of non-indifference through the inclusion of Article 4(h), gives the Union the right to intervene in a member state, in respect of grave circumstances (AU Constitutive Act, 2002, AUPSC Handbook, 2023: 20).

Although the AU recognises the sovereignty of member states and respects their independence and their territorial integrity, it also acknowledges its responsibility to intervene in an event of internal conflict within a member state. The inclusion of Article 4(h) in the Constitutive Act marks a paradigmatic shift in the AU’s role in the maintenance of peace and security on the continent. This is because this Article, as well as other Articles, which focus on human rights and sanctity of human life, constitutes the basis of the AU’s peace and security architecture (AUPSC Handbook, 2023: 2). The intervention by the AU is only permitted, provided that there are grave circumstances, which are characterised as war crimes, genocide, and crimes against humanity (AU Constitutive Act, 2002). Therefore, Muiruri (2008: 193) argues that it is “unlikely that the AU Assembly would overrule a recommendation from the AU.”

Similar to the UN Charter, the AU Constitutive Act does not provide a definition of what it means by ‘intervention’. According to Muiruri (2008: 235), given that the intervention mentioned in Article 4 of the Constitutive Act is in relation to grave circumstances listed as war crimes, crimes against humanity and genocide, therefore, a military intervention would be applicable in response to these situations. Milland (2023: 2) purports that intervention by the AU is through coercive means, which is inclusive of security and military operations and sanctions. This has been evidenced by the AU’s practice, where

the continental body has implemented sanctions against a state in circumstances where a threat to legitimate order prevailed (Muiruri, 2008: 235). The AU is often slow in providing a response to grave circumstances and, in most cases, would rather suspend a member state rather than intervene through military action. This is mainly because of financial and capacity constraints faced by the body. This, therefore, highlights the importance of activating a permanent ASF that is not reliant on member states' deployment.

The non-interference mentioned in Article 4(g) is not inclusive of the AU, as Article 4(h) gives the Union the right to intervene in a member state pursuant to a decision of the Assembly (AU Constitutive Act, 2002). According to Muiruri (2008: 238), Article 4(g) appears to be in contradiction to Article 4(h) as it does not refer to the AU's intervention as an exception. However, in the researcher's view, the two articles are not contradictory mainly because Article 4(g) refers to the non-intervention of a member state, while Article 4(h) refers to the intervention of the AU itself. Therefore, the inclusion of both articles indicates the Union's support of collective security versus unilateralism, in resolving issues of peace and security on the continent.

Unlike the UN Charter, the Constitutive Act describes what grave circumstances are, and thus not leaving the Article open to the member states' own interpretation of it. This might assist in preventing uncertainties associated with the lack of Chapter VIII's grounds for interventions by regional organisations. However, Packer and Rukare (2002: 378) note that the prerequisite of a decision by the AU Assembly prior to the Union's interventions raises the risk of inaction, given the history of the African states' reluctance to involve the Union in internal conflict to avoid possible interventions in its own country.

In addition, the Protocol on the Amendments to the Constitutive Act of the AU, adopted in February 2003, amended Article 4(h) by including the Union's right to intervene if there is "a serious threat to legitimate order to restore peace and stability in a member state upon recommendation of the Peace and Security Council" (Protocol on the Amendments to the Constitutive Act, 2003: 2). According to Ferreira-Snyman (2010: 155), the amendment of Article 4(h) provides the AU with more flexibility in deciding on situations

for intervention by including threats not only to national but regional peace and to security, which is likely to limit the states' advancing objection to non-interference in domestic affairs. Similar to the UN Charter's failure to define terms such as 'threat to peace' or 'breach of peace', the Act fails to define what constitutes a serious threat to legitimate order and how this relates to other grounds of intervention as mentioned in Article 4(h). Maluwa (2022: 13) proposes that the AUPSC, similar to the UNSC, can interpret the term in a manner that promotes the fulfilment of the organisation's purpose.

Should member states find themselves in a situation where they are unable to resolve their own internal affairs, Article 4(j) gives them the right to request intervention from the Union in order to restore peace and security (Constitutive Act, 2002). Similarly, Article 52 of Chapter VIII of the UN Charter also provides for member states to request intervention from the UNSC in situations where they are unable to resolve the dispute. However, given that Article 4(j) provides this right to member states to request the Union's intervention, the inclusion of the right of the AU to intervene in situations threatening legitimate order, gives the Union an opportunity to intervene despite an invite from the member states (Ferreira-Snyman, 2010: 155).

Packer and Rukare raise two fundamental perspectives pertaining the intervention of the Union through an Assembly decision or by request from a member state. One is that, some states which are not democratically in power are likely to seek the intervention of the AU to restore peace and security, and the second one is that, should they request such intervention, these states are often likely to use the AU's intervention to their own advantage in order to be seen as doing something legitimate, although not providing the political will to restore peace and security (Packer & Rukare, 2002: 373).

Furthermore, Article 9(1) of the PSC Protocol further empowers the intervention of the PSC, as stipulated in Article 4(h) of the constitutive Act by providing entry points and modalities for the action of the PSC. According to the Article, the PSC "shall use its discretion to effect entry, whether through collective intervention of the Council itself or through its Chairperson or the Chairperson of the Commission, the Panel of the Wise, and/or in collaboration with the Regional Mechanisms" (AUPSC Protocol, 2002). By

including this Article, the PSC provides for the assistance of other resources and capabilities within the AU, as well as through regional bodies such as SADC, ECOWAS, and IGAD.

Although the PSC has referred to war crimes or crimes against humanity in its outcome documents, the Council did not directly use Article 4(h) and this was reflected, for example, in the report of the AU Commission of Inquiry on South Sudan established by the PSC. In addition, since the establishment of the PSC, it has explicitly invoked Article 4(h) only once pertaining the crisis in Burundi in 2015. However, this decision was not implemented due to the lack of endorsement at the level of the PSC Heads of State and Government and by the AU Assembly (AUPSC Handbook, 2023: 20).

Although Chapter VIII of the UN Charter does not speak to possible measures that could be used by member states, not involving the use of force, Chapter VII Article 41 does, which is similar to Article 23(2) of the Constitutive Act. According to Article 23(2), “any member states that fails to comply with the decision and policies of the Union may be subjected to other sanctions such as the denial of transport and communication links with other member states, and other measures of a political and economic nature to be determined by the Assembly (Constitutive Act, 2002).

### 5.3.3 The Prohibition of the Use of Force

As mentioned earlier, Article 4(f) of the Constitutive Act prohibits the use of force or threat of force amongst member states of the Union (Constitutive Act, 2002). By adhering to the prohibition of the use of force, member states would support the continental body’s ambitions to seek to promote peace, security, and stability on the continent as stipulated by Article 3(f) of the Constitutive Act. In so doing, member states would be encouraging international cooperation as they adhere to the Charter of the UN and Universal Declaration of Human Rights (Constitutive Act, 2002: Article 3(e)).

Unlike the UN Charter, the Constitutive Act does not provide exceptions in the prohibition of the use of force. According to Muiruri (2008: 239), this could be viewed as an emphasis on the AU’s role as a continental body to collectively act in “self-defense on behalf of a

victim state” pertaining situations of grave circumstances. The AU’s choice of intervention is dependent on the nature of the threat to peace and security on the continent (Sylistier, 2022: 93). As per the collective security framework of the AU, the continental body is mandated to use force based on four scenarios. The first scenario is pursuant to a decision of the AU Assembly due to grave circumstances which is inclusive of genocide, war crimes, and crimes against humanity (Constitutive Act, 2002: Article 4(h)). The second scenario is following a request a member state in order to restore peace and security (Constitutive Act, 2002: Article 4(j)). The third scenario is in a situation which poses a serious threat to the legitimate order to restore peace and stability to the member state upon recommendation of the AUPSC (AU Amendment Protocol, 2002). The fourth situation is through the deployment of peace support missions (AUPSC Protocol, 2002).

Each form of intervention has its own nature and scope. In a situation where the intervention of the AU is without consent of a member state, the intervention is often in response to genocide, war crimes, and crimes against humanity. Furthermore, intervention where the AU is responding to a request by a member state may be to protect both civilians and state security. Last, intervention using peace support missions may be to provide human and state security, depending on the extent of a particular mandate (Sylistier, 2022: 92-93).

The decision to intervene in the fulfillment of collective security on the continent is made either by the AU Assembly or through recommendations of the AUPSC. The decisions of the AU Assembly are twofold, namely, on its own initiative as stipulated by Article 4(h) of the Constitutive Act, or at the request of a member state as indicated by Article 4(j) of the Constitutive Act. To carry out its mandate on the use of force, the AU uses its APSA mechanism, especially the ASF whose mandate, as mentioned above, is to ensure the rapid deployment and intervention of peace support missions decided by the AUPSC or interventions authorised by the AU Assembly (AUPSC Protocol, 2002).

Ani (2016: 5) notes that despite the AU Constitutive Act permitting the continental body to intervene, the AU is yet to invoke Article 4(h) to launch a military intervention against a member state, which has been evidenced in the case of Libya in 2011, where the AU was

against the military intervention of NATO as it sought to find a political solution. Instead, the AU has rather preferred to intervene with the consent of a member state as evidenced in some of its missions in Somalia, Burundi, and Sudan, to name a few (Ani, 2016: 5).

Given all these requirements, Syllister notes that the AU and its member states have departed from the normative framework. This is because the AU and its member states have knowingly ignored the requirements on the use of force as well as the mandatory pre-condition to obtain authorisation from the UNSC prior to the use of force as stipulated in Chapter VIII of the UN Charter (Syllister, 2002: 95). This has been justified by the urgent need to contain domestic conflicts, where circumstances justify the need for military intervention “while awaiting UNSC authorisation which, in some instances, reformulates UNSC primacy and the principle of global security system governance” (Sous, 2017: 521). A case in point is the 1990 intervention by ECOWAS in Liberia in response of the civil war in the country, where 5 000 troops were deployed to the country without authorisation on the UNSC (Allain, 2003: 259). Therefore, while the AU's approach can sometimes be seen as contradictory to Chapter VIII requirements, this position is also grounded in the AU's responsibility to maintain regional stability, posing a legal and ethical challenge that reflects the tension between sovereignty, regional autonomy, and international legal obligation.

The AUPSC has noted the challenges pertaining regional actions as per the requirements of Chapter VIII. On the one side is the application of Chapter VIII without undermining the role of the UNSC, while on the other, is to not undermine AU's efforts in developing its own capacity to provide an acceptable response to the peace and security challenges on the continent (AUPSC, 2015).

#### 5.3.4 Acknowledgment of the role of the UNSC

As has previously been mentioned, the AU and the UN acknowledge each other's strategic importance and comparative advantage. The AU, through Article 3(f) of the Constitutive Act, encourages international cooperation by considering the Charter of the UN and the Universal Declaration on Human Rights. In addition, it is in the AU Peace and Security Protocol, where the relationship between the UN and the AU is outlined. Article

7(k) of the PSC Protocol calls on the AUPSC to “promote and develop a strong partnership of peace and security between the Union and the UN and its agencies, as well as with other relevant international organisations” (AUPSC Protocol, 2002).

To strengthen the cooperation and relationship between the UNSC and AUPSC, Article 17 provides more details of how this relationship should pen out. Article 17(1) states that the AUPSC shall, in fulfilment of its mandate in the promotion and maintenance of peace and security on the continent, cooperate and work closely with the UNSC and other relevant UN agencies in the promotion of peace and security in Africa. In addition, the Article also notes that the UNSC has the primary responsibility for the maintenance of international peace and security (AUPSC Protocol, 2002).

In line with Article 17(1), the AUPSC has established a working strategic relationship with the UNSC, which allows both bodies to develop policy coherence and operational coordination, including a framework for burden-sharing, while ensuring the maintenance of peace and security on the continent (AUPSC Handbook, 2023: 217). In 2007, the PSC and the UNSC institutionalised and regularised the annual joint consultative meetings, which rotate between New York and Addis Ababa. In addition, since 2016, both Councils have held informal joint seminars to consult on thematic issues ahead of the formal annual consultations. However, the implementation of joint commitments remains a challenge, particularly with the UNSC, as the organisation of joint field missions in Africa between the AUPSC and the UNSC are yet to be undertaken largely because of lack of joint modalities to regulate such undertakings (AUPSC Handbook, 2023: 217).

In keeping with Chapter VIII of the UN Charter, on the role of regional organisations in the maintenance of international peace and security, Article 17(3) states that the AUPSC and the Chairperson of the Commission shall maintain close and continued cooperation with the UNSC, Secretary-General, and its member states by holding periodic meetings and regular consultations pertaining peace, security, and stability on the continent. Furthermore, the AU-UN relationship has also been strengthened by the AU Permanent Observer Mission to the UN, which is based in New York, respectively so is the UN Office

to the AU, which was established by UN General Assembly Resolution 64/288 in 2010 and is based in Addis Ababa (AUPSC Handbook, 2023: 216).

Given the above provision, the AU and the UN use their different fora to discuss pertinent African and global issues and, if possible, take a common position to mobilise regional and international support for a cause. One of the avenues in which the two Councils have implemented in relation to Article 17(3) is at the secretariat level, where a joint framework of partnership was signed which established structures to manage their partnership (AUPSC Handbook, 2023: 217).

The cooperation at the secretariat is hierarchical in that the partnership structures consist of various components. Since 2008, annual desk-to-desk meetings have been held, which bring together experts from both organisations' departments on conflict prevention, management, and resolution. Political issues from the desk-to-desk meetings are then referred to the Joint Task Force, which was launched in 2010, which meets bi-annually on the sidelines of the AU Summit and UN General Assembly. However, issues that require the highest political decisions are referred to the Annual Conference, which convenes at the level of the AU Commission Chairperson and the UN Secretary-General (AUPSC Handbook, 2023: 218)

In addition, the AU, as indicated in Article 17(2), shall, if necessary, call upon the UN to provide financial, logistical, and military support for the AU's activities in the promotion and maintenance of peace, security, and stability on the African continent (AUPSC Protocol, 2002). One of the areas in which the AUPSC has sought assistance from the UNSC is through Partnership peacekeeping, where both Councils pursue a process for developing a model of burden sharing be it through financial, logistical and military assistance (AUPSC Handbook, 2023: 217). The UN-AU Joint Framework for Enhanced Partnership in Peace and Security allows both organisations to have continuous partnership review while enhancing the predictability, sustainability, and flexibility of financing AU-led peace support operations in order to prevent, respond and mediate conflict and sustainable peace (AUPSC Handbook, 2023: 219).

