

## The Legal Framework for Regional Organisations in Africa and the Proactive Role in Addressing Threats to International Peace and Security

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### Abstract

The United Nations Security Council is the global body mandated by the United Nations Charter to maintain and restore international peace and security. Regional organisations are also mandated by the UN Charter to set up regional arrangements to maintain and restore international peace and security. What is the legal framework from which regional organisations in Africa derive legitimacy for peacekeeping and peace enforcement operations? It is the author's view that there is little literature on this topic and this paper aims to make a contribution by discussing the legal instruments adopted by regional organisations which inform the context within which they operate. Also, it is observed that over the years, the international community has either abandoned African states in the early years of conflicts or has responded quite late. Bureaucracy and delays in intervention has led and would lead to the escalation of conflicts leading to serious human rights violations perpetuated against civilians. Regional organisations in Africa therefore saw it as a matter of necessity to devise own mechanisms to respond to regional peace and security threats and breaches consistent with the purposes and principles of the United Nations. This paper will demonstrate that regional organizations have assumed a more proactive role in addressing threats to international peace and security in African. Regional organisations have become custodians of international peace and security on the continent as a result of a vacuum, out of necessity and due to their unique placement and expertise in regional matters.

**Keywords:** UNSC, UN Charter, International Peace, Africa, Threat

Several African states have experienced or are experiencing violent conflicts, civil wars, and terrorism mostly involving the participation of both state and non-state actors. These conflicts are considered threats to regional stability and international peace and security due to their nature and effect both on the domestic population and the region. These conflicts are either influenced by external factors or the impacts are felt across borders. The continent has witnessed gross human rights violations, commission of international crimes and violation of the laws of armed conflict leading to humanitarian disaster. This paper will address two main questions, namely, what is the legal framework

or legal basis for regional arrangements in Africa, and how have regional organisations assumed a proactive role in addressing threat to or breach of international peace and security.

The concept of “threat to or breach of international peace and security” and what constitutes it. It points out that the determination of what amounts to a threat to or breach of international peace and security is not defined in the United Nations Charter and it is the Security Council that determines whether a threat to or breach of international peace and security exists. On the other hand, regional legal instruments expressly prescribe the circumstances that would constitute threat to or breach of regional peace and security. Regional arrangements in Africa have a complex legal basis rooted in various instruments at different levels. At the international level, the United Nations Charter provides the foundation for regional organizations' involvement in peace and security. The African Union, at the continental level, has its own legal framework for addressing conflicts and promoting stability. Regional Economic Communities like ECOWAS have additional protocols and agreements governing their peace and security activities. These organizations respond to threats through a range of actions, including peacekeeping, conflict prevention, mediation, peacemaking, peace enforcement, and peacebuilding. Peacekeeping involves monitoring ceasefires and supporting peace processes, while peace enforcement allows for the use of military force to restore peace. Each approach has distinct legal requirements and implications. Regional organizations have become more proactive in maintaining peace and security for several reasons, including their proximity to conflicts, cultural understanding, and the need to address security challenges that affect their member states directly.

### **A. What Constitutes A Threat to or Breach of International Peace and Security?**

There is no definition of threat to or breach of international peace and security in the UN Charter 1945. Pursuant to Article 39 of the Charter, it is the Security Council that determines whether there is threat to the peace or breach of the peace, or act of aggression in a given situation and it shall make necessary recommendations or decide on measures to be taken to that effect in order to maintain or restore international peace and security. This in effect means that the Security Council gives a subjective interpretation to what constitutes a threat to or breach of international peace and security. Notwithstanding the absence of an objectively defined meaning, it is suggested that: “Modern guidelines for making a determination of the existence of a threat to the peace might include considerations of the scope and severity of the resulting consequences, as well as evolving notions of state ... that crimes, perpetrated by non-state actors, that are transnational in character inherently involve egregious threats of violence to persons and

are beyond the ability or the will of the domestic nation to control, may justify the authorization of the use of force under Chapter VII of the U.N. Charter.”<sup>1</sup>

It is further suggested that a determination on the existence of a threat to or breach of international peace and security is aided by certain factors amongst which include: a) where the consequences of a criminal behavior are transnational in character, b) where the behavior or act in question is clearly criminalized under international law or by a majority of the criminal codes of the member nations of the United Nations, c) where the home country is unable or unwilling to address the criminal violation in question, d) where the act involves the use of force or amounts to a threat of committing violence to the person of another, and e) that the extent of the criminal violation is egregious,<sup>2</sup> The violation of international humanitarian law and gross human rights violations which amount to a threat to or breach of international peace and security are evident in the precarious refugee crises, the atrocities perpetrated against civilians, trans-national organised crimes, and terrorism in various parts of Africa.

The first set of measures that may be decided by the United Nations Security Council under Article VII of the Charter are measures not involving the use of armed force and these include economic and diplomatic sanctions. These are described in Article 41 as 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. Where the Security Council considers the said measures to be inadequate or where the measures prove to be inadequate, it may take more severe line of action involving the use of armed force. Article 42 provides that 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

Comparatively, regional organisations are clearer on the specific circumstances that may amount to threat to international peace and security to warrant regional intervention in a Member State, namely, where war crimes, genocide, or crimes against humanity has occurred or has the potential to occur.<sup>3</sup> Further, situations of armed conflict, extreme tension with the potential of humanitarian disaster or threat to peace and security in the sub-region, or coup d'état are clear contexts within which a threat to or breach of regional peace and security may exist that may warrant the intervention of Member

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<sup>1</sup> Daniel Pickard, “When Does Crime Become A Threat To International Peace And Security?” *Florida Journal of International Law*, Vol. 12 Number 1, (1998), pp. 4-5

<sup>2</sup> Idem, pp. 14-19

<sup>3</sup> Article 4 (h) of the Constitutive Act of the African Union

States.<sup>4</sup> This perhaps provides a reason why regional organisations are more proactive in assuming a proactive role as compared to the Security Council which is more bureaucratic and slow in determining a threat to international peace and security and reaching a proactive decision to act in time.

