

THE CHANGING ROLE OF REGIONAL ORGANIZATIONS IN AFRICAN PEACE AND SECURITY

This panel was convened at 2:15 pm, Friday, April 5, by its moderator, Ademola Abass of the Institute for Comparative Regional Integration Studies, United Nations University, who introduced the panelists: Théodore Christakis of the University of Grenoble; Francis M. Ssekandi, Lecturer-in-Law, Columbia University Law School; and Sarah Nouwen of Cambridge University.

INTRODUCTORY REMARKS BY ADEMOLA ABASS*

When the UN Charter was adopted in 1945, it was envisaged that regional organizations would play certain roles in respect of peace and security. This role, it needs to be emphasized, was only the product of an afterthought. Initial discussions during the United Nations Conference on International Organization (UNCIO) that led to the creation of the UN Charter did not include the possibility of regional organizations playing any peace and security role.

The UN Charter provides, in Chapter VIII, for regional organizations to play both pacific and enforcement roles in respect of peace and security. Whereas these organizations, which are organically referred to in the UN Charter as regional arrangements or agencies, could settle disputes among their members peacefully without involving the UN Security Council (Article 52), they are forbidden by Article 53 to take enforcement action without Security Council authority. The Charter also empowers the Security Council to use regional organizations for such actions as it deems fit.

It is probably correct to state that in no other continent has the role envisaged for regional organizations in 1945 undergone such profound change and transformation than in Africa. Not only have African regional organizations become, by far, the most actively engaged with peace and security (at least insofar as being physically involved in such matters is concerned), they have also been extremely proactive in interpreting Chapter VIII provisions in a manner that has enabled them continuously to undermine the constitutional structure of the Chapter's framework.

Up until about 1990, the majority of African regional organizations were essentially economic groupings with little or no competence in maintaining peace and security among their member states. This situation was owed partly to the Cold War, which ensured that regional organizations would not obtain the required UN Security Council authorization for undertaking muscular military operations among their member states, and partly to the fact that African states were themselves notoriously protective of their sovereignty. Thus, any talks of military intervention by African organizations (or any organization, for that matter) during this time were a non-starter.

One serious consequence of the inability of the UN to respond to conflicts in an equitable and timely fashion is the opening up of a subsidiarity space for regional organizations. African organizations, coming from a region that has unarguably been the worst hit by the UN's selective intervention machinery, began to tackle African conflicts from 1990. From the brave, if neophytic, intervention by ECOWAS in Liberia and Sierra Leone between 1990 and 2003, to the virtual irrelevance of the African Union in the resolution of the Libya and

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Ivory Coast debacles in 2011 and 2012, African organizations have played varying roles in maintaining peace and security on the continent.

Naturally, interventions by African organizations in armed conflicts have produced some costly mistakes, just as they have also authored some modest gains. Serious lessons have (and are still being) learned as the process continues.

The role of African regional organizations in peace and security continues to change in key areas, both in respect of their member states and, more importantly, in their relation to the UN Security Council. With regard to their member states, some African organizations have been able to adopt treaties, which enable them to disaggregate or altogether dispense with the consent of their members before they can take enforcement action in response to their conflicts. The ratification of such treaties or protocols by those member states *ipso facto* establishes the legality of enforcement actions leveled by an organization against such a member state. Concerning the relationship of these organizations with the Security Council, the picture is less apt. The requirement of Security Council authorization as a precondition for regional enforcement action has so frequently been ignored by African regional organizations as to warrant the conclusion that of this requirement, as with Ozymandias, only the words remain. This problem pulls in different directions.

African regional organizations continue to adopt treaties and protocols that now empower them to authorize enforcement actions on their own. While none of such conventions has gone as far as explicitly dispensing with the Security Council authorization of such operations, the wording and *travaux préparatoires* of many such instruments leave no one in doubt of the intention behind those treaties. In the case of the African Union—the continent’s premier organization and inarguably its most inclusive body—not only has its Constitutive Act equipped the Union with a right of humanitarian intervention (Article 4(h)) (the first such that has ever been done by any international organization), but the Union’s leadership has made several declarations to the effect that they will not wait around for the Security Council whenever peace and security is at stake in Africa.

Developments in recent times, especially in regard to the Libyan, Ivory Coast, and Malian crises, demonstrate, however, that African regional organizations may not necessarily match their rhetoric with action when a situation arises. But it may also be that the particular dynamics of those crises played a role in tempering the expected role of the African Union with reality. What is certain is that enormous tension arises from the provisions of the UN Charter with regards to the prohibition of the use and threat of force (Article 2(4)), the legal regulation of regional organizations (Chapter VIII), and the nascent normative developments by African regional organizations.

From their apparent failure to act in Mali, Ivory Coast, and Libya, it is certainly not any easier to impugn the ability of African organizations to act without Security Council authority than it is to infer the UN’s inability to resolve the Syrian crisis from the failure of the Security Council to authorize a military intervention despite considerable loss of Syrian lives. Any such judgment call must countenance