Although the AU's Constitutive Act gives the AU the right to intervene in order to maintain peace and security, Article 53 of the UN Charter provides limitations to its intervention in that it obligates the AU to obtain authorisation from the UNSC should enforcement action be taken. Ferreira-Snyman indicates that regional organisations often do not wait for the UNSC's authorization, as the UNSC has, in some instances, not fulfilled or delayed its obligation in the maintenance of peace and security, often at the expense of the African continent (Ferreira-Snyman, 2010: 160). Ferreira-Snyman (2010: 161) further argues that the lack of a provision in the Constitutive Act on the obligation stipulated in Article 54 of the UN Charter for regional organisations to fully inform the UNSC of enforcement activities undertaken suggests that the AU does not provide or consider its duty to report to the UNSC.

Despite this, the PSC Protocols, Article 8(10c), does provide for "regional mechanism, international organisations or civil society involved and/or interested in a conflict or a situation under consideration by the PSC may be invited to participate, without the right to vote, in the discussion relating to that conflict or situation" (AUPSC Protocol, 2002). The inclusion of this Article clearly provides an opportunity for the UNSC to be kept informed on a conflict situation, albeit not as a method of reporting but rather as a means to discharge its responsibilities.

As has been highlighted, the AU's Constitutive Act and the PSC Protocol allow for a working relationship between the AU and the UN. Despite this, challenges exist in this interdependent relationship. First, the relationship between the two is unequal, especially pertaining the power and authority that each Council holds, the resources available to each, as well as the political status (Forti & Singh, 2019: 3). This is reflected in the AU's increasing political legitimacy and positioning itself as a driver of the continent's peace and security agenda, while the UNSC protects its mandate as the primary custodian of maintaining international peace and security. In its Ezulwini Consensus, the AU states that "it is convinced that Africa is now in a position to influence the proposed UN reforms by maintaining her unity of purpose... Africa's goal is to be full represented in all decisions of the UN, particularly in the UNSC" (Ezulwini Consensus, 2005: 9). Second, the divergent political and economic interests of their respective member states and the different

working methods and mandates of the two Councils contribute to the limitations in reaching agreement on conflict prevention and mediation (Forti & Singh, 2019: 3).

## 5.4 A REFLECTION OF THE AU'S RESPONSE

### 5.4.1 The Libyan Crisis

The AU's role in, and response to the Libyan crisis in 2011 has raised questions in the confidence of the continental body's ability to implement collective security. The AUPSC's initial response, following its meeting on 23 February 2011, was not to invoke Article 4(h), which would allow intervention on humanitarian grounds despite the situation providing justification for the AU to do so (Abass, 2014; Maluwa, 2022; Africa & Pretorius, 2012). As the continental body responsible for peace and security on the continent, the AU, through the AUPSC, first condemned the violence against civilians and urged the Libyan government to adhere to its responsibility to protect civilians and desist from the disproportional use of force (AUPSC Communique of the 261st meeting, 2011).

Abass (2014: 128) assessed that the Libyan government had not committed, at that period, any of the crimes listed in Article 4(h), hence it was for the same reason that the AU could not invoke intervention as per Article 4(h). Furthermore, given that the UNSC had not decided that the Actions of Muammar Gaddafi's government amounted to any of the crimes listed in Article 4(h), the AU acknowledged its obligation to seek UNSC authorisation before invoking its right to intervene, as prescribed by Article 4(h) of the Constitutive Act (Maluwa, 2022: 16).

Despite the AU's call, the Libyan government continued with violent attacks, which forced the AUPSC to establish an ad hoc High-Level committee mandated to seek a diplomatic solution to the conflict (Ani, 2016: 16). The AU, through the committee, submitted a proposal for a framework of agreement on a political solution to the crisis. This was in line with Chapter VIII, Article 54(2), which calls on regional organisations to use all efforts to achieve pacific settlement of local disputes. Furthermore, the AU's actions were in line with Article 4(e), which calls for the peaceful resolution of conflicts through appropriate means, as well as Article 4(f), which prohibits the use of force (AU Constitutive Act, 2002).

Regardless of its efforts, the AU's proposal, received little international support but was instead accused of being biased and divided in making any decisive resolution, given Muammar Gaddafi's influential role within the AU (Abass, 2014; Apuuli, 2018; Perry, 2011). As a result, the UNSC adopted Resolution 1970 on 26 February 2011, which called for an arms embargo and targeted sanctions on Gaddafi and his allies (UNSC Resolution 1970). Less than 15 days later, the UNSC adopted Resolution 1973, which established a no-fly zone over Libya under the responsibility to protect and authorised UN member, stated to "take all necessary measures to protect civilians and civilian populated areas under threat" (UNSC Resolution 1973).

The passing and implementation of Resolution 1973 authorising NATO's intervention in Libya in 2011 reflects some of the challenges between the UNSC and the AU in implementing collective security. This is reflected by the P3's disregard of the AU's efforts to mediate amongst the Libyan authorities in order to secure democratic transition, a position which diverges from NATO's implied involvement in the implementation of Resolution 1973 (Africa & Pretorius, 2012: 411). Furthermore, the UNSC failed to recognise the AU as a significant actor in the region, which resulted in the marginalisation of the AU (Ani, 2016: 17). However, Maluwa (2022: 83) disagrees with this notion, as he contends that the AUPSC had relinquished its primary responsibility to the League of Arab States (LAS) which, according to Resolution 1973, permitted the LAS, given its geographical proximity to the crisis, to take the lead in coordinating with the UNSC.

Although the UNSC's resolution disregarded AU efforts, the AU also has its own shortcomings, given that it struggled to implement a coherent and effective response to the Libyan crisis, as it had to balance Resolution 1973, as well as the decisions of the AU. This was reflected in the A3 not having consensus and guidance from Addis Ababa on what position to take (Africa & Pretorius, 2012: 412).

According to Maluwa, regardless of the AU having collective security frameworks, its efforts to resolve the crisis in Libya were bound to fail (Maluwa, 2022: 87). This position was supported by De Waal who highlights that this was because the AU had failed to

persuade the Libyan warring parties to accept its mediation efforts, as well as the political framework (De Waal, 2013: 397). Furthermore, divisions within the AU, especially between SA and Nigeria, exacerbated the already fragile political alliances. Lastly, these divisions within the AU weakened the continental body's negotiation position with other external role-players, especially the P3 (De Waal, 2013: 397).

The Libya crisis and the response from the international community exposed the limitations of the AU's collective security framework, given that the continental body could not unilaterally invoke its policy on intervention given grave circumstances, without bypassing UNSC authority. Furthermore, the crisis revealed the limits of collaboration between the AU and the UNSC, despite Chapter VIII providing that the regional organisations have primacy in dealing with matters relating to the maintenance of peace and security.

#### 5.4.2 The Côte D'Ivoire Crisis

The 31 October 2010, much awaited and repeatedly extended presidential election held in Côte d'Ivoire, brought with it an uncertainty for the country, that was not envisioned by the Ivorian population as well as the international community at large (Apuuli, 2012: 137). The political stand-off between Laurent Gbagbo and Alassane Ouattara over the presidential results created a political division within the country which led to worsening violence (Kode, 2016: 18).

The role played by the AU, along with ECOWAS, during the Côte d'Ivoire 2010-2011 crisis faced major challenges, namely the i) the terms of design of formulas for the type of intervention and mediation to be adopted; ii) the complexities of the domestic situation due to the deteriorating civil security and the willingness of the warring parties involvement in mediation efforts; and iii) the ability of the AU to maintain pan-African ideological unity versus the ongoing conflict in the country (Ramis, 2011).

As mandate by Article 52 of the UN Charter, to peacefully settle disputes, ECOWAS announced in December 2010, its recognition of Ouattara as the president and as a means to put pressure on Gbagbo to resign, suspended Côte d'Ivoire. In solidarity with

ECOWAS, the AUPSC also suspended Côte d'Ivoire's membership from the AU. Furthermore, the AU and ECOWAS engaged in several mediation efforts to try resolve the situation, by sponsoring several diplomatic delegations with the aim of diffusing tensions and finding a peaceful resolution to the ongoing instability (Apuuli, 2012: 142; Cook, 2011: 13).

In response, the UNSC endorsed the AU and ECOWAS positions, and officially recognised Ouattara as the president-elect (Kode, 2016: 18; Cook, 2011: 12). The UNSC's decision was in line with Article 52(1) which, as previously mentioned, states that nothing in the present Charter precludes the existence of regional organisations in trying to maintain peace and security. While the use of mediation by ECOWAS, the AU and the UN to force Gbagbo to cede power, yielded no success, the use of sanctions and military interventions remained the only viable solution. The UNSC adopted Resolution 1946, which renewed an arms embargo on Côte d'Ivoire and targeted sanctions against individuals obstructing the peace process. This Resolution was strongly supported by both ECOWAS and the AU (Apuuli, 2012: 142; Cook, 2011: 14).

Given the deteriorating security situation in the country, both ECOWAS and the AU were obliged by the AU's non-indifference policy, as stipulated in Article 4(h)(j) of the Constitutive Act, to intervene in a Côte d'Ivoire in order to reinstate peace and security (Kode, 2016: 19). Following several meeting of ECOWAS military Chiefs in December 2010 and January 2011, ECOWAS considered options available to forcefully remove Gbagbo however such military action faced challenges due to a lack of political will and support from member states. In addition, ECOWAS' military intervention considerations were not necessarily accepted by the UNSC, this was mainly because ECOWAS had not received prior authorization from the UNSC as stipulated in Article 53 of the UN Charter (Apuuli, 2012: 143).

With no political resolution in place, ECOWAS, through the support of the AU requested the UN to strengthen the United Nations Operation in Côte d'Ivoire (UNOCI) and take necessary action to secure peace and stability in the country. The UNSC therefore adopted Resolution 1975 authorising UNOCI to protect civilians. After exhausting all

political mediation efforts, the UNOCI, French military and FRCI engaged in a military campaign on 32 March 2011, against pro-Gbagbo's militia. The military campaign, which lasted a few days resulted in the arrest of Gbagbo on 11 April 2011, marking an end to the country's post-election crisis (Apuuli, 2012: 146).

The case of Côte d'Ivoire post-election crisis and the involvement of sub-regional, regional and international peace and security institutions best illustrates the implementation of subsidiarity in ensuring collective security. Although the AU, claimed the success in the resolution of the crisis, it was the role of ECOWAS that made a significant impact in resolving the crisis.

## 5.5 CONCLUSION

The move from the OAU to the AU has been progressive for the continent in that the AU's collective security frameworks have capacitated the continent in to have a more constructive role in preventing and managing peace and security on the continent. It is evident from the Chapter that the APSA is still an evolving framework, which has remained in a continuous change between ambitious institutionalism and pragmatic compromise (Milland, 2023: 2).

Having assessed the collective security frameworks of the AU, it is evident that both the constitutive Act and the Protocol establish that the AUPSC is, to some extent, aligned to Chapter VIII of the UN Charter. In this respect, both the UN and the AU note the importance of regional organisations, in this respect, the AU, as having the responsibility to peacefully settle disputes on the continent.

The AUPSC and UNSC partnership has grappled with the issue of aligning their working methods given their respective mandates, powers, and responsibilities. A challenge between the Chapter VIII and the Constitutive Act identified from this Chapter concerns the AU's use of force as a means of intervention to resolve grave circumstances in a member state. It is assessed that the right of the AU to intervene is compatible with the UN Charter. However, any enforcement action by the AU without UNSC authorisation

would be illegal, despite its legitimacy under Article 4(h). As has been stated above, Article 4(h) of the Constitutive Act allows the AU to intervene in a member state. However, it does not subordinate itself to UNSC authorisation prior to intervention. This thus goes against what Article 53 of the UN Charter requires from regional organisations.

Therefore, the shortcomings that have been witnessed by the AU in managing peace and security on the continent is not because of the absence of collective security frameworks but rather the application of these frameworks. Furthermore, the application of the frameworks are limited by (i) the marginal resource capacity and influence of the AU; (ii) the authority of the UNSC over the AU's decisions despite the UN Charter and the Constitutive Act supporting the AU's primacy in resolving conflicts on the continent as was evidenced in the Libyan crisis; and (iii) the often divergent views adopted by the AU and the UNSC on issues pertaining peace and security on the continent, which influences their collective security partnership.

## **CHAPTER SIX**

### **DATA ANALYSIS AND INTERPRETATION**

#### **6.1 INTRODUCTION**

Having assessed both Chapter VIII of the UN Charter and the AU's Constitutive Act, this chapter discusses and provides an analysis of the key findings of the main research question posed by this study, which was, 'To what extent is Chapter VIII of the UN Charter and the AU Constitutive Act compatible or competitive in the implementation of collective security in African peace operations?' In responding to this question, the study has been able to determine whether the two frameworks permit both the AU and the UN to resolve the challenges of the present international system.

The study's main research question was raised mainly because regional organisations have, since the end of the Cold War, taken on a more active role in the maintenance of international peace and security. In addition, many scholars (Apuuli, 2018; Walter 2012; Williams & Boutellis, 2014) have studied the successes and failures of activities undertaken, such as peacekeeping, peacemaking and peace building operations by both the AU and the UN, without analysing the mechanisms and frameworks used by the two organisations in collective security. Furthermore, the changing character of security threats and widespread economic challenges, especially in Africa, have become more complex and require an enhanced partnership between the UN and the AU.

The main research question was cross-examined by addressing the following subsidiary questions:

- i) What is the role of regional organisations as outlined in Chapter VIII and the implications of it on implementing collective security?
- ii) What are the similarities and differences between the collective security frameworks adopted by both the AU and the UN?
- iii) To what extent does the AUPSC and UNSC cooperation impact on the successes or failures of collective security on the African continent?
- iv) What type of reform is needed for Chapter VIII of the UN Charter to align to the changing geo-strategic dynamics?