### **B. The Legal Basis for Regional Arrangements in Africa**

The legal basis for regional intervention through regional arrangements for the maintenance or restoration of a threat to or breach of international peace and security in Africa emanates from Chapter VIII of the UN Charter 1945. *Article 52 of the UN Charter* provides that: 1. 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. 2. 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. 3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

The Member States of the regional organisations in Africa adopted and domesticated the spirit of Article 52 provision under the legal framework of the Union and the various Regional Economic Communities (RECs) in furtherance of the maintenance or restoration of international peace and security in the region. At the Union level, *Article 3 (f) of the Constitutive Act of the African Union* provides that: The objectives of the Union shall be to: promote peace, security, and stability on the continent and *Article 4 (h)* thereof provides that: The Union shall function in accordance with the following principles: the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity. Further, *Article 23 (1) of the African Charter on Human and Peoples' Rights* guarantees the right to national and international peace and security. It provides that: All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

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<sup>4</sup> Preamble of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace- Keeping and Security (1999)

Under the community legal framework, using ECOWAS as an example, *Article 4 of the ECOWAS Revised Treaty 1993* adopts the maintenance of regional peace, stability and security as one of the fundamental principles of ECOWAS. It provides that: THE HIGH CONTRACTING PARTIES, in pursuit of the objectives stated in Article 3 of this Treaty, solemnly affirm and declare their adherence to the following principles: (e) maintenance of regional peace, stability and security through the promotion and strengthening of good neighbourliness. *Article 58 of the ECOWAS Revised Treaty 1993* further provides: 1. Member States undertake to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region. 2. In pursuit of these objectives, Member States undertake to co-operate with the Community in establishing and strengthening appropriate mechanisms for the timely prevention and resolution of intra-State and inter-State conflicts, paying particular regard to the need to: (f) establish a regional peace and security observation system and peace keeping forces where appropriate.

Members of ECOWAS entered into a *Protocol for 'Mutual Assistance on Defense in 1978 and also in 1981'*. The *Preamble of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace– Keeping and Security (1999)* also provides that ‘Member State in crisis’ refers both to a Member State experiencing an armed conflict as well as a Member State facing serious and persisting problems or situations of extreme tension which, if left unchecked, could lead to serious humanitarian disaster or threaten peace and security in the sub–region or in any Member State affected by the overthrow or attempted overthrow of a democratically elected government.

The Preamble also provides that ‘ECOMOG’ means the ECOWAS Cease–fire Monitoring Group which constitutes the Community’s intervention force as defined in article 21 of the Protocol. *Article 21 of the Protocol (1999)* provides that: The ECOWAS Cease–fire Monitoring Group (ECOMOG) is a structure composed of several Stand–by multi–purpose modules (civilian and military) in their countries of origin and ready for immediate deployment. Pursuant to *Article 22 of the said Protocol (1990)*, ECOMOG is vested with authority to undertake a number of missions including but not limited to (a) Observation and Monitoring; (b) Peacekeeping and restoration of peace; (c) Humanitarian intervention in support of humanitarian disaster; (d) Enforcement of sanctions, including embargo; (e) Preventive deployment;(f) Peacebuilding, disarmament and demobilisation; (g) Policing activities, including the control of fraud and organised crime; (h) Any other operations as may be mandated by the Mediation and Security Council.

### C. Regional Response to Peace and Security Threat or Breach

Regional responses have mainly involved various activities including peacekeeping, conflict prevention and mediation, peacemaking, peace enforcement and peacebuilding. According to the United Nations,<sup>5</sup> these activities have become increasingly blurred to the effect that they rarely occur in a linear or sequential pattern and are not limited to one type of activity. Therefore, they should be seen as mutually reinforcing. Peacekeeping thus seem to be a broader concept within which some of the other activities are absorbed, embedded or run in tandem. This has been observed by some authors who maintain that the objective of peacekeeping is firstly to limit or curtail violence of a conflict that has already been initiated. Secondly, to help resolve the substantive issues of the dispute, also referred to as peacemaking. Thirdly, to avoid or minimize conflict through socioeconomic programs such as technical assistance and quasi-governmental programs, also referred to as peace serving and peace-building.<sup>6</sup> It can be seen that the above observation on terminologies based on the United Nations experience is akin to peace operations undertaken by regional organisations in Africa.

Despite the mutually enforcing nature of the above activities, it is still important to draw a distinction between peacekeeping and peace enforcement due to their legal requirements and effects. It is generally understood that Peacekeeping involves the deployment of forces to support the implementation of a ceasefire or peace agreement in order to control and resolve an actual or potential armed conflict between or within states. Its distinctive features which are also referred to as the essential elements, according to the United Nations' "Capstone Doctrine", are; (i) peacekeeping operations require the *consent* of the main parties to a conflict, (ii) they are based on the principle of *impartiality*, and (iii) the *non-use of force* except in self-defence and the defence of the mandate.<sup>7</sup>

<sup>5</sup> United Nations Peacekeeping, "Terminology", indicates that Peacekeeping is one among a range of activities undertaken by the United Nations to maintain international peace and security throughout the world. The other activities are: conflict prevention and mediation, peacemaking, peace enforcement and peacebuilding.

<sup>6</sup> Sam G. Amoo, "Frustrations of Regional Peacekeeping: The OAU in Chad, 1977-1982" The Carter Center, pp. 3-4; David P. Forsythe, United Nations Peacemaking (Baltimore: The Johns Hopkins University Press, 1972), pp. 1-3; Boutros Boutros-Ghali, An Agenda for Peace (U.N. Department of Information, New York, 1992), pp. 8-9

<sup>7</sup> Richard Caplan, „Peacekeeping/Peace Enforcement“ Princeton University, Encyclopedia Princetoniensis; Brandt Chu, „The Forgotten Chapter: The Legality of Peacekeeping, Peace Enforcement, and Military Intervention under Chapter VIII of the UN Charter” Scholastica, p.3; Sam G. Amoo, „Frustrations of Regional Peacekeeping: The OAU in Chad, 1977-1982,” The Carter

On the other hand, Peace enforcement involves the use of military assets to enforce a peace against the will of the parties to a conflict when, for instance, a ceasefire has failed. It involves the application of a range of coercive measures, including the use of military force. It also requires the explicit authorization of the Security Council.<sup>8</sup> Therefore, the provisions of Article 41 of the UN Charter may best be described as peace enforcement measures which do not involve the use of armed force but include economic and diplomatic sanctions. The provisions of Article 42 of the Charter, on the other hand, may be described as peace enforcement measures involving the use of coercive measures including the use of military force.

One of the key reasons for the above distinction is that, for peace enforcement to be undertaken by or under any regional arrangement the Security Council must give authorization, pursuant to Article 53 of the UN Charter. On the other hand, no Security Council authorization is required for peacekeeping missions. Article 54 of the Charter only requires that the Security Council must be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies and these include those undertaken under peacekeeping missions. The requirement for peacekeeping therefore is a duty to report on or give update to the Security Council on activities of a peacekeeping mission. Secondly, for peacekeeping, you cannot derogate from the principle of the non-use of force. For peace enforcement however, you derogate from the principle of the non-use of force and the non-interference in the internal affairs of sovereign states. At the threshold of humanitarian disaster, the sovereign right of the state is suspended and the right of humanity takes precedence, justifying humanitarian intervention.

## **D. Union Level**

### **1. The organization of African unity (OAU)**

As most African nations emerged from colonization, they sought their common identity and mutual cooperation in the establishment of the Organization of African Unity (OAU). On 25 May 1963 African heads of State and Government established the OAU in Addis Ababa, Ethiopia. Their primary aim was to foster unity and solidarity among all African States, to achieve better standards of life for all Africans, to defend African States' sovereignty, territorial integrity and independence, to eradicate colonialism, and

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Center, pp. 3-6 however indicates five essential elements or requirements which includes a) consent, b) cooperation, c) non-use of force, d) clear mandate, e) institutional capacity

<sup>8</sup> Ibid

promote international cooperation.<sup>9</sup> Therefore, "the OAU is not primarily conceived as a collective security or defense organization, but security was recognised from the outset as inherently a subsidiary dimension of its primary purposes".<sup>10</sup> The aims or purposes highlighted above were predicated on the goal to liberate the continent from colonial and Cold war domination, hence; defending the sovereignty, territorial integrity, and independence of the African states, and regional cooperation were the main priorities.

African States have been on the move to achieve peace in conflict regions and to prevent conflicts from breaking forth. However, it has been suggested that the OAU could not achieve much in its regional peace support initiatives due partly to its strong focus on pan-Africanism and sovereign independence'. Thus, the role of the OAU was much more of 'coordination and policy direction, leaving robust implementation action to developing sub-regional bodies such as ECOWAS and SADC'.<sup>11</sup> The OAU made its first peace support action in 1979 when it sent troops to Chad (1980-1982) under OAU Resolution 102(XVIII) in order to 'ensure the defense and security of the country whilst awaiting the integration of government forces'. Chad had fallen into a bloody civil war after independence in 1965,<sup>12</sup> which led to massive human rights violations and political instability. This ad hoc force was composed of France, Libya, Nigeria and later Zaire and Senegalese forces followed. Though the OAU led Chad mission is deemed to have failed, many critics recognised the attempts made by the OAU considering the complexities of that conflict.

At the height of guerrilla war in the Western Sahara predicated on the struggle for post-colonial self-determination, the OAU again championed the fate of the continent in its peace-keeping role by setting up a 'ad hoc committee in 1978 and an implementation committee in 1981' to monitor a ceasefire and a referendum. Amidst critical political disputes between Morocco, Mauritania and Polisario Front, among other things, the ad hoc Western Sahara mission could not yield the desired fruits, hence; the UN took over.<sup>13</sup> Having created the 'Mechanism for Conflict Prevention, Management and Resolution' in 1995, the OAU undertook other robust peace support operations including those in

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<sup>9</sup> Article 2(1) of the OAU Charter

<sup>10</sup> McCougrey, H. & Morris, J. (2000), *Regional Peacekeeping in the Post-Cold War Era*, p.33.