- v) What are the implications of ambiguities and gaps in the interpretation of the collective security frameworks as adopted by both the AU and the UN?

The main and sub-questions were used to structure the study, by determining which literature to use and the different themes that were applicable to the study. Furthermore, all questions were used to determine which data is relevant. To gain more insight on the literature used in the study, elite semi-structured interviews were conducted with eight (8) officials from the South African DIRCO, as well as with scholars and experts within the domain of peace and security (see Annexure D). Given that this study is qualitative in nature, thematic data analysis was used to analyse the responses of the interviewees.

Thematic analysis is used to systematically organise and analyse data by searching for and identifying the themes that can best reflect the narrative from the data set available (Dawadi, 2020: 62). To achieve the best result, thematic analysis involves the reading, re-reading, and analysing data systematically (Dawadi, 2020). The use of the thematic analysis technique was to allow the arrangement of the data collected into different themes that were common throughout the semi-structured interviews.

## 6.2 DATA ANALYSIS

This section provides an analysis of the interviewees' responses based on the themes identified in response to the subsidiary questions of the study.

### 6.2.1 Question 1: What is the role of regional organisations as outlined in Chapter VIII and the implications of it on implementing collective security?

The participants in this study discussed the role of regional organisations, particularly the AU in addressing peace and security issues on the continent as outlined by Chapter VIII. There was a strong focus on the challenges which these organisations face in relation to the UN, especially regarding the constraints imposed by the UN Charter. Many participants expressed frustration over the limitations that regional bodies encounter due to the UNSC's mandate, which they believe obstructs local autonomy in managing regional conflicts. Others highlighted the benefits of cooperation with the UN, noting the structured mechanisms for collaboration, even if imperfect. These themes reveal a

tension between the desire for regional self-governance and the reality of international regulations that restrict independent action. The interpretation and discussion of the findings on the role of regional organisations are presented according to the following themes which emerged from the findings:

1. Cooperation and subsidiarity
2. Policy influence and agenda setting
3. Regional and international frameworks

### **6.2.1.1 Theme 1.1: Cooperation and subsidiarity**

The principle of subsidiarity has an influence on the operations of regional organisations, as it dictates that issues are first addressed at the most immediate, local level before escalating to larger organisations like the AU or the UN. This is a hierarchical method that prioritises localised responses, while also establishing pathways for larger interventions when necessary. Participant 1 clearly articulates this layered stance, noting how the SADC initially took charge of the conflict in Mozambique. The participant recognises it as a "SADC baby" before escalating it to higher authorities as the situation worsened. They state that *"...if there is a conflict... we've seen the deployment of SADC troops in, into Mozambique... but then if the situation gets worse then it's escalated to the continent... and then it goes to the UN."* This response reveals a pragmatic posture where regional organisations like the SADC address crises locally until the gravity or complexity of the situation necessitates external intervention.

However, while subsidiarity provides a framework for localised action, the cooperation required between regional bodies to manage these conflicts effectively remains inconsistent. Participant 3 highlights this inconsistency within regional organisations, stressing that certain issues may not reach the agenda or warrant formal reporting unless deemed essential by the regional body itself. According to the participant,

*"It is the inconsistency at the level of the regional bodies themselves...something has to be on their agenda before it is considered."*

This implies that the effectiveness of subsidiarity hinges on a hierarchy of responsibility as well as on the consistent prioritisation and accountability of regional organisations.

The need for regional organisations to act as "*primary sources*" of intervention is a point of contention, particularly regarding their capacity to manage conflicts without relying on higher authorities. Participant 4's perspective introduces a degree of scepticism, as they note that,

*"Yes, we say there is primacy of regional organisations. And all of that. But... can they keep the peace, you know."*

This suggests that there is an underlying tension between the principle of subsidiarity and the reality of capacity limitations. While regional organisations may be well-positioned geographically and culturally to understand local issues, the actual capability to maintain long-term peace and security remains questionable, hence there may be dependence on larger bodies such as the UN.

The relationship between regional organisations and the UNSC further exemplifies the composite web of cooperation required to ensure peace and security. Participant 5 reflects on the mandate of the UNSC as the ultimate authority for international peace, regardless of regional prerogatives. This mandate reveals the interconnectedness of regional and international bodies, as regional organisations must still engage with and seek authorisation from the UNSC when addressing conflicts within their regions. Participant 5 reported on the flexibility that Chapter VIII of the UN Charter offers to these organisations which enables them to "*consult and talk to one another and partner with one another*" in a way that respects the local autonomy and international oversight. This illustrates a mutual benefit, as it allows regions to address specific issues autonomously while still benefiting from the UN's overarching mandate, thereby buttressing a cooperative structure that blends localised focus with global support.

However, these findings have implications which centre on the balance between regional autonomy and international support in addressing security challenges effectively within Africa. The principle of subsidiarity, as practised by regional organisations within Africa,

reveal strengths and limitations, and it creates a valuable space for regional entities to lead responses to local conflicts – a structure that enables relevance, cultural sensitivity, and regional ownership of interventions. However, the findings also reveal noteworthy challenges, such as the lack of consistent prioritisation by regional bodies and the limitations in sustaining peace without recourse to the UN. This suggests that while subsidiarity offers a framework for action, its effectiveness is closely tied to the operational capacity of regional bodies and their willingness to engage with international partners.

#### **6.2.1.2 Theme 1.2: Policy influence and agenda setting**

Regional organisations such as the AU have a central role to play in setting the policy agenda on peace and security issues across Africa through positioning issues on regional and international platforms. The potential for regional organisations to exert significant policy influence is evident in the AU’s ambitious vision for peacekeeping. As Participant 4 emphasises, the AU aspires to make the UN “*redundant*” in African peace operations by enhancing the capabilities and self-reliance of regional organisations. This aspiration involves bolstering the AU’s peacekeeping capacity to a level where it can authorise, fund, and execute peace support operations independently, without reliance on the UN. The AU’s advancement towards this goal would strengthen regional stability and strengthen its autonomy, hence it can assume a leadership role in Africa’s peace and security agenda. However, the realisation of this vision depends on overcoming challenges related to financial sustainability and operational readiness, as regional organisations currently face substantial resource limitations compared to the UN.

The nature of the partnership between the UN and the AU further suggests that there are existing dynamics of influence and agenda setting. Participant 6 describes the UN-AU relationship as

*“The most sort of ambitious and aspirational relationship between the UN and a regional organisation.”*

This highlights the possibility of a cooperative and prosperous partnership. The UN Charter, through Chapter VIII, allows regional organisations to evolve and shape peace and security policies in ways that respect regional autonomy (Chapter VIII, Article 5).

Despite this, Participant 8 acknowledges that Chapter VIII “*doesn't make a legal distinction between the AU and the RECs... they are all regional organisations.*” This provides a flexible framework for regional entities to assume distinct roles in their areas of jurisdiction, an inclusivity that encourages policy innovation and allows regional organisations to adapt their strategies to local needs while operating under a wide international mandate. However, this flexibility also poses challenges, as the lack of clear legal distinctions can sometimes lead to overlaps in authority or policy conflicts.

The capacity of the regional organisations to position key issues on international agendas provides a powerful means to advocate for African security concerns, but inconsistencies in policy frameworks between these organisations and the UN pose challenges to cohesive action. The insights from the participants reveal the conflict between regional autonomy and international oversight, given that regional bodies strive to lead on African security matters while still being subject to the UN's ultimate authority. This suggests that while regional organisations hold valuable promise for self-determined policy influence, they remain constrained by financial dependencies and the lack of a stronger international alignment.

Furthermore, the growing trend of bilateral agreements hints at an evolving landscape in which individual states exercise intense autonomy in setting their security agendas. Although such agreements provide flexibility, they also risk fragmenting the coherence of regional policy, which could seek to undermine the collective efforts of organisations like SADC. This indicates that, for regional organisations to retain meaningful influence, they may need to find mechanisms to better integrate or regulate such bilateral arrangements.

### **6.2.1.3 Theme 1.3: Regional and international frameworks**

The interaction between regional and international frameworks is largely shaped by the UN Charter, specifically Chapter VIII, which outlines the role of regional arrangements in maintaining international peace and security. However, as Participant 1 observes, the issue extends beyond Chapter VIII. Instead, it is necessary to re-evaluate the entire UN Charter. The participant argues that the current framework dates back to the 1940s and

it does not adequately address the dynamics and contemporary security concerns faced by the AU, such as terrorism. They state that,

*“...the Charter was...written back in the 1940s... there are developments... new phenomena like your terrorism... But the Charter is silent”.*

This perceived silence points to a dire shortcoming in the current international framework which fails to consider ongoing threats that overly impact regions like Africa. For the AU to function effectively, a revised Charter that closely aligns with the realities faced by African nations thus appears necessary.

Furthermore, the legally binding nature of UNSC resolutions adds another layer of complications to the relationship between the regional and the international frameworks. P5 reported that while the AU may wish to act independently, it is ultimately bound by the decisions of the UNSC. They observe that, *“the Security Council is the only organ that has got legally binding [authority].”* This legal constraint means that regional organisations should seek approval from the UNSC to conduct peacekeeping or security interventions in order to limit the AU’s ability to act without UN authorisation. As a result, the AU’s capacity to respond to regional security crises is commonly subject to international considerations and priorities that may not always align with those of the African states. The need for UNSC approval reveals an inherent irregularity, that the current international framework restricts the AU’s agency and autonomy in dealing with its own regional challenges.

Despite these limitations, the UN Charter does provide a degree of flexibility for regional organisations to evolve, as noted by P6. The founders of the UN could not have anticipated the complicated mandates that organisations like the AU would develop, which include peace and security responsibilities that extend far beyond what was envisioned in the 1940s. P6 observes that *“the Charter... gives the space for regional organisations to evolve,”* a recognition that while the Charter may be outdated, it does not preclude the possibility for regional organisations to adapt and expand their mandates within its framework. This adaptive potential is remarkable, as it implies that regional

bodies like the AU can carve out a role within the international system that reflects their unique needs and priorities, even if the current framework imposes certain limitations.

The implications of these findings have an impact on the AU's autonomy and effectiveness in managing regional security and peacekeeping efforts. For example, the findings reveal tension between the need for an inclusive and updated global security framework and the limitations imposed by the existing UN Charter. The AU's reliance on international authorisation and funding, combined with the veto power wielded by a few powerful states, indicates that the system restricts regional autonomy.

### 6.2.2 Question 2: What are the similarities and differences between the collective security frameworks adopted by both the AU and UN?

The participants generally acknowledged that both the AU and UN frameworks have common goals of maintaining security and promoting peace and development. However, they also pointed out that the AU focuses on regional challenges and tailored solutions for Africa, while the UN takes a global viewpoint. Several participants mentioned the importance of the AU in implementing African solutions to African problems to align with the continent's vision and aspirations. The participants frequently highlighted challenges such as political dynamics, external influences, and operational limitations that impact the efficacy of both frameworks. However, they noted that the core vision of the AU remains solid. The interpretation and discussion of the findings on the similarities and differences between the collective security frameworks of the AU and UN are presented according to the following themes, which emerged from the findings:

1. Role and structure of the bodies
2. Collective security challenges
3. Influence and reform

#### 6.2.2.1 Theme 2.1: Role and structure of the bodies

The AU and UN are primarily committed to maintaining peace, but their roles and structures vary, which reflects their respective focuses on regional versus global security.

The AU is reported by Participant 5 to be committed to “*a peaceful and prosperous African continent*,” an objective that is focused on the stability and development of African nations. This is contrasted with Participant 5’s further explanation on the mandate of the UN of “*international peace and security*” across the world. This difference indicates a structural distinction that while the AU concentrates on African issues in a regional context, the UN has a universal mandate which focuses on global conflicts. This scope means that the UN’s stance may overlook the extent of regional dynamics that are central to the AU’s mission.

A noteworthy structural feature that shapes the interaction between the AU and the UN is the principle of subsidiarity. Under the APSA, which guides the AU, subsidiarity dictates that conflicts should be addressed at the most localised level possible, usually by the AU or sub-regional organisations like SADC or ECOWAS (Sousa, 2017: 519). In the same vein, Participant 2 explains that Chapter VIII of the UN Charter does indeed make provision for partnerships with regional organisations to grant the UN sufficient grounds to collaborate with regional organisations such as the AU. However, Participant 2 also points out a structural inconsistency in the UN’s treatment of regional bodies, noting that “*the UN makes no distinction between the AU and sub-regional bodies*” such as SADC or ECOWAS. This equal footing at the UN level disregards the AU’s intermediate position between the UN and its sub-regional bodies, which, according to Participant 2, has led to the AU being “*increasingly bypassed*” in global peace and security responses on the continent. This disconnect suggests a strain between the global and regional frameworks, where the UN’s generalised technique risks side-lining the AU’s regionally-informed security perspectives.

In practice, the AU’s structural design also allows it to operate flexibly and with a regional focus. Unlike the UN, which operates through a centralised UNSC the AU’s peace and security efforts are influenced by a rotating secretariat and commonly reflect the political and regional interests of its chairing states. Participant 4 observes, “*if it’s the West, then it’s West Africa*,” which alludes to the AU’s tendency to prioritise regions according to the chairing nation’s focus. While this structure provides adaptability, it can also restrict the AU’s consistency and focus, as priorities may shift with the rotation of leadership, unlike

the stable UNSC-led structure of the UN. This variability highlights a huge challenge that although the AU's structure enables it to adapt to immediate African security needs, the influence of rotating leadership can fragment focus and affect the continuity of collective security agendas on the continent.

Other participants reported on the relationship between the AU and UN structures, and pointed out the strengths and limitations, which are inherent in each framework. They highlighted the view that while the UN's global mandate usually overshadows the regional focus of the AU, the AU's customised and region-specific posture holds substantial potential for addressing Africa's unique security needs. For example, Participant 3 reported that despite the UN Charter enabling cooperation with regional bodies under Chapter VIII, its application is inconsistent, particularly when regional conflicts evolve into larger international issues. The participant also pointed out that this inconsistency can restrict the AU's ability to respond effectively, specifically when there is a lack of coordination with sub-regional organisations or when the UN does not fully acknowledge the AU's intermediary role between itself and bodies like ECOWAS and SADC. Participant 3's observations align with Participant 7's comments about the UN treating the AU and sub-regional entities similarly, which further indicates how the UN's lack of differentiation can lead to missed opportunities for a unified response to African conflicts.