<sup>11</sup> Ibid

<sup>12</sup> Zwanenburg, M. (2005), 'International Humanitarian Law Series' : Accountability of Peace Support Operations, p.24

<sup>13</sup> McCougrey & Morris, *Regional Peacekeeping in the Post-Cold War Era*, p.40



Rwanda (1990-1993), Burundi (1993-1996), and the Comoros (1997-1999).<sup>14</sup> OAU's authorized peace operations since 2000 include; the OAU Joint Military Commission (OAU JMC) to the Democratic Republic of Congo from 1999-2000 with 43 personnel; OAU/AU Liaison Mission in Ethiopia-Eritrea (OLMEE/AULMEE) from 2000-2008 with 43 authorized personnel; OAU Observer Mission in the Comoros (OMIC 2) from 2000-2001 with 14 authorized personnel; and OAU Observer Mission in the Comoros (OMIC 3) from 2001-2002 with 39 authorized personnel.<sup>15</sup> The OAU-led interventions can be primarily described as peacekeeping missions.

## **2. The African union (AU)**

At the time the OAU transitioned into the AU in 1999, the objective of maintaining and promoting peace and security on the continent were expressly incorporated into the legal framework of the AU. After the establishment of the African Union (AU) in September 1999 which succeeded the OAU in July 2002, African member states continued with the vision to create a standby army under the new organization.<sup>16</sup> This idea was founded in June 1981 when 'the OAU Council of Ministers approved the creation of a pan-African Crisis Response Force which would be a stand by force in 'readiness for OAU 'green beret' service' in a manner envisaged by article 43 of the UN Charter for "blue helmet forces", though it remained in theory like its "blue helmet" counterpart.<sup>17</sup> In 2004 the African Union, through its Peace and Security Council, took proactive step by sending a mission to Darfur for a ceasefire agreement between the Sudan People's Liberation Movement (SPLM) and the Khartoum government. The first African Mission in Darfur (AMID), also known as the African Union Mission in Sudan (AMIS I) with 4,400 authorized personnel lasted from 2004-2005 and it was the first<sup>18</sup> to intervene in Darfur as a peacekeeping force.

The second African Mission in Darfur (AMIS II) with 7,700 authorized personnel lasted from 2005-2007 and AMIS remained at the scene of peacekeeping until the UN Security Council adopted Resolution 1590 on 24 March 2005 which established the United Nations Mission in Sudan (UNMIS).<sup>19</sup> In line with Resolution 1769 adopted on 31

<sup>14</sup> See note 12 above; C. Lynch, UN Approves Peacekeeping Force for Burundi, *The Washington Post*, 22 May 2004, at A15

<sup>15</sup> Nate D.F. Allen, „African-Led Peace Operations: A Crucial Tool for Peace and Security”, *Africa Center for Strategic Studies* (Aug 9, 2023), p.5

<sup>16</sup> See note 12 above

<sup>17</sup> McCougrey & Morris, *Regional Peacekeeping in the Post-Cold War Era*, p.36

<sup>18</sup> Adam Keith, "The African Union in Darfur: An African Solution to a Global Problem" 154

<sup>19</sup> Security Council Report, "UN Documents for Sudan: Security Council Resolutions

July 2007, both parties formed a hybrid operation known as the United Nations/African Union Mission in Darfur (UNAMID)<sup>20</sup> which finally took over on 31 December 2007.

In addition to the establishment of AMIS in Sudan, the African Union on a number of occasions made efforts to negotiate peace accords between the government-led troops and the insurgencies. On 9 November 2004, The AU was able to negotiate a peace agreement between President Omar al-Bashir's government and the two rebel groups; the Justice and Equality Movement (JEM) and the Sudanese Liberation Army (SLA). The three parties signed a peace agreement for a no-fly zone over rebel-controlled areas of Darfur. The aim was to stop Sudanese military from bombarding rebel villages. Another peace accord was organized by AU which ensured that international humanitarian aid agencies had unrestricted access to the Darfur region. These two peace talks laid the foundation for the Abuja peace summit of October 25, 2004. These were also not a linear or sequential approach but a mutually reinforcing model including peacekeeping, conflict prevention and mediation, and peacemaking.

The AU has undertaken several other peace support missions including the AU Mission in Burundi (AMIB) from 2003-2004 with 3,250 authorized personnel; AU Observer Mission in the Comoros (MIOC) in 2004 with 41 authorized personnel; AU Mission for Support to the Elections in the Comoros (AMISEC) in 2006 with 1,260; Operation Democracy in the Comoros in 2008 with 1,800 authorized personnel; AU Mission in Somalia (AMISOM) from 2007-2022 with 22,000 authorized personnel; AU Electoral and Security Assistance Mission in the Comoros (MAES) from 2007-2008 with 356 authorized personnel; AU Regional Coordination Initiative for Elimination of the Lord's Resistance Army (RCI-LRA) in CAR, DRC, South Sudan, and Uganda from 2011-2018 with 5,000 authorized; AU Support to the Ebola Outbreak in West Africa (ASECOWA) Mission in Guinea, Liberia, Sierra Leone from 2014-2015 with 800 authorized personnel; AU Human Rights Observers and Military Experts Mission in Burundi from 2015-2021 with 200 authorized personnel; Multinational Joint Task Force (MNJTF) in Cameroon, Chad, Niger, and Nigeria since 2015 with 10,000 authorized personnel; G5 Sahel Joint Force in Burkina Faso, Chad, Mali, Mauritania, and Niger (now remaining Mauritania and Chad) since 2017 with 5,600 authorized personnel; AU Technical Support Team to The Gambia (AUTSTG) from 2017-2021 with 8 authorized personnel; AU Support to the Ebola Outbreak in the DRC (ASEDCO) Mission in 2019 with 850 authorized personnel; AU Military Observer Mission to the Central African Republic (MOUACA) since 2020 with 34 authorized personnel; AU Transition Mission

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<sup>20</sup> Ibid; See also African Union, (2013), a United and Strong Africa: Vote of Thanks on the conclusion of the African Union (AU) Peace and Security Council (PSC) field mission in Sudan, delivered by the Ambassador of the Gambia, Member of the AU-PSC, 17–19 March 2013

in Somalia (ATMIS) since 2022 with 22,000 authorized personnel; and AU Monitoring, Verification and Compliance Mission (AU-MVCM) in Ethiopia since 2022 with 10 authorized personnel. It is observed that the above interventions were mostly peacekeeping missions incorporating other peace mission activities, whereas a few involved peace enforcement operations, including those of the AU Regional Coordination Initiative for Elimination of the Lord's Resistance Army (RCI-LRA) in CAR, DRC, South Sudan, and Uganda, and the Multinational Joint Task Force (MNJTF) against Boko Haram and other terrorists groups in the Lake Chad Basin countries of Cameroon, Chad, Niger, and Nigeria.

## **E. Regional Economic Communities (Recs) Level**

### **1. The economic community of west African states (ECOWAS)**

In 1975, the countries within the Western part of Africa established the Economic Community of West African States (ECOWAS). It was founded with the purpose to foster 'economic stability and development'. In the original ECOWAS Treaty 1975, there was no provision for the maintenance of regional peace and security. In the ECOWAS Revised Treaty 1993 however, this all significant issue is addressed as seen in the legal texts above. In 1990, ECOWAS took a 'significant military security dimension' due to the outbreak of the Liberian civil war,<sup>21</sup> a factor which led to the establishment of the Economic Community of West African States Monitoring Group (ECOMOG).

ECOMOG undertook operations in Liberia (1990-2000 and also in 2003), Sierra Leone (1997-2000), Guinea- Bissau (1998-1999) and Ivory Coast.<sup>22</sup> The ECOMOG operations in Liberia and Sierra Leone (1990-2000) involved 7,000 authorized personnel and ECOWAS was the authorizing entity. Other operations initiated and spearheaded by ECOWAS include: ECOWAS Mission in Guinea-Bissau (ECOMIB) from 2012-2020 with 629 authorized personnel; ECOWAS Intervention in The Gambia (ECOMIG) since 2017 with 8,000 authorized personnel; and ECOWAS Stabilization Support Mission in Guinea-Bissau (SSMGB) since 2022 with 630 authorized personnel.<sup>23</sup>

In December 1989, Charles Taylor and his National Patriotic Front of Liberia (NPFL) began a civil war in Liberia against Master Sergeant Samuel Doe who had come to power on a military coup ticket and turned the country into a 'military dictatorship which further destabilized the already badly shaken political and economic structures of

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<sup>21</sup> McCougrey & Morris, *Regional Peacekeeping in the Post-Cold War Era*, p.141

<sup>22</sup> See note 12 above

<sup>23</sup> Allen, „African-Led Peace Operations: A Crucial Tool for Peace and Security”, pp.5-6

the country'.<sup>24</sup> This civil war which was capitalized on Doe's misrule, corruption, tribalism and dictatorship, among others, brought in various warring factions such as the Armed Forces of Liberia (AFL) the National Patriotic Force of Liberia (NPFL), the Independent National Patriotic Front of Liberia (INPFL-K) and INPFL-J and the United Liberation Movement of Liberia for Democracy (ULIMO). That war claimed tens of 'thousands of lives, amputation of arms and legs, mass rape, looting and burning of houses to name a few.

In May 1990, ECOWAS' heads of states and governments held a meeting in Banjul, The Gambia, under the auspices of Nigeria's leader, General Ibrahim Babangida, ECOWAS's Chairman at the time. They adopted a Standing Mediation Committee (SMC) which was comprised of The Gambia, Ghana, Mali, Nigeria and Togo "to settle disputes and conflict situations within the Community."<sup>25</sup> The SMC engaged the various warring parties (Doe's AFL, Taylor's NPFL and Johnson's INPFL) and proposed negotiations for a cease-fire agreement, disarmament of warring factions, establishment of an interim government and the call for a democratic election.<sup>26</sup> Charles Taylor's refusal of the peace negotiation made the SMC finally adopt the ECOMOG operation as an 'ad hoc force' which entered Liberia on 24 August 1990 comprised of Ghanaian, Guinean, Nigerian and Sierra Leonean forces and later followed by forces from 'Benin, Burkina Faso, Gambia, Ivory Coast, Mali, Niger, and Senegal' troops.<sup>27</sup> Between 6,000 and 11,000 or 14,000 army, naval and air force personnel from the above countries participated in the ECOMOG operation in Liberia.<sup>28</sup> The main mandate of ECOMOG was to oversee a cease-fire, restore order in the country and establish an interim government. They established an interim government with Amos Swayer as leader. ECOWAS/ECOMOG initiated several peace negotiations and accords in order to end the Liberian civil war.