Similarly, Participant 5 echoed the importance of the AU's unique mandate, noting that its vision is geared specifically toward a "*peaceful and prosperous African continent.*" The participant stressed that the AU's focus on Africa's security is necessary and appropriate, given the challenges and needs of the region. However, Participant 5 also pointed out that the UNSC's global authority, particularly its mandate for international peace and security, means that the AU's regional focus may be overshadowed when global actors become involved in African issues. This dynamic reflects the strain between the AU's continent-centred goals and the UN's main objectives, which can dilute the AU's ability to prioritise Africa's interests effectively.

Furthermore, Participant 4 added an important insight regarding the AU's leadership structure, explaining how the AU's rotating chair regularly influences its focus. According

to the participant, the priorities within the AU can shift based on the chairing nation, which can sometimes lead to an uneven approach to security challenges across different African regions. This rotation-based system allows for varied perspectives, but it also risks a lack of continuity, which can make it difficult to sustain long-term peace and security agendas. While the AU's rotating leadership can provide flexibility, it also necessitates stronger internal mechanisms to maintain consistent goals which should be independent of any particular chairperson's regional or domestic interests.

The findings on the structural misalignment carry grave implications for the effectiveness of collective security efforts on the continent. Without the recognition of the AU's intermediate position, the UN's viewpoint may inadvertently diminish the AU's influence and reduce its ability to address security concerns autonomously or in concert with sub-regional partners. For the AU to fulfil its vision of a stable and prosperous Africa, there would need to be stronger recognition within the UN of the AU's role as an intermediary body that is capable of coordinating with both the UN and sub-regional organisations. A further insight is that while the AU's flexibility in leadership and structure allows it to address African conflicts responsively, this flexibility also poses challenges for consistency and continuity. The rotating nature of the AU's secretariat, which is noted by Participant 4, can create regional biases depending on the chairing nation's priorities. This suggests that there is a need for a balanced posture within the AU's framework, where continuity in peace and security agendas is maintained despite shifts in leadership.

#### **6.2.2.2 Theme 2.2: Collective security challenges**

A recurring obstacle in the AU's stance to collective security is the challenge of balancing state sovereignty with regional security goals. Participant 3 reported on this strain, noting how "*state sovereignty and collective security... in the African context... prioritise sovereignty,*" which consequently complicates regional mechanisms for security cooperation. This increased focus on sovereignty within Africa can result in resistance from the member states when regional interventions are proposed, particularly in sensitive areas such as counterterrorism and conflict resolution. For example, Participant 3 reported "*an increase in bilateral agreements*" that reflects member states' hesitance to cede authority to regional entities, as they fear potential encroachment on their autonomy.

This sovereignty-based resistance affects the AU's ability to act decisively, hence pushing countries to pursue unilateral or bilateral solutions over collective action. These findings suggest a problematic issue in the AU's framework, that while regional unity is embraced, the realities of political independence restrict the AU's capacity to implement effective and uniform security measures.

Another collective security challenge lies in the AU's dependency on external funding which frequently shapes the organisation's objectives and actions. As Participant 3 points out,

*"We're [the AU] also relying on donor funding... from countries outside of Africa, and therefore donors... have their own requirements that need to be fulfilled".*

The reliance on external resources for security initiatives introduces competing objectives, where donor-imposed priorities may sometimes conflict with the AU's internal agenda. For instance, donor nations may impose conditions that align with their own geopolitical interests, which has the potential to dilute or redirect AU efforts and create friction between African interests and external influences. This dependency highlights a major limitation in the AU's collective security ambitions. Without a sustainable financial model that is premised in African contributions, the organisation's capacity to act autonomously remains constrained. This illustrates a key vulnerability that suggests that strengthening financial self-sufficiency is important if the AU hopes to champion African-led security solutions that are not impeded by external political agendas.

Despite these challenges, increasingly there is a strong alignment in the vision of both organisations for a peaceful and prosperous Africa. Participant 5 mentions that,

*"Many of the instruments that you get from the AU are a mirror of what you have at the UN".*

This reflects a shared vision that is engrained in foundational documents like the AU Constitutive Act and various UN Chapters, specifically Chapter VIII. This similarity points to a convergence of ideals. Both organisations envisage stability and development as inseparable from collective security. However, the gap lies in the practical realisation of

this vision, as highlighted by Participant 4, who acknowledges the presence of implementation “*challenges*,” while affirming that “*the vision is right. The spirit is right.*” This affirmation signals that, although the AU faces practical constraints, the underlying intent resonates with a global peace agenda that is shared with the UN. This convergence symbolises a potential for enhanced collaborations between the AU and UN, where shared values could lead to complementary efforts that transcend financial or operational limitations.

### **6.2.2.3 Theme 2.3: Influence and reform**

The participants reported the perceived lack of adequate African representation and participation within the UNSC, which manifests in influence and reform. Participant 3 emphasises the “*need for reforms and representation within the UNSC*,” pointing out that the long-standing demand for “*better representation and meaningful representation*” of African countries remains unresolved. This lack of representation restricts Africa’s influence in critical decisions that affect global and regional security, especially since conflicts in Africa frequently demand UNSC intervention.

Moreover, Participant 5 provides a historical context that illustrates the evolving political dynamics that affect operational complementarity. According to the participant,

*“There is now a trend... in all collective security matters, but one that has really become more pronounced over the past decade... deferring to regional efforts... [This] has become a political necessity here in New York, where long gone are the days where the P5 can make decisions about the African continent without... views from the continent”.*

This signals a shift in the power dynamic on how the UNSC is progressively acknowledging the necessity of regional voices in decision-making processes concerning Africa. Participant 5’s insights suggest that political pressures have made it clear that the UNSC cannot act unilaterally on African security issues without considerable input from the AU. This evolution is encouraging in theory, as it positions the AUPSC as a natural counterpart and a vital contributor to collective security. However, operational hurdles which have been alluded to by Participant 5, still remain substantial. Participant 5 points out 2017 as a decisive year in redefining this relationship, suggesting that quite recent

policies are a shift towards viewing the AUPSC as a legitimate partner. This is mainly because in 2017, the AU and UN signed a Memorandum of Understanding providing a framework and strengthening cooperation in support of peace-building and sustainable peace efforts in Africa (Forti & Singh, 2019: 1).

The findings suggest that while both Councils have distinct mandates, the AUPSC's position as the continental security body positions it as a natural counterpart to the UNSC, albeit with limitations in political and logistical cohesion. Achieving genuine operational complementarity will require both councils to transcend political and procedural obstacles to effectively merge their efforts. For the AUPSC and UNSC to meet collective security challenges effectively, they should align their approaches by building on their distinct strengths and respecting regional sovereignty.

Participant 4 sheds light on the political dynamics within both the AU and UN frameworks, noting that

*"The principle of collective security... [is affected by] the politics of these things... especially [among] the five [UNSC members]"*.

This observation reflects how collective security becomes entangled in the political interests of powerful states, with decisions swayed by their national agendas rather than the collective good. In the case of the AU, this political influence is also apparent, as Participant 4 mentions that AU decisions "*depend on who is the chair,*" which indicated that the AU's governance and direction can vary based on leadership. This variability influences the AU's ability to maintain consistent policies and responses to conflicts, as different leaders may have distinct priorities or political leanings. These political influences within both organisations illustrate a noteworthy flaw in the concept of collective security that reveals that even when principles are established, the decision-making process remains susceptible to individual or national biases. This insight raises questions on how truly 'collective' these security efforts are and suggests that both the UN and AU may benefit from mechanisms that promote stability and continuity in their decision-making processes.

The move towards informal coalitions as an alternative to formalised collective security frameworks also reflects the shifting attitudes towards conflict resolution. Participant 2 observes that,

*“Institutionalised responses to conflict... [are] coming to be seen as increasingly less attractive for international actors, as they pursue these ad hoc coalition-based responses” [outside the UN and AU frameworks].*

This shift indicates a waning confidence in the efficacy of established institutions to respond quickly and effectively to evolving security threats. For international actors, informal coalitions are flexible and responsive to conflict, as they can bypass the bureaucratic and political constraints that are typical of larger organisations. However, this trend poses challenges to the UN and AU frameworks, as it undercuts their authority and relevance in global security. If this reliance on external coalitions continues to grow, both organisations may struggle to maintain their roles as primary facilitators of peace and security, especially in African contexts where sub-regional bodies such as ECOWAS adopt an immediate stance.

### 6.2.3 Question 3: To what extent does the AUPSC and UNSC cooperation impact on the successes or failures of collective security on the African continent?

The participants highlighted that while there is formal cooperation between the AUPSC and UNSC, there remain significant gaps in realising effective collaboration, particularly in addressing African security issues. Many participants pointed out that the existing mechanisms, although in place, do not always translate to practical, on-the-ground coordination. The key issues raised by the participants included the importance of a developmental approach to conflict prevention, challenges in achieving true operational complementarity, and the necessity for closer partnership to promote sustainable peace. Furthermore, the participants emphasised the role of information-sharing and local insight to influence better-informed UNSC interventions on African issues. The interpretation and discussion of the findings on the extent of AUPSC and UNSC cooperation’s impact on the successes or failures of collective security are presented according to the following themes, which emerged from the findings:

1. Formal cooperation mechanisms
2. Informational influence and local insight
3. Resource sharing

### **6.2.3.1 Theme 3.1: Formal cooperation mechanisms**

The participants reported that there are formal cooperation mechanisms between the AUPSC and the UNSC that have a role in either enhancing or limiting collective security efforts in Africa. Participant 1 highlights the symbolic yet essential nature of this cooperation, pointing out that the UN Secretary-General is customarily invited to address the AU summit. This inclusion signifies that there is a mutual recognition of shared security goals that has indeed improved over time. However, Participant 1 adds that “*the UN and the AU can still do more*” to bolster this relationship, suggesting that, despite the visible progress, there remains an opportunity to deepen these formal links. This insight points to an expectation within both organisations for a unified partnership that can directly influence the success of collective security efforts on the continent.

Despite these efforts, the participants revealed the challenges experienced in realising true operational synergy. Participant 3 reported a “*discordance*” concerning the envisioned coordination on paper and the practical realities, which is thus a divide between policy and practice that impedes effective collaboration. This view is reinforced by Participant 5, who suggests that while general coordination exists, the desired close and substantive alignment is lacking. As Participant 5 puts it, “*engaging but on a superficial level*” dilutes the impact, hence mere procedural interactions do not suffice in addressing Africa’s complex security challenges. This superficial engagement has limitations on the ability of the AU and UN to mobilise swift and consistent responses in crisis situations, and it reflects the absence of a shift from formal intermittent meetings to intensive outcome-focused cooperation. The findings suggest that profound consistent collaboration, rather than occasional engagement, would bring the strategic alliance that both organisations aspire to achieve.

Excitingly, Participant 6 observes a positive trend towards this collaboration. The participant notes that there is a recent shift towards viewing the AU as a primary, rather

than secondary, partner. This shift is demonstrated by the signing of a new framework for cooperation by the UNSG and the AU Commission Chairperson, which aimed at solidifying their partnership. According to Participant 6, this framework injects “*a brand new impetus*” into their interactions and elevates the status of the AUPSC within the UNSC’s planning and decision-making processes. This move demonstrates that these organisations are now acknowledging their complementary roles and the benefits of aligning their security agendas. The implications of this strengthened partnership are profound, as a united AU-UN front could enable timely and effective responses to African security crises, with the potential to transform the landscape of collective security on the continent.

These findings have implications that while the AUPSC and UNSC are making strides towards meaningful cooperation, achieving a fully aligned partnership could greatly boost their effectiveness in maintaining collective security in Africa. The existing disconnect relating to policy and practice suggests that without outcome-driven coordination, superficial engagements may continue to fall short in addressing urgent security challenges. However, the recent commitment to an equal and formalised partnership, as indicated by new frameworks and agreements, is promising. If these efforts evolve into deeper and continuous cooperation, they could transform peace operations across the continent and allow for agile and unified responses that leverage the strengths of the AU’s regional knowledge and the UN’s global influence. This shift could steer in a new era of collective security that seeks to strengthen Africa’s capacity in managing its security affairs and reducing its reliance on external interventions.

### **6.2.3.2 Theme 3.2: Informational influence and local insight**

The participants revealed that informational influence and local insight are important through involving African perspectives directly in AUPSC and UNSC collective security efforts. The participants reported that effective decision-making in collective security requires informed input from regional stakeholders who understand the specific contexts and complexities on the ground.

Participant 2 illustrates the transformative effect of incorporating local insight by recounting an instance when the former South African President Thabo Mbeki was invited to brief the UNSC. According to the participant,

*“We invited President Mbeki... to informally brief the Council... after that meeting, there was a change in the dynamics. Somebody from Africa, telling these people who are not Africans about what is actually happening... changing the dynamic”.*

This suggests that when African leaders provide direct input, they can reshape international perspectives and offer grounded context that might otherwise be overlooked or misunderstood by non-African members. Mbeki’s briefing exemplifies the role of informational influence from African representatives in contributing to an informed understanding of regional issues, which, in turn, can prompt the UNSC to make decisions that are aligned and customised with on-the-ground realities. The positive shift in dynamics following Mbeki’s briefing reflects the potential of African insights to enhance the relevance of collective security strategies.

However, Participant 5 introduces a cautionary note regarding the challenges posed by external interference, which counteracts local efforts by empowering conflicting parties and destabilising peace processes. Participant 5 explains that,

*“The minute there is behind-the-scenes collaborations...with external interferences...it emboldens the parties...very difficult...then you get a lot of criticism against the continent”.*

This observation points out the complications of collective security in Africa, where external forces can sometimes challenge regional stability by reinforcing power dynamics that fuel conflict. P5 raises to a critical issue, that while external support can be essential, it can also complicate peace efforts if it fails to align with regional goals and may thus weaken local initiatives. This point to the relevance of respecting African insights to avoid exacerbating conflict through misaligned or overly intrusive foreign involvement.