28 November 1990: Bamako Agreement: All of the warring factions agreed to a ceasefire; 30 October 1991: Yamoussoukro Agreement: All of the warring factions agreed to encampment and disarmament of factions under ECOMOG supervision; 17

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<sup>24</sup> Michelle Pitts, "Sub-Regional Solutions for African Conflict: The ECOMOG Experiment" Volume 19, Number 1, spring (1999), p. 4, citing Clement E. Adibe, "The Liberian Conflict and the ECOWAS-UN Partnership," *Third World Quarterly*, 18, no. 3 (1997), p. 473

<sup>25</sup> Ibid

<sup>26</sup> Idem, pp. 4-5

<sup>27</sup> McCougrey & Morris, *Regional Peacekeeping in the Post-Cold War Era*, p. 142

<sup>28</sup> Monlar, D. (2008), *ECOMOG: The example for a viable solution for African conflicts*, Vol, 7. No. 1 (2008) 55-61, at p. 58; See also BBC Focus on Africa, November 4, 1992

July 1993: Geneva Agreement: The NPFL, ULIMO and the Liberian Interim Government agreed to a ceasefire; 25 July 1993: Cotonou Agreement: The NPFL, ULIMO and the Liberian Interim Government agreed to encampment and disarmament of the factions under ECOMOG supervision. They also agreed to a tri-partite transitional government responsible for organizing general elections in February 1994; 12 September 1994: Akosombo Agreement: The NPFL, ULIMO and AFL agreed to a ceasefire, the installation of a transitional presidency composed of members decided upon by the three factions, and plan for general elections in October 1995; 21 December 1994: Accra Agreement: The NPFL, AFL, ULIMO-K, ULIMO-J, Lofa Defense Force, LPC, CRC-NPFL and the LNC agreed to establish safe havens and buffer zones, to have elections in November of 1995, to demobilize, and to re-adopt the transitional presidency of the Akosombo Agreement; 19 August 1995: Abuja Agreement: All of the warring factions agreed to a ceasefire, a period of disarmament, the creation of a collective presidency, and plan for general elections in August 1996; 17 August 1996: (Revised) Abuja Agreement: All of the warring factions agreed to disarmament, dissolution of all factional militia and plan for general elections in May 1997.<sup>29</sup>

The ECOMOG Mission in Liberia has been credited as successful despite allegations of human rights violations committed by its personnel, especially against women. The Mission secured peace in Liberia and the troops were present in the country until 1996 when the war ended.<sup>30</sup> Again, following the second Liberian civil war between 1999 and 2003, regional troops under the ECOWAS Mission in Liberia (ECOMIL) consisting of 3,500 soldiers mostly coming from Nigeria intervened in Liberia. It is observed that while the first civil war brought Charles Taylor to power, the second civil war led to his exit. ECOMIL served as an interposition force, keeping the warring parties apart and facilitated the arrival of the United Nations Mission in Liberia (UNMIL).<sup>31</sup> The ECOMOG intervention in Liberia can be described as an initial peacekeeping mission that was later transformed into a peace enforcement operation.

Contrary to the view that the military intervention of ECOWAS began with questionable legal authority and Article VIII of the Charter was used to commend the said intervention retroactively,<sup>32</sup> ECOWAS did not legitimize its intervention in Liberia by obtaining ex post facto approval from the UN Security Council. ECOWAS

<sup>29</sup> Prosper Addo, "Peace-making in West Africa: Progress and Prospects," Kofi Annan International Peacekeeping Training Centre (KAIPTC) Monograph No. 3 (Nov 200), p. 19

<sup>30</sup> Aljazeera, "Timeline: A history of ECOWAS military interventions in three decades" (1 Aug 2023)

<sup>31</sup> Ibid

<sup>32</sup> Brandt Chu, "The Forgotten Chapter: The Legality of Peacekeeping, Peace Enforcement, and Military Intervention under Chapter VIII of the UN Charter" pp. 3-5

intervention in Liberia was commenced under the ECOWAS security framework and legal arrangements<sup>33</sup> and it is argued that these were not in breach of the United Nations' purposes and objectives. No consent requirement was needed from the government of Liberia when the peacekeeping mission was transformed into a peace enforcement operation after Charles Taylor's refusal to the peace negotiation and ceasefire. Long before UN intervention, ECOWAS had assumed a proactive role by starting a peace negotiation among the parties to the conflict. In fact, the UN Security Council Resolution 788 which imposed an arms embargo on Liberia was adopted on 19 November 1992 whereas, ECOWAS peacekeeping efforts in Liberia started in May 1990.

The Sierra Leone civil war (1991-2002), which erupted largely due to pervasive corruption and the dire failings in governance that characterised all the regimes of the pre-conflict years particularly the one party rule of the All Peoples Congress (APC) party devastated the country and caused many human rights violations.<sup>34</sup> The election of the first democratic government under the Sierra Leone Peoples Party (SLPP) led government of President Ahmed Tejan Kabbah in February-March 1996<sup>35</sup> brought sign of hope as democratization continued. Not too long, a group of disgruntled Sierra Leone military officers overthrew that civilian government on 25 May 1997 and formed the Armed Forces Revolutionary Council (AFRC) led by Major Johnny Paul Koroma. Once again Sierra Leoneans witnessed the deep scourge of war in the hands of the Revolutionary United Front (RUF) rebels and dissident soldiers (AFRC) who embarked on massacre and untold human rights violations.