Building on these observations, Participant 6 identifies a promising shift in the UN’s approach, noting a recent trend towards recognising the AU as a vital partner rather than a secondary contributor. Participant 6 observes that,

*“Over the past 6-7 years...a positive and deliberate shift from seeing the African Union as a secondary partner to one of very prominent engagements across all aspects of peace and security for the UN... it’s a key interlocutor.”*

The findings imply that to enhance the effectiveness of collective security efforts, the AUPSC and UNSC should prioritise the integration of African perspectives. Local insights provide an essential foundation for decisions that are contextually relevant, culturally sensitive, and likely to achieve lasting outcomes. More so, the success of AUPSC and UNSC cooperation seems to hinge on balancing external support with a strong commitment to respecting and empowering African voices. This stance buttresses the credibility and agency of African institutions and mitigates the risks of imposing solutions that may clash with local priorities. The ongoing shift towards seeing the AUPSC as a “key interlocutor” is thus a promising development, which indicates that there is the potential for a mutually beneficial partnership where African-led insights inform global security decisions.

### **6.2.3.3 Theme 3.3: Resource sharing**

The participants reported that while the AUPSC bears the primary mandate for peace and security on the continent, the scale and complexity of its responsibilities exceed its resource capacity. The participants reveal a shared view that effective resource allocation and support from the UNSC can relieve some of the AUPSC’s operational pressures and allow both councils to work effectively towards collective security.

Participant 2 reported on the necessity for strategic resource allocation. They stated that,

*“It’s important to allocate resources effectively to ensure that both organisations can address their responsibilities.”*

This puts the spotlight on the role that resource distribution plays in enabling each council to fulfil its mandate, further suggesting that without adequate support, collaborative goals may fall short. The findings illustrate that these councils bring unique strengths to their partnership, yet effective cooperation hinges on shared access to resources that empower each to operate at full capacity. Therefore, maximising the potential of AUPSC

and UNSC cooperation requires a resource sharing, to ensure that interventions are not hindered by financial or logistical limitations.

Participant 4 offers a complementary perspective, discussing the financial challenges faced by the AUPSC and the role that the UNSC could play in alleviating these pressures. They state that,

*“Understanding what is a burden to the Africans and how can the Security Council assist...especially in terms of resources.”*

This suggests the importance of recognising the resource disparity between the two councils. The participant suggests that the UNSC could serve as a support system in contributing resources to bolster African-led initiatives. This also implies that sustainable collective security requires commitment to peace as well as a willingness to address practical limitations that affect African institutions. For the AUPSC to fulfil its mandate effectively, it needs resource support that allows it to pursue long-term security objectives and manage current challenges without the constant risk of resource shortfalls.

Similarly, Participant 5 emphasises the implications of resource sharing, observing that,

*“You need a lot of political will. You need a lot of financial and time investment... resource investment into it”.*

Resource sharing is not only a financial issue; it requires a political commitment from both organisations. The participant’s comment suggests that while material resources are important, the political will to prioritise these investments and follow through is equally essential. Without dedicated financial and time resources, initiatives are likely to remain underfunded or suffer from short-term planning that cannot adequately address Africa’s complex and evolving security needs. This implies that for cooperation to be truly impactful, both councils should allocate resources and consistently prioritise these efforts within their respective agendas.

Participant 6 provides a wide context on the importance of resource sharing in the relationship between the AUPSC and the UNSC. According to the participant,

*“AU Peace and Security Council is the continental organ with the mandate... collective security on the continent... deferring to regional efforts... becoming a political necessity.”*

The participant highlights how the changing political dynamics have increasingly positioned the AUPSC as a central figure in African security matters, which point to a growing need for the UNSC to support regional leadership. This implies that resource-sharing efforts should respect the AUPSC’s leadership role and work to enhance its capabilities rather than overshadow them. As Participant 6 points out, external intervention without African input is no longer viable. Therefore, resources from the UNSC should be provided in a way that complements and amplifies African agency rather than dictating terms from outside. This is essential for building a partnership that is equitable and responsive to the AUPSC’s needs and goals.

#### 6.2.4 Question 4: What type of reform is needed for Chapter VIII of the UN Charter to align to the changing geo-strategic dynamics?

The participants’ responses indicate a recurring focus on the challenges and limitations imposed by Chapter VIII of the UN Charter in empowering regional organisations, especially the AU, to effectively fulfil their roles in peace and security. A few participants argue that ambiguities in the Charter, while sometimes allowing flexibility, commonly lead to operational inefficiencies and reliance on the UNSC. Others suggest that the existing power structures within the Security Council, notably the control exercised by the P5 nations, present a barrier to any substantive reforms that would grant regional organisations more authority. Some participants also suggested better alignment between the UN’s objectives and those of the AU, which stresses that reforms should consider the unique goals of the African nations. The interpretation and discussion of the findings on the needed reforms for Chapter VIII of the UN Charter are presented according to the following themes, which emerged from the findings:

1. Structural reform
2. Operational limitations
3. Definitional clarity
4. Alignment with AU objectives

#### 6.2.4.1 Theme 4.1: Structural reform

The findings revealed that structural reforms are part of the needed reforms for Chapter VIII of the UN Charter. As expressed by several participants, the Security Council is perceived as outdated and heavily shaped by the post-World War II power dynamics. For example, Participant 2 remarks that the Council "*reflects the global Power Distribution from the end of the Second World War.*" This points to a stagnant structure, one that fails to mirror the difficulties and shifts in global influence over the last seven decades. The sentiment around outdated power structures seems to reflect a call among the participants for a Security Council that adapts to contemporary geopolitical realities to make a strong case for a re-envisioned model that is in tandem with the diverse world that we inhabit today.

Adding to this, Participant 4 puts forward a practical perspective and proposes that revisiting Chapter VIII may be a viable entry point for reform. According to the participant, reforming the Chapter should involve drawing insights from "*recent documents*" to reshape or "*reform whatever is in the Chapter.*" This viewpoint takes into cognisance the ancient nature of the existing provisions and points to the evolving body of international protocols and doctrines that can be foundational for reshaping the Council's mandates. Participant 4's emphasis on referencing recent documentation hints at an opportunity to align the Charter's language and provisions with contemporary international law to address the emerging global challenges while preserving the Charter's foundational ideals. This suggests that structural reform is not necessarily a complete overhaul but rather an adaptive process that refreshes the existing framework.

However, the concept of structural reform is not without its challenges, as Participant 5 notes the immense difficulty in pursuing these changes due to the "*highly powered or concentrated power*" vested in the Council's permanent members. This concentration of power, with only five nations wielding substantial influence, appears to act as a barrier to reform which brings to light the entrenched reluctance among these states to "*relinquish*" or "*share*" power. Participant 5's assertion that "*you will not win that battle,*" speaks to the power dynamics that any reform effort would thus need to navigate. In essence, P5 points

to a paradox, that the very powers that possess the authority to enable reform may simultaneously resist it, given that redistributing influence could destabilise their privileged positions within the global order.

#### **6.2.4.2 Theme 4.2: Operational limitations**

The participants reported that the needed reforms for Chapter VIII of the UN Charter include addressing the existing operational limitations. Participant 3 notes that there is a “*gap between the ambitions for autonomy of the AU*” and “*their actual operating capacity*,” which is a disconnect between the AU’s envisioned role and its dependence on the UNSC for authorisation. This view suggests that there is a challenge in the operational dynamics of the UN Charter, where the AU’s vision of self-reliant peace and security measures remains constrained by bureaucratic oversight which delays or rather impedes its ability to respond swiftly to regional crises. Participant 3 implies that to empower regional bodies effectively, Chapter VIII would need reforms to reduce the dependence on Security Council authorisation and possibly create a framework where the AU can exercise a degree of autonomy in handling African security concerns.

In the same vein, Participant 4 echoes this sentiment by directly calling for a revision to the “*vision that requires authorisation from the UNSC*.” This shared frustration among the participants with the current authorisation mechanism seems to prioritise control over collaboration. Participant 4’s call for an adaptable structure points to a need for Chapter VIII to enable operational independence for regional organisations while maintaining a cooperative link to the Security Council. This dual approach – granting autonomy alongside coordination, could encourage a responsive system that recognises the advantages that regional bodies have in addressing localised issues, while still drawing on the UN’s global mandate as needed. Such reform could lead to a fluid yet contextually aware operational framework that bridges the gap between ambition and implementation for regional bodies.

Interestingly, Participant 6 indicates that while this authorisation dependency may be seen as a constraint, “*there is ambiguity...that is not actively harming continental efforts*”. Participant 6’s insight suggests that, despite the challenges presented by the UN’s

authorisation requirements, the AU and other regional bodies have adapted and are finding ways to operate within or around these constraints. This adaptability reflects the potential strength within regional bodies to work within existing frameworks, even if these frameworks are not fully supportive of their goals. However, the ambiguity mentioned by P6 may also create inconsistencies in response times and operational clarity, and may impede the AU's capacity to act decisively.

#### **6.2.4.3 Theme 4.3: Definitional clarity**

The participants reported that the necessary reforms within Chapter VIII of the UN Charter entail addressing the identified lack of definitional clarity surrounding what constitutes a "*regional arrangement or agency*." The participants highlighted this ambiguity as an obstacle to effective action under the Charter's provisions. Participant 3 suggests that "*better defining what would be considered a regional arrangement or agency*" within Articles 52, 53, and 54 could bring some level of rationality to the current framework. According to Participant 3, the vague definitions within these articles leave regional organisations with limited guidance on their operational scope and restrains their ability to take decisive action on security issues. The clarification of these definitions in Chapter VIII could empower these bodies with a clearer mandate and enable them to act independently within their regions while also maintaining regulation with UN principles.

Participant 4 reinforces the need for modernised terminology. They observed that while the Charter "*acknowledges that there are other players*," the language of the articles is "*certainly not for our times*." This reflects a common frustration with the outdated language in Chapter VIII which appears unable to accommodate the evolving nature of regional organisations in today's world. According to Participant 4, redefining terms and clarifying the roles of these "*other players*" could make the Charter somewhat relevant and to provide a structured yet modern basis for partnership between the UN and regional entities. Such a revision could serve as a foundation for effective context-sensitive peacekeeping endeavours, in which the UN and regional bodies work conjointly within a mutually recognised framework.

The need for definitional clarity extends beyond general semantics. Rather, it stretches to impact operational dynamics, as highlighted by Participant 6, that the "*broad ambiguity*" within Chapter VIII "*sometimes restrains action.*" The participant points to the interchange of politics within the Security Council and on the African continent, where the lack of precise definitions can lead to confusion or even the stifling of regional initiatives. However, Participant 6 also brings an important suggestion, while definitional clarity is necessary, reform alone may not resolve extreme political dynamics that influence regional actions. This implies that while clearer definitions can aid operational logic, they cannot entirely alleviate the influence of political interests. Nevertheless, reducing ambiguity would likely provide regional organisations with a strong foundation to assert leadership and to create "*space for the continent to take a lead*" within the global peacekeeping framework.

#### **6.2.4.3 Theme 4.4: Alignment with AU objectives**

In discussing the alignment of Chapter VIII reforms, the participants reported that the reforms should be aimed towards alignment with the objectives of the AU. The findings bring to light an absolute need for the UN Charter to resonate with the AU's contemporary ambitions, frameworks, and on-the-ground realities. The participants pointed to certain areas where there is misalignment, revealing that while the AU's vision is substantial, the existing structures within the UN Charter and AU frameworks lack the responsiveness that is required to actualise that vision. Participant 2 reported on the need to update the AU's APSA framework to account for "*tensions...within the PSC [Peace and Security Council] and among Member States.*" According to the participant, the AU and the UN could benefit from the re-evaluation of frameworks that speak to internal and external strains. Participant 2 indicates how the current APSA, in its ambition to standardise African peace and security strategies, overlooks practical challenges such as the divergent member state interests and challenges within the PSC. Therefore, aligning Chapter VIII with a revised APSA could enable seamlessness and a cooperative security mechanism between the organisations – one that directly focuses on these practical issues.

Similarly, Participant 3 echoed this by calling attention to the ambitious nature of the AU Constitutive Act. They noted that it "*needs more relevant provisions...considering actual practice,*" which raises concerns on the sync between the AU's founding ambitions and its operational reality. Although the AU Constitutive Act envisioned a vigorous and unified posture to African issues, it did not foresee the challenges of implementation and consensus that would arise among the Member States. This disconnect shows that there is a need for Chapter VIII reforms that could support an adaptive framework and bring to life the AU's aspirations and its operational constraints. This way, the UN could create a setting where the AU's goals are met with structural backing that appreciates the ambition and on-the-ground complications. According to Participant 3, the AU's ambitions should not be diluted, but should rather be supported through provisions that are in tandem with the region's political landscape that is evolving.

Furthermore, Participant 6 touched on the shifting nature of African leadership and contrasted the initial visionary stance taken by the early leaders with the "*egocentric...self-centred*" leadership style that he perceives in the present. Participant 6's observation sheds light on a critical barrier that stands in the way of aligning the AU and UN, namely, the challenge posed by internal politics and competing national interests. Where previous generations may have acted with a continental vision, some current leaders prioritise personal or national interests, which thus complicate unified action. According to the participant, it is important for Chapter VIII reforms to go beyond structural adjustments to also promote frameworks that encourage accountability, transparency, and cooperation among the Member States. Such adjustments could bring about an interconnected leadership style within the AU and strengthen its ability to fulfil its peace and security mandate in ways that speak to the AU's objectives and the global agenda.

Considering this, the implications of these findings are on the promising bearing of Chapter VIII reforms on regional peace and security in Africa. Therefore, aligning the UN Charter with the AU's objectives and adapting to its political and operational realities would allow the UN to adopt a framework to empower the AU to act effectively in response to the regional security challenges.

### 6.2.5 Question 5: What are the implications of ambiguities and gaps in the interpretation of the collective security frameworks as adopted by both the AU and the UN

The participants expressed concerns about the ambiguities and gaps in the interpretation of collective security frameworks between the AU and the UN. They reported differences in historical contexts, evolving international law, and political interests that have an impact on the ability of these organisations to cooperate. The diverse interests of the Security Council members and the changing roles within the AU are seen as an impediment to effective collaboration. This tension frequently complicates the execution of joint initiatives, particularly in peace and security operations, as the participants reported that there is an imbalance in power and influence between the two bodies. The participants further suggest that political will and structural updates may address some challenges but remain sceptical of achieving genuine complementarity without substantial changes. The interpretation and discussion of the findings on the implications of ambiguities and gaps in the interpretation of the collective security frameworks are presented according to the following themes, which emerged from the findings:

1. Historical gaps and structural limitations
2. Competing interests among member states
3. Power imbalance and authority issues
4. Operational and implementation gaps
5. Differing peace and security approaches

#### **6.2.5.1 Theme 5.1: Historical gaps and structural limitations**

In exploring the implications of ambiguities and gaps in the interpretation of the collective security frameworks, the participants reported that historical and structural limitations present challenges to the application of these frameworks. The findings highlight the evolving nature of international law, which contrasts, with the provisions of foundational documents like the UN Charter, which are considered relatively stagnant. The participants revealed the limitations that stem from these historical gaps, with regards to the language and definitions that underpin international security. These reflected that there is a lack of stability in security frameworks vis-a-vis the demand to adapt to meet modern threats.

Participant 1 reflected on the absence of connectedness in the Charter, noting that “*there are some gaps here and there, especially in the context of the UN*” due to the era in which these documents were created. This points to the static nature of the Charter which was written with the political landscape of the post-World War II period in mind, and has thus struggled to accommodate the shifts in power dynamics and threats over the decades. The lack of revision has left certain terms and provisions seemingly outdated or even obsolete, hence they impact the applicability of the UN Charter in its modern role as a collective security framework.

Similarly, Participant 3 reported on the competitive tension between the past and present interpretations of international law. According to the participant, the body of international law has evolved since the UN Charter’s establishment, hence the framework

*“Cannot have a situation where they are complementary when one... must give, or rather endorse the actions”.*

Evolving terminologies and practices in international law can conflict with older entrenched structures in the Charter. This reveals how attempts to apply these frameworks in today’s environment can result in conflict rather than complementarity, as modern international law concepts clash with a historically-entrenched document. For instance, according to Participant 3, outdated terminologies have limited the ability of the Charter to address new forms of threats such as cyber warfare that were unimaginable when the document was drafted. This creates uncertainties and gaps in how member states interpret the scope and responsibilities of collective security.

Participant 4 echoed this concern and described the Charter as “*an old document*” whose ambiguity serves the interests of powerful member states, namely, the P5. The participant observed that “*many things are not clearly defined, so it works for... especially the P5 that these things are not... defined clearly.*” This reflects the structural limitations within the Charter, which give rise to imbalances that favour certain powers over others. The endurance of indefinite terminology such as the Charter’s references to “enemy states” – a concept that has long since lost its relevance, suggests how this ambiguity can be

applied to protect the interests of the dominant states. The implication here is that, these gaps are not merely incidental. Rather, they are structural features that strengthen the power dynamics in the UN framework. This lack of clarity has allowed the P5 to exercise an interpretative latitude to create a system in which adhering to international norms becomes negotiable for some while remaining stringent for others.

#### **6.2.5.2 Theme 5.2: Competing interests among member states**

The participants reported that the powerful influence of competing interests among member states presented ambiguities and gaps on the effectiveness of these frameworks. The findings revealed how diverse political objectives and power imbalances complicate collaborative security efforts, as dominant states leverage collective frameworks to serve their own strategic interests. Furthermore, the findings reveal how this divergence of interests weakens collective security systems and cause friction between established powers and other states within the AU and UN.

Participant 1 reported on the rift among the permanent members of the UNSC – the P5. The participant describes how “*differing interests, especially around the P3,*” referring to France, Britain, and the US, contrast with those of Russia and China. This reveals a strain within the P5 that usually influences decisions on international security issues. Participant 1 suggest that these countries, despite being bound by a collective framework, tend to align according to their geopolitical goals rather than in pursuit of a unified international response. Consequently, this divergence contributes to delays, gridlock, or diluted resolutions in the Security Council and weakens the UN’s ability to effectively address crises.

Participant 2 built on this notion and observed that,

*“The challenge lies not so much with the actual wording of the documentation... it's all of the real-world politics that complicates things.”*

The participant clarifies that the barriers to unified action within collective security frameworks are not necessarily textual; rather, they are political. This points to a paradox within the UN and similar institutions, that while these frameworks aim to provide a neutral

and legal basis for cooperative security, they are habitually influenced by the power struggles among states, as each prioritises national agendas over collective obligations. These findings reveal an implication of competing interests within collective security frameworks, that even the most clearly defined terms cannot counteract the effect of practical politics where states interpret these frameworks to fit their own strategies.

Participant 4 addressed the impact of selective adherence to these frameworks. They noted that certain provisions “*serve particular interest... so they are OK for others, they’re not OK for others.*” This reveals that there is a discrepancy in how member states benefit from the UN framework, depending on their alignment with or opposition to P5 members’ interests. For instance, a country may support a given resolution if it aligns with its own national interests or those of its allies, but it may resist or ignore resolutions that impose constraints on it. The implication here is that selective engagement with the framework dilutes its intended purpose and results in a system where rules and norms are inconsistently applied. According to Participant 4, this self-serving application of collective security norms benefits stronger states excessively while side-lining the security concerns of the less influential states.

Similarly, Participant 5 reflected on the dynamics within the P5. According to the participant, “*the interests of these five members which is always problematic*” frequently dominate decision-making processes. The participant points to a structural imbalance within the Security Council, where the P5’s veto power enables them to steer the agenda in line with their national interests, commonly at the expense of international security needs. However, this has significant implications, as the P5’s competing interests can stall essential initiatives and also dent the worth of the entire framework, leaving certain regions or issues neglected or unaddressed.

Expanding beyond the UN, Participant 6 noted that,

*“Different Member States have different views... mindsets, are very different from when the AU was created.”*

This reflects similar issues within the AU, where contrasted national priorities complicate the organisation's ability to act as a unified security body. Participant 6 indicates the difficulty of forming effective policies when member states have widely different security concerns and levels of political stability. This is a fragmentation within the AU, which mirrors challenges observed within the UN. Given this, it only reinforces the notion that collective security frameworks face systemic challenges when member states prioritise their national interests over regional or international stability.

The perspectives shared by the participants suggest that these frameworks cannot realise their goals of global security as long as they are subject to the power dynamics and self-interest of their most influential members. This issue extends beyond the text of the collective security frameworks of both the AU and the UN and into the broad political context that shapes their interpretation and application. The implications of these competing interests are intense. For one, they challenge the credibility of collective security frameworks as other member states observe the inconsistent application of security norms based on the interests of powerful members.

### **6.2.5.3 Theme 5.3: Power imbalance and authority issues**

The participants reported on the way these frameworks, particularly under the UN Charter, centralise authority within a select group of states to create power imbalance and authority issues that restrict regional autonomy as well as the development of security frameworks that are complementary. The findings reveal how the dominant position of the UN, such as the Security Council, impacts regional organisations and supports a hierarchy where a few states exert excessive influence over global security matters.

Participant 3 explicitly described the UN Charter as "*competitive*" rather than "*complementary*" to other international agreements. According to the participant, the Charter's provisions "*take supremacy over any other international or regional agreements*" and relegate these frameworks to "*subchapters*" of the UN's mandate. This reflects a huge issue within collective security, that the UN's persistence on primacy over regional frameworks reduces the authority and agency of these regional entities. Instead

of ensuring cooperation, this model constrains the autonomy of regional bodies and makes it difficult for them to implement policies or actions that do not align with the Security Council's strategic priorities. Unfortunately, this causes tension whereby the AU struggles to establish its relevance within a framework that seeks to prioritise UN authority over local perceptions and responses.

Participant 5 pointed to a related issue, that the AU *“lacks the kind of implementation capacity that the Security Council has.”* This is a structural challenge that perpetuates power imbalances within the global security architecture. Without the necessary resources or authority, regional organisations like the AU remain dependent on the UN for implementing substantial security measures. Consequently, regional frameworks are unable to act decisively without the Security Council's backing. According to Participant 5, the UN's centralised power structure sidelines regional bodies and reduces them to advisory roles rather than enabling them to be equal partners in addressing regional crises. This imbalance impasses the potential for a diversified yet locally informed stance to security.

Participant 6 further elaborated on this disparity and indicated that,

*“The UN Charter does take supremacy over any other international or regional agreements”.*

The participant further noted the power imbalances in the Security Council's veto mechanism. In Participant 6's words, this setup creates *“an unequal dynamic,”* where the permanent members of the UNSC have a monopoly that is effective on decision-making, yet to the detriment of collective interests. The veto power which is applied only by the P5 allows these states to block any resolutions that conflict with their national interests at the expense of international or regional stability. This unequal dynamic detracts the spirit of collective security by allowing the interests of a few powerful states to override the needs and concerns of the international community. Participant 6 thus reports on the inability to enact equitable security measures due to the structural privileges that favour certain nations – a problem that is prevalent in the UN.

#### 6.2.5.4 Theme 5.4: Operational and implementation gaps

The participants acknowledge that there are operational and implementation gaps in carrying out timely responses to security threats. The findings revealed that while the UNSC benefits from the established processes that allow swift action, the AU's efforts are impeded by financial constraints, bureaucratic delays, and an over-reliance on external support, all which negatively impacts its role in regional security.

Participant 2 noted that,

*“The AU lacks the kind of implementation capacity that the Security Council has”.*

The participants further described how the UNSC can enact resolutions that become *“concretised immediately.”* For the UNSC, institutional processes are firmly in place, and they allow resolutions to be implemented as quickly as possible in order to streamline responses to emerging threats. In contrast, the AU lacks similar capabilities, which result in slower and less vigorous interventions. The immediacy with which the UNSC can mobilise resources is a structural advantage that enables it to address crises before they escalate, while the AU, without comparable mechanisms, remains reactive rather than proactive.

Furthermore, Participant 2 described issues within AU coordination as *“more of like a coordination forum,”* where resolutions can take up to a year to issue a formal communiqué, depending on logistical factors like the host country. This delay points to an operational gap in the AU's response framework, since the extended time required for official communication impedes its ability to act decisively. In urgent situations, such delays can render the AU's responses obsolete by the time they are enacted. The reliance on host nations to convene discussions also complicates coordination and results in inconsistencies in response times. The implication here is clear; these delays pose restrictions on the AU's capacity to provide timely interventions and affect its credibility as a security actor in the eyes of both the member states and the international community.

Participant 5 further illustrated the AU's operational challenges. In reference to the financial dependency of African states on external actors, primarily the UN or other Western donors, the participant noted,

*“African countries...don't have to carry the heavy financial burden...[they say] it is your responsibility.”*

Rather than pooling resources from within its member states, the AU remains dependent on external support, which restricts its autonomy and ability to execute long-term interventions. For example, peace and security missions like the AU's involvement in Somalia remain isolated instances rather than part of a sustainable framework. Participant 5 thus reflects how the AU's operational model is constrained by an uneven financial burden, one that impedes its ability to launch region-wide initiatives without relying on external actors.

These implementation gaps are further complicated by a lack of resources for *“hard peace and security interventions,”* as Participant 5 mentioned. This reflects that there is an imbalance in the AU's operational efforts, where meaningful interventions remain few and geographically confined – challenges that the AU faces in scaling its operations to cover the security needs across the continent. Without a sustainable framework for deployment and financing, the AU struggles to address even the pressing security issues consistently, hence in comparison to a well-resourced body like the UNSC, its effectiveness and reach raise questions.

The implications of these findings reveal weaknesses in the structures of the AU's operational and implementation capacity. First, these limitations affect the AU's ability to act autonomously and responsively as a security force, given that its authority is constrained by an over-dependence on external funding and logistical support. The reliance on international actors to fill financial and operational gaps further introduce biases or political agendas that may conflict with regional interests and complicate its efforts to operate as an impartial regional security provider.

### 6.2.5.5 Theme 5.5: Differing peace and security approaches

One of the key issues that were reported by the participants relates to the differing peace and security approaches between the AU and UN. Participant 7 revealed the varied and conflicting nature of "*hard peace and security interventions*" and referred to them as "*a complete mixed bag*." This diversity stems from the fact that interventions are usually influenced by the vested interests of permanent Security Council members who may prioritise their geopolitical agendas over a unified posture to peacekeeping. This influence can fragment intervention strategies that may serve some stakeholders while disadvantaging the others. The AU is grounded in principles of regional subsidiarity, and it stresses local solutions and a collaborative role for sub-regional bodies. However, its efforts are hindered by its limited implementation capacity compared to the UNSC. Participant 2 reveals a major problem within collective security frameworks, that while the AU advocates for regional autonomy, it lacks the operational resources needed for rapid response, hence it becomes impossible to address security crises without the UNSC support.

The principle of subsidiarity is a foundational aspect of the AU's approach, yet it is another important factor in these differing approaches. As Participant 4 pointed out, the AU's reliance on this principle which involves delegating responsibilities to sub-regional bodies, can create internal "*tensions*" between its PSC and the Commission. While subsidiarity enables sub-regional organisations to manage conflicts within their territories, it also introduces the problem of bureaucracy and potential conflict over jurisdiction. The AU's focus on subsidiarity can delay and complicate decision-making, as responsibilities are divided between the PSC and sub-regional entities. This contrasts sharply with the UNSC's centralised structure where authority is consolidated to enable faster decision-making but often at the cost of regional involvement or consideration of local dynamics.