In July 1997 and October 1997, ECOWAS delegation held regional meetings in Abidjan, Ivory Coast and Conakry, Guinea respectively to continue negotiation with the AFRC/RUF. This led to the signing of the Conakry Peace Plan on 23 October 1997.<sup>36</sup> The AFRC's refusal to return power to the Kabbah government led to the imposition of severe sanctions by both ECOWAS countries and the international community. Thus, ECOMOG military intervention in early February 1998 was inevitable". The main mandate of ECOMOG was to end AFRC junta rule and restore the Kabbah civilian government to power.<sup>37</sup>

<sup>33</sup> Addo, "Peace-making in West Africa: Progress and Prospects," p. 14; Article 18 (1), Article 4 (b), Article (3) of the Protocol Relating to Mutual Assistance in Defence (1981); Article 23 of the African Charter on Human and Peoples' Rights, 1981

<sup>34</sup> Truth and Reconciliation Commission Report, Volume Two, Chapter Two

<sup>35</sup> Teson, Fernando R. (2005), "Humanitarian Intervention: An Inquiry into Law and Morality" p. 327

<sup>36</sup> Idem, p.41

<sup>37</sup> Idem, pp. 42- 47

The initial (OPERATION SANDSTORM), "aimed at the capture of the capital of Freetown and the deposing of the AFRC junta under Johnny Paul Koroma in Freetown, was launched on 2 February 1998 and was named Operation TIGERHEAD. The three-pronged attack on the city was conducted with three Nigerian infantry battalions each assisted by small ad hoc contingents of ex-policemen, military officers and university students who were loyal to the Sierra Leone government in exile".<sup>38</sup> International commitment to end the conflict began in June 1997 when the UN joined forces with ECOWAS to further with peace negotiations with the RUF and AFRC. On the 22 October 1997 the parties reached a negotiation and President Kabbah returned to power. On the 13 July 1998, the UN Security Council Resolution 1181 established the United Nations Observer Mission to Sierra Leone (UNOMSIL) which initially comprised of 70 unarmed military observers and 15 medical personnel to oversee the peace process. The ECOMOG intervention in Sierra Leone can be described as a peace enforcement operation with the use of force.

#### **F. Reasons why Regional Organisations have Assumed a Proactive Role in Peacekeeping and Peace Enforcement**

Regional organisations are usually the first point of call during crises in Africa. There is a history of unwillingness from the UN Security Council or the international community to prioritize swift intervention in conflicts in Africa despite the looming humanitarian disasters. For instance, Prosper Addo recounts that, "Prior to ECOWAS' intervention in Liberia, there was lack of credible international response to the Liberian crisis. Thus, it was up to local actors to respond to the imminent humanitarian disaster that threatened to engulf the entire Mano River Basin (MRB)."<sup>39</sup> The Truth and Reconciliation Commission (TRC) Report<sup>40</sup> similarly found that the international community abandoned Sierra Leone during the early years of the conflict. Regional organisations have therefore assumed the role and have taken the lead to serve as the custodians of peace and security in Africa. The growing number of conflicts which pose threats to international peace and security shows that the UN cannot handle all of the international security threats. Examples that demonstrate the overstretched capacity of the UN include the war between Ukraine-Russia, the wars in Gaza, Darfur, and South Sudan. These show the indispensable need for regional cooperation and mutual support in addressing threats to international peace and security on the continent.

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<sup>38</sup> *Idem*, p. 43

<sup>39</sup> Addo, "Peace-making in West Africa: Progress and Prospects," p. 14; Article 18 (1), Article 4 (b), Article (3) of the Protocol Relating to Mutual Assistance in Defence (1981); Article 23 of the African Charter on Human and Peoples' Rights, 1981

<sup>40</sup> Truth and Reconciliation Commission Report, Volume Two, Chapter Two, para 367

UN-led peacekeeping and peace enforcement activities in Africa have declined considerably. Though some authors have suggested a different explanation for the decline,<sup>41</sup> it is generally agreed that since 2015 there are no active peacekeeping and peace enforcement authorised under Chapter VIII of the UN Charter.<sup>42</sup> In the face of such a decline, regional organisations have devised regional arrangements relying on the Union and Community legal framework consistent with the purposes and principles of the United Nations to initiate and spearhead the maintenance of international peace and security. That said, Chapter VIII of the UN Charter should not be construed or interpreted as requiring authorization or approval from UN Security Council for all regional arrangements. Distinction should be made between peacekeeping missions that require no authorization from the Security Council and peace enforcement operations that require authorization from the Security Council under Article 53 of the UN Charter. The requirement for UN Security Council authorization of peace enforcement operations could be seen from the viewpoint that, since the use of lethal force is derogation from the principle of the non-use of force, it is important to have such actions authorized by the Security Council. Also, it is derogation from the principle of non-interference and therefore, the targeted state must know that even the community of nations is in support of the said use of force. Furthermore, it also brings the peace enforcement troops under strict obligation to comply with International Humanitarian Law once they take part in hostility.

The Member States of the AU and the various Regional Economic Communities (RECs) are in the best position to solve their internal problems through African solutions to African problems. To a large extent, peacekeeping, peacemaking and peace building efforts are more sustainable using regional actors. This is because they have a unique history, strategy and platform to preside over, mediate or intervene through peacekeeping and other integrated activities during crises. It is a customary practice for African states to take mutual action on regional security matters. African solidarity and unionism can best be explained with reference to their common struggle for independence. The nationalist movements in Africa led to African solidarity and as independence was ushered, the desire to fight a common cause was well planted. Also, The African collectivist perception of neighborhood, sense of community and societal mutuality is also an entrenched factor for regional organizations playing proactive role in addressing threats to international peace and security.