Participant 5 revealed on yet another critical perspective, that African states remind the UNSC of its responsibilities by urging it to "*shoulder your responsibility*" and "*carry out your mandate*." This suggests a reliance on the UNSC to fulfil duties that the AU cannot manage independently due to resource constraints and operational limitations. African countries acknowledge the gaps in the AU's intervention capabilities and the need for

global backing. However, this also highlights the frustration among AU member states who may feel that the UNSC's reluctance to act decisively in certain situations reflects its selective engagement based on strategic interests rather than a commitment to collective security. Therefore, while the AU seeks to lead in its region, its dependency on the UNSC for support in major peacekeeping operations is a limitation that is imposed by its own financial and logistical constraints.

In contrast to these challenges, Participant 6 offers an optimistic perspective, that “*there’s more complementarities*” between the AU’s approach and the global framework under the UN. According to the participant, the AU Constitutive Act was designed to “*learn from different lessons,*” hence the AU has attempted to synthesise the experiences of other international bodies in shaping its security policies. This is commitment to harmonising with global standards while also allowing the AU to apply lessons learned from past conflicts in Africa and beyond. While the AU’s framework reflects a blend of regional insights and international standards, its efforts at complementarity are frequently impeded by the UNSC’s prioritisation of global mandates over regional autonomy.

These findings thus raise critical questions regarding the role of power dynamics within the UNSC and their influence on intervention outcomes. Given that certain Security Council members may have “*vested interests,*” according to Participant 2, regional organisations like the AU may find it challenging to secure support for initiatives that do not align with the goals of these influential states. This affects the ability of the UN to act independently, hence there is a need for reforms that would allow for neutrality within the UN's peace and security operations.

### 6.3 CONCLUSION

The UNSG António Guterres’ *New Agenda for Peace* discusses the importance of having strong regional frameworks and organisations which have a strong relationship with the UN, in order to manage the growing competition amongst member states, as well as the growing transnational threats facing the international community (A New Agenda for Peace, 2023; Security Council Report, 2024). Having looked at and analysed the responses of the participants, it is evident that the relationship between the AU and the

UN as outlined by the Constitutive Act continues to be important to date, especially in relationship to the maintenance of peace and security on the continent.

Inferences were made during the interviews that despite the two organisations' collective security frameworks, namely, AU Constitutive Act, and Chapter VIII of the UN Charter, there are limitations that hinder their collective security efforts. The unequal nature of the relationship in Chapter VIII gives limited authority to regional organisations, while the UNSC's P5 members have greater authority, especially through the use of the veto power, which restrict independent action. Furthermore, the insights provided by the participants reveal the balance that regional organisations must strike between autonomy and collaboration, where a refined strategy between the AU and the UNSC can collaborate in a scalable system that allows for local expertise and immediate action with the support of international resources when required.

Therefore, for the relationship between the UN and AU to remain relevant and effective in their collective security efforts, their frameworks need to adapt to the evolving landscape of security threats. It is thus important that both the Constitutive Act and the UN Charter, especially Chapter VIII, be more flexible and adopt faster procedural frameworks to ensure timely responses to emergent threats. As the findings suggest, the current reliance on formal authorisation processes can delay interventions and affect the AU's responsiveness to crisis. The need for reform not only for Chapter VIII but the whole UN Charter, was identified as a possible solution to some of these shortcomings.

# **CHAPTER SEVEN**

## **FINDINGS, RECOMMENDATIONS, CONCLUSION AND AREAS FOR FUTURE REASEARCH**

### **7.1. INTRODUCTION**

Having analysed both the literature and the data collected through the interviews, this chapter provides the key findings of the study, recommendations, and draws the conclusion. The findings are based on the interviewees' accounts and the analysis of the literature obtained. In so doing, the study not only reflected on, but also answered the research question posed by the study. The findings provided in this chapter contribute to the field of knowledge made by this study.

### **7.2 RESEARCH FINDINGS AND ANALYSIS**

#### **7.2.1 The Relationship between the AU and the UN**

Although on paper, the relationship between the AU and the UN may be described as competitive, in reality, this relationship is complementary. The competitive nature of the relationship is evidenced by the AU's framework, indicating that "...the Union, has the primary responsibility for promoting peace, security and stability in Africa" (AUPSC Protocol, 2002: Article 16). By entrusting itself with the primary responsibility for maintaining peace and security on the continent, the AU creates competition with the role mandated to the UNSC as having the primary responsibility to maintain international peace and security, which is inclusive of Africa (UN Charter, Article 24). Furthermore, the silence of the AU's Constitutive Act, along with the AUPSC Protocol amending it, on subordinating its own activities under the authority of the UNSC, indicates a competitive aspect of this relationship.

Among the key findings of the study is the revelation that the relationship between the AU and the UN has matured through established mechanisms for meaningful engagement

and collaboration. This relationship is not only based on both the Constitutive Act (Article 17(1)), and Chapter VIII (Article 51(1)), highlighting the need to cooperate with each other, but both organisations have enhanced this partnership through other mechanisms as mentioned in Chapter Five, and thus ensuring that, it is a complementary relationship.

This enhanced partnership reflects that, given Africa's complicated security landscape, effective cooperation requires structured communication channels. Therefore, it is important to enhance and continue with the formalised mechanisms that have contributed to the evolution of AU-UN relationship and their capacity for joint action on pressing issues. These include annual meetings, high-level dialogues, and frameworks that reflect efforts to build a mutual operational understanding between the two organisations.

However, the relationship between the AU and UN is also strained by operational constraints that impede effective collective security efforts between the two organisations. This reveals an important structural difference between the organisations, where the UN's established regulatory expectations clash with the AU's flexible and context-responsive posture. This points to the fact that while the AU's regional focus allows it to respond with adaptability to African security challenges, it may struggle to meet the high compliance standards that the UN and its member states see as essential for joint interventions. For example, Chapter VIII of the UN Charter is noted to technically grant the AU autonomy to create peace enforcement mechanisms, yet these must still be authorised by the UNSC.

This requirement affects the ability of the AU to respond immediately to crises on the continent, which raises concerns about its theoretical authority and practical capacity. Although the AU is equipped on paper, there is a lack of resources and logistical capacity, which hinders its collective security efforts. The unpredictability in this partnership ultimately diminishes the ability of the AU to act independently in crises. These insights indicate that there is a necessity for sustainable resources if the AU is to enhance its operational autonomy. Resultantly, this may reshape the AU-UN relationship towards equity rather than dependency. Furthermore, a formal division of labour would develop a stronger partnership between the UN and AU.

## 7.2.2 Structural Limitations impacting operationalisation of collective security efforts

Another key finding of the study is that despite the working relationship between the AU and the UN, there is a power imbalance, which affects the extent to which the AU can shape decision-making in matters of peace and security on the continent. Although there are mechanisms of engagement, the UNSC has a dominant role, as mandated by the UN Charter, in this partnership that overshadows the AUPSC in making decisions.

This particularly refers to the veto power held by the five permanent members of the UNSC, which enables any one of its permanent members to “hold hostage” the Council’s decisions. In contrast, the AUPSC does not have any single member with unilateral power to block decisions, which allows the democratic and probably responsive decision-making. This structural difference characterises the challenges that African nations face under a global security system that is shaped by the interests of a few powerful states. It reflects the limitations of a framework that cannot fully replicate the concerns of regions without veto power, hence it can be said that there is the absence of an equitable system to empower regional organisations like the AU to act decisively on behalf of their member states.

As a result, the AU is treated as a secondary body and its decisions are often ignored, especially on issues pertaining peace and security on the continent. This indicates that Africa’s voice, especially on the UNSC, has been reduced to a mere presence only despite Chapter VIII stating that “nothing in the present Charter precludes the existence of regional organisations in issues relating to the maintenance of peace and security (UN Charter, 1945). While the AU possesses invaluable local insights, asserting these in global discussions is restricted by the UNSC’s desire to maintain its dominance, especially the P5, through the use of the veto power. These power dynamics can influence AU-UN cooperation, hence the absence of an equal partnership can cause security solutions for Africa that are not relevant and sustainable for the continent.

The AUPSC encounters limitations which are a result of the hierarchical and politically driven structure of the UNSC, in that the AUPSC decisions are subordinate to those of

the UNSC. This restricts the operational autonomy of the AU and rather promote the perceptions of control by the UN over AU-led missions. This imbalance is intensified by the P5's dominant role within the UNSC, as this apex hierarchy leaves the AUPSC on an unequal footing, even in addressing African issues. It is evident that the political agendas and national interests heavily influence decisions within the UN, hence the UNSC members are driven by more than just the UN Charter mandates. This is exacerbated by the reliance of the AU on the UN for resources – a dependency that weakens the AU's bargaining power.

### 7.2.3 Gaps and Ambiguities in the Frameworks

The study identified the historical gaps and ambiguities within Chapter VIII. These demonstrate the grave consequences that historical gaps and structural limitations within the UN Charter have on the consistency and fairness of international security practices. First, Chapter VIII did not envision a bigger role for regional organisations, especially in the case of the AU, which has taken a more active role in the maintenance of peace and security on the continent. This has been reflected in the limited role that Chapter VIII affords regional organisations and the requirement for them to act under the supervision of the UNSC.

Furthermore, Chapter VIII does not cater for the nature of conflict in the current international landscape, given that conflicts can escalate rapidly, and thus requiring swift enforcement action. However, the requirement of regional organisations obtaining authorisation prior to enforcement action creates a situation where regional organisations lose their legitimacy in being the primary respondents to peace and security issues, as the authorisation by the UNSC may be delayed because of the Council's procedural mechanisms. Therefore, the inability to adapt these frameworks to modern-day realities has eroded trust among member states, especially those outside the P5.

In addition to the gaps identified, the lack of precise definition is a problem in that it provides for ambiguities which have implications on the operationalisation of the frameworks. For example, the lack of clarity on what entails "enforcement action" under Chapter VIII or "grave circumstances" by the Constitutive Act, may see the application of

these Article to justify unwarranted regional actions. Therefore, clarifying the definitions within Chapter VIII of the UN Charter and the Constitutive Act could augment the functions and autonomy of regional organisations in managing local security issues. Without clear definitions, regional bodies like the AU experience operational uncertainties that restrict decisive action and their ability to fulfil a leadership role in conflict resolution. The modernisation of the language of Articles 52, 53, and 54 could support these organisations in creating a framework that recognises their capacities and coordinates them with global peacekeeping activities. However, while definitional clarity could empower regional initiatives, the findings also imply that political dynamics within the UN and on the continent may still pose challenges, hence clarity alone may not fully address the existing political constraints.

#### 7.2.4 Convergence and Divergence

Another key finding of the study is that both the Constitutive Act and the AUPSC Protocol amending it, have convergences and divergences with Chapter VIII of the UN Charter. This is because the AUPSC adheres to principles such as ‘respect for sovereignty and territorial integrity’, ‘principle of non-interference in the internal affairs of a member state’, and ‘the pacific settlement of disputes’. In addition, the AUPSC is modelled around the UNSC, both having the responsibility to maintain peace and security with one at the continental level and the other at the global level. However, as was previously mentioned, the difference between the two Councils is that the AUPSC has no veto power and permanent membership unlike the UNSC.

The implications of these findings suggest that the AU’s framework for collective security mirrors UN ideals, yet it is continually tested by the challenges of state sovereignty and financial dependency. This presents a key insight – the ability of the AU to address regional conflicts and security threats may hinge on the creation of a model that balances respect for state sovereignty with regional accountability. Furthermore, the establishment of financial mechanisms that lessen reliance on external donors could empower the AU to pursue a genuinely African security agenda, one that addresses the unique security landscape of the continent without compromising on local priorities.

At the core of both the UN's and AU's peace agendas is the concept of sustainable peace, although their methods and priorities diverge based on regional focus, resources, and political influence. The UN has an extensive global remit, and it stresses peacekeeping as an essential mechanism for managing and containing conflicts largely through interventions grounded in neutrality and non-intervention. This is aligned with the UN's guiding principles of consent, impartiality, and non-use of force, which help to maintain its role as an international peace arbiter. However, while this principle-based model is effective in certain contexts, it can restrain flexibility in situations where assertive interventions may be necessary to restore peace. This restraint reflects the UN's peace agenda which is shaped by a commitment to international standards and the views of its member states, especially the permanent members of the UNSC.

In contrast, the AU's peace agenda reflects the regional organisation's pragmatic stance to peace and security on the African continent which advocates for active, context-specific interventions. The AU is less constrained by the principles that guide the UN's peacekeeping operations, and it is willing to engage in peace support operations that may involve enforcement action, and this has been provided for in Article 4(h) of the AUPSC Protocol. This approach, in part, reflects the AU's recognition of Africa's unique conflict dynamics, including issues like cross-border terrorism, political instability, and economic fragility that can escalate quickly. As a regional body, the AU's primary objective is to create a stable and self-sufficient Africa by employing a mix of peace support operations and Post-Conflict Reconstruction and Development (PCRD) initiatives. Unlike the UN's peacekeeping efforts which typically focus on maintaining a cessation of hostilities, the AU's peace agenda seeks to address the original causes of conflict, hence it views peace not merely as the absence of war, but as a compound effort that involves economic and social rehabilitation.

This difference in viewpoints is partly due to resource limitations and reliance on external support. The AU frequently relies on international donors for funding its peace operations, which constrains its capacity to act independently. This dependency disconnects the AU's ambitious peace agenda, as enshrined in the Constitutive Act, and the practical realities of implementing large-scale peace operations without substantial external support. In this

regard, the AU's agenda can sometimes be designed by the interests of its donors, hence misaligning its stated objectives and the practicalities of fulfilling them. By comparison, the UN's peace agenda benefits from global support and has established funding channels that provide relative operational stability, despite being resource-constrained.

In spite of these differences, there are several areas where the peace agendas of the UN and AU converge, namely, the peaceful settlement of disputes, post-conflict reconstruction, and the prevention of relapse into conflict. Both organisations recognise that sustainable peace requires support structures that address governance, economic stability, and social cohesion. These shared objectives are a foundation for collaboration, where the AU can draw upon the UN's resources and expertise in areas such as electoral assistance, human rights monitoring, and institution-building. This indicates the potential for a complementary relationship, where the AU's on-the-ground knowledge and regional focus can enhance the UN's formalised structures.