Regional arrangements have many advantages which may be lacking in foreign

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<sup>41</sup> Chu, "The Forgotten Chapter: The Legality of Peacekeeping, Peace Enforcement, and Military Intervention under Chapter VIII of the UN Charter," p.3

<sup>42</sup> Ibid



interventions. These include the ability of peace actors to understand the underlying factors of conflicts, and the culture and interests of the conflicting parties. Though it can be argued that African states are largely diverse in terms of culture and language, yet, there is unity in diversity. The countries within the various Regional Economic Communities (RECs) share common borders and are faced with similar challenges and have a regional objective. Regional organisations are therefore able to view conflict from a domestic point of view and can react proactively through mediation, conciliation, and peacebuilding to prevent a crisis or curtail the impact of a humanitarian disaster. The interventions of regional organisations such as the ECOWAS' ECOMOG initiatives in Liberia and Sierra Leone would serve as a blueprint and model for Africa's security system. Despite the challenges and limitations that characterised ECOMOG's operations, the nature and complexity of those conflicts can be much more appreciated by looking beyond the printed legal text to see the realities that informed the reasoning to intervene in those given circumstances largely using regional legal framework and structures.

Firstly, the Liberian and Sierra Leonean civil wars were characterised by both internal and external actors who caused massive cross-border human rights violations that posed direct and immediate regional threats and breach of international peace and security. As evidence from the Sierra Leone Truth and Reconciliation Commission shows, Charles Taylor and his National Patriotic Front of Liberia (NPFL) had the aim to destabilize the countries within the Mano River Union (MNU) in order to plant tyranny, exploit natural resources and establish dictatorship.<sup>43</sup> Charles Taylor and his NPFL was a key external factor in the Sierra Leonean civil war, for which he was indicted, tried and convicted by the Special Court for Sierra Leone (SCSL) on 11 charges arising from war crimes, crimes against humanity, and other serious violations of international humanitarian law committed from November 30, 1996 to January 18, 2002.<sup>44</sup> Therefore, it can be argued that member states within ECOWAS could have relied on collective self-defense in order to react to Charles Taylor's threats to international peace and security in that regional context. ECOMOG's peacekeeping and humanitarian interventions were paradigms borne out of a dire need to curtail the humanitarian disaster that had become a regional threat. Secondly, it shows the capability of regional organisations to take self-initiatives and mobilize available resources with the willpower to effect change despite the challenges of limited resources. Thirdly, the timeliness of the intervention shows that

<sup>43</sup> Truth and Reconciliation Commission Report, Chapter Two at para 365 and 366, the Commission finds that Charles Taylor deployed about 2,000 (Two thousand) fighters from his NPFL into Sierra Leone in 1991 and that Charles Taylor was primarily responsible for initiating the conflict in the manner in which it began and that the NPFL was responsible for most of the early human rights atrocities committed against civilians.

<sup>44</sup> Open Society Foundations, (Sep 2013)

regional organisations can be responsive to crises with less bureaucracy than the United Nations system.

### **Conclusion**

Regional organisations in Africa have developed various legal frameworks through which they set up regional arrangements to proactively respond to international peace and security threats on the continent. The legal frameworks adopted are consistent with the United Nations' principles and objectives in tandem with its Charter and they are responsive and functional. The effectiveness of regional organisations in maintaining or restoring international peace and security in Africa should not just be assessed on the benchmark of ending conflict but on their record of curtailing violence during conflict, playing pivotal role of resolving conflict through peacemaking, intervening to avoid or minimize conflict through socioeconomic peace-building initiatives, and where necessary, the humanitarian intervention to restore peace and security.

The weaknesses and limitations of peacekeeping and peace enforcement operations are not unique to regional arrangements in Africa. For instance, similar patterns could be seen in the NATO led operations in Libya (2011), Afghanistan (2003), Kosovo (1999) and Bosnia (1992-1995), and UN operations in Somalia (1993-1995) and Congo (1960-1964). Therefore, the peacekeeping and peace enforcement efforts carried out at the Union level by the AU and at the Regional Economic Communities (RECs) level by ECOWAS as case study must be commended and the gains made must be consolidated for current and future peace keeping and peace enforcement initiatives whilst frantic efforts are made to address the limitations and lessons learnt. It is important to improve the standards of regional arrangements by providing technical and logistic support, create a forum for effective cooperation between regional organisations and the United Nations, and increase the capacity of human resource development through the African security academies, universities and other peace and security institutions so as to propagate the culture of peace and security.

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Sam G. Amoo, “Frustrations of Regional Peacekeeping: The OAU in Chad, 1977-1982” The Carter Center, pp. 3-4; David P. Forsythe, United Nations Peacemaking (Baltimore: The Johns Hopkins University Press, 1972), pp. 1-3; Boutros Boutros-Ghali, An Agenda for Peace (U.N. Department of Information, New York, 1992), pp. 8-9

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Truth and Reconciliation Commission Report, Chapter Two at para 365 and 366, the Commission finds that Charles Taylor deployed about 2,000 (Two thousand) fighters from his NPFL into Sierra Leone in 1991 and that Charles Taylor was primarily responsible for initiating the conflict in the manner in which it began and that the NPFL was responsible for most of the early human rights atrocities committed against civilians.

Truth and Reconciliation Commission Report, Volume Two, Chapter Two

Truth and Reconciliation Commission Report, Volume Two, Chapter Two, para 367

United Nations Peacekeeping, “Terminology”, indicates that Peacekeeping is one among a range of activities undertaken by the United Nations to maintain international peace and security throughout the world. The other activities are: conflict prevention and mediation, peacemaking, peace enforcement and peacebuilding.

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