#### 7.2.5 The Need for Reforms

The study further identified the need for reforms in both the UN and AU as necessary to enhance their legitimacy and responsiveness. For the UN, increasing African representation within the UNSC could help to address historical imbalances and bring the perspectives of underrepresented regions to the forefront. Such reform would strengthen the UN's commitment to equitable governance and empower African states to influence decisions that directly impact the continent. For the AU, establishing consistent and transparent decision-making processes, irrespective of leadership changes, could improve its stability and credibility as a security actor. This would enable the AU to act with a stronger, unified voice and enhance its capacity to respond to regional conflicts and possibly reduce the reliance on external coalitions.

An exciting insight from this analysis is the potential for both organisations to evolve through shared lessons and reforms. The Constitutive Act and Chapter VIII of the UN Charter could become inclusive and adaptive, and better positioned to meet contemporary security challenges if they address the representation gap in the UNSC

and improve governance structures within the AU. This points to an opportunity for the UN and AU to align their reforms in mutually reinforcing ways to ensure cohesion to collective security that respects both global and regional interests. In doing so, both organisations could reaffirm their relevance and strengthen their roles in promoting peace and stability on the African continent and beyond.

Although the structural reform of Chapter VIII of the UN Charter is urgent, the auctioning of it is, however, complex, as it is likely to be hampered by the innate power imbalances within the Security Council. The findings suggest that while there is a clear demand for a Council that is reflective of modern geopolitical realities, achieving this would require challenging the dominance of the permanent members, whose vested interests may resist any redistribution of authority. This dynamic indicates that meaningful reform may necessitate policy revisions, as well as diplomatic strategies that are innovative to encourage collaboration from the influential states. Ultimately, the findings point to the need for a re-envisioned UN structure that is truly capable of adapting to an increasingly diverse world, and without such reforms, the Council risks diminishing its relevance in addressing global challenges.

Operational reforms to Chapter VIII could be the pivot in enhancing the effectiveness through the autonomy of regional organisations like the AU in managing local security concerns. Currently, the dependency on the UNSC authorisation delays and restricts the AU's response to regional crises, hence a disconnect between its aspirations and the actual capabilities may be inevitable. Although the AU has adapted within these constraints, the ambiguity around authorisation can result in inconsistencies and possibly weaken its impact on regional stability. These findings suggest that reforms that grant operational autonomy to regional bodies could be effective in streamlining responses and increasing the AU's capacity to address African security challenges directly. Such changes could empower regional entities and ensure a concentrated peacekeeping framework that blends local expertise with global knowhow to enhance relevance in peace operations.

These reforms would provide the AU with a stronger foundation to address the existing threats such as terrorism and to act decisively in African conflicts without waiting for external authorisation. More so, the findings indicate that financial independence is a requirement for regional autonomy. Without sustainable funding, the AU's operational capacity remains vulnerable to the priorities of external donors. This dependency suggests that for the AU to establish a fully self-sufficient peace and security framework, African states would need to increase their contributions and political commitment with the goal of reducing their reliance on international donors and thus gaining more control over their security agenda.

### 7.3 RECOMMENDATIONS

Having analysed both the data from the literature and responses from the interviewees, the study provides the following recommendations:

- The lack of meaningful inclusion of regional organisations, especially the AU in the decisions undertaken by the UNSC on African peace and security issues, warrants the need for reforms of Chapter VIII in order to reflect a balanced and representative global order.
- There is a need for integration between the AU's Constitutive Act and Chapter VIII of the UN Charter, in order to elevate the AU's role as a decisive actor in international peacekeeping, peacemaking, and peace building, which may be effective in supporting African perspectives in global decision-making.
- To achieve true collective security requires the reimagining of these frameworks in the quest to limit the influence of dominant states and promote fairness to international security needs.
- A formal and well-defined division of labour, where the AU is not just a secondary actor but an equal participant in the implementation of collective security on the continent would develop a stronger partnership of peace and security between the AU and UNSC. Such a formalised division of labour would not only reduce reliance on ad hoc mechanisms but would also embed collective security efforts that would guarantee more efficiency and legitimacy for both the AU and UNSC.

- To optimise synergies, both organisations may need to develop a clearer framework for aligning their peace agendas and minimise overlap and address gaps in intervention strategies.
- While both the AU and UN share a common goal of ensuring sustainable peace, achieving true alignment requires addressing the limitations of each framework. For the AU, reducing dependency on external donors could enhance its capacity to pursue its peace agenda independently and to respond effectively to African security needs. For the UN, acknowledging and adapting to the AU's posture on peace support could bring in new opportunities for collaborative interventions that go beyond traditional peacekeeping.
- There is a need for an integrated peace framework between the AU and UN, where each organisation plays to its strengths. This way, the AU and UN could advance their peace agendas in a manner that is globally accountable and regionally responsive.

## 7.4 CONCLUSION

The founders of the UN Charter recognised the significant function of regionalism within the UN system by recognising the important role of regional organisations as stipulated in Article 52, as well as their right to collective defence under article 51, which was considered necessary for the maintenance of peace and security (Muiruri, 2008: 141).

The gaps and ambiguities that have been identified in Chapter VIII have consequences in relation to the consistency and fairness of the implementation of collective security efforts, especially by the AU. This is mainly based on (i) what constitutes a regional organisation as stipulated by Article 52, (ii) the definition of what entails enforcement action under Article 53, and (iii) the timeframe and method of reporting by the regional organisations to the UNSC, as stipulated by Article 54. Despite this, it should be considered that maybe, to an extent, such ambiguities and gaps could benefit regional organisations, in that the interpretation of Chapter VIII by such organisations may allow them to implement collective security efforts which cater to their own respective needs, provided that they are within the bounds of internationally acceptable behaviour. In

addition, the research believes that it was intentional on the part of the founders of the UN Charter to allow such gaps and ambiguities in order to allow for a level of flexibility in the implementation of collective security.

The conclusion of the study is that the AU plays a complementary role to the UN as it possesses a subsidiary responsibility to the UNSC. However, this is not because of the design of the AU Constitutive Act but the structural rigidity of the UNSC, the lack of a division of labour between the AUPSC and UNSC, as well as the AU's financial dependency on external donors which often affects its collective security efforts. However, the weaknesses of both the AU and UN's collective security frameworks requires for more collaboration between the two organisations to meet the threats and challenges of the current century. As was envisaged by both the Constitutive Act and Chapter VIII, by working together and aligning their respective frameworks, the partnership between the two organisations would be stronger.

## 7.5 AREAS FOR FUTURE RESEARCH

The following topics were identified by this study as areas for future research:

- The application of Chapter VIII in UNSC Resolutions authorising regional organisations efforts in the implementation of collective security.
- The preference of bilateral military agreement vis-à-vis regional or multilateral agreements to avoid the rigid requirements outlined by such organisations' collective security frameworks.
- The critical analysis of redundant clauses in the UN Charter and implications of them in the implementation of the UN's mandate as an international organisation mandated to implement peace and security.

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## ANNEXURE A: ETHICAL CLEARANCE



Faculty of Humanities  
Fakulteit Geesteswetenskappe  
Lefapha la Bomotheo



18 December 2023

Dear Miss GK Moerane

**Project Title:** A critical analysis of Chapter VIII of the United Nations Charter with a special reference to the African Union  
**Researcher:** Miss GK Moerane  
**Supervisor(s):** Prof VL Graham  
**Department:** Political Sciences Reference number: 29100373 (HUM031/1022)  
**Degree:** Doctoral

I have pleasure in informing you that the above application was **approved** by the Research Ethics Committee on 18 December 2023. Please note that before research can commence all other approvals must have been received.

Please note that this approval is based on the assumption that the research will be carried out along the lines laid out in the proposal. Should the actual research depart significantly from the proposed research, it will be necessary to apply for a new research approval and ethical clearance.

We wish you success with the project. Sincerely,

A handwritten signature in black ink, appearing to read 'KH'.

**Prof Karen Harris**

**Chair: Research Ethics Committee Faculty of Humanities UNIVERSITY OF PRETORIA**

**e-mail: [tracey.andrew@up.ac.za](mailto:tracey.andrew@up.ac.za)**

**Research Ethics Committee Members: Prof KL Harris (Chair);** Mr A Bizos; Dr A-M de Beer; Dr A dos Santos; Dr P Gutura; Ms KT Govinder Andrew; Dr E Johnson; Dr D Krige; Prof D Maree; Mr A Mohamed; Dr I Noomé; Dr J Okeke; Dr C Puttergill; Prof D Reyburn; Prof M Soer; Prof E Taljard; Ms D Mokalapa

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# ANNEXURE B: DIRCO PERMISSION LETTER



international relations  
& cooperation

Department:  
International Relations and Cooperation  
REPUBLIC OF SOUTH AFRICA

Private Bag X152, PRETORIA, 0001 • OR Tambo Bld, 460 Soutpansberg Road, Rietondale, PRETORIA, 0084  
Tel: +27 (0) 12 351 1000 • www.dirco.gov.za

Ms. Gomolemo Khumo Moerane  
Doctor of Philosophy (PhD) International Relations in the Department of Political Sciences at the University of Pretoria  
[gmoerane@yahoo.com](mailto:gmoerane@yahoo.com)  
Gauteng  
Republic of South Africa

Dear Ms. Moerane

**Research study: A Critical Analysis of Chapter VIII of the United Nations Charter with a Special Reference to the African Union**

The Director-General of the Department of International Relations and Cooperation (DIRCO) approved your request to utilise DIRCO whilst conducting research for the fulfilment of the Doctor of Philosophy (PhD) International Relations in the Department of Political Sciences at the University of Pretoria.

Yours sincerely

Director-General

Date: 2023/06/02

Kgoro ya Tirisano le Tshomišano ya Dinaga tša Boditšhabatšhaba • Lefapha la Dikamano le Tshebedisano Dinaheng tsa Matjhaba • Lefapha la Dikamano tsa Boditšhabatšhaba le Tirisano • Umnyango Wezobudlelwano Nokubambisana Bamazwe Namazwe • Litiko Letebudlelwane Bemave kanye Nekusebentisana • ISebe lezobuDlelwane neNtsebenziswano yamZwe ngamaZwe • UmNyango weTjhebiswano nokuSebenzisana kweenTjhabatjhaba • Muhasho wa Vhushaka ha Dzitshakatshaka na Tshumisano • Ndzawulo ya Vuxaka bya Matiko ya Misava na Ntirhisano • Departement van Internasionale Betrekkinge en Samewerking

**Batho Pele** - putting people first

# ANNEXURE C: INTERVIEW QUESTIONS



**Faculty of Humanities**  
Fakulteit Geesteswetenskappe  
Lefapha la Bomotheo



**Student name and surname:** Gomolemo Khumo Moerane

**Student Number:** 29100373

**Degree:** PhD International Relations

**Research title:** A Critical Analysis of Chapter VIII of the United Nations Charter with a Special Reference to the African Union

## INTERVIEW SCHEDULE

The broad research themes and questions to be explored in the interviews are listed below. This is not an exhaustive list of questions since new issues and questions may arise during the interview, due to the nature of unstructured interviews.

- How would you describe the relationship between the African Union (AU) and United Nations (UN)?
- To what extent does the AUPSC and UNSC cooperation impact on the successes or failures of collective security on the African continent?
- Looking at the AU's collective security frameworks, as established by the AU Constitutive Act and amended by the Protocol Establishing the PSC, is there any limitations to its relationship with the UNSC in the implementation of collective security?
- What is your analysis of the UN Charter's Chapter VIII and its impact on the relationship with the AUPSC?
- What are the similarities and differences between the collective security frameworks adopted by both the AU and UN?
- Are there any impediments within both frameworks that limit the relationship of the AUPSC and UNSC in implementing collective security?
- What are the implications of ambiguities and gaps in the interpretation of the collective security frameworks as adopted by both the AU and the UN?
- Is there a need to reform Chapter VIII of the UN Charter, the Constitutive Act of the AU or the Protocol Establishing the PSC in order to align it to the changing geo-strategic dynamics impacting collective security?
- In your view is Chapter VIII and the AU's Constitutive Act compatible or competitive?

## ANNEXURE D: LIST OF INTERVIEWEES

<b>Interviewee Participant Number</b>	<b>Designation at the time of interview and/or former portfolio relevant to the research</b>
<b>1</b>	DIRCO Senior official on AU Policy
<b>2</b>	Senior Researcher on Peace and Security issues
<b>3</b>	DIRCO Senior Official on UN Policy
<b>4</b>	DIRCO Senior Official on UN Policy
<b>5</b>	DIRCO Senior Official on AU Policy
<b>6</b>	Senior Researcher on AU-UN relations
<b>7</b>	Expert on AU-UN Peacekeeping missions
<b>8</b>	Former SA Diplomat at the UNSC

# ANNEXURE E: INTERVIEWEE CONSENT FORM



Faculty of Humanities

Fakulteit Geesteswetenskappe  
Lefapha la Bomotheo



## INTERVIEW: INDIVIDUAL INFORMED CONSENT

**29100373, Gomolemo Khumo Moerane, Doctoral (PhD): A Critical Analysis of Chapter VIII of the United Nations Charter with a Special Reference to the African Union**

I, the undersigned,

TITLE:

INITIALS AND SURNAME:

INSTITUTION / COMPANY/INTEREST GROUP:

POSITION / APPOINTMENT:

ADDRESS:

have been fully informed about the purpose of the research and understand the conditions of informed consent under which I shall be interviewed. I hereby grant permission for the interview on condition that:

### \* Delete what is not applicable

the interview \*may / may not be \*electronically recorded / documented in an electronic format / documented in a written form for research purposes

\*my name and affiliation to \_\_\_\_\_ may be used and cited for the purposes of \*the thesis only/the thesis and related articles.

\*if the researcher wishes to pursue publication at a later date, my name and affiliation to \_\_\_\_\_ \*may be cited / may be cited only with prior informed consent

\*my name may not be used or cited, or my identity otherwise disclosed, in this research project, thesis or related articles, but that the interview can be used or cited on a basis of anonymity

\*the interview may not be used or cited, or my identity otherwise disclosed, in this research project, thesis or related articles

Interviewee signature: ----- Date:----- Place: -----

Researcher signature: ----- Date:----- Place: -----

Supervisor signature: ----- Date:----- Place: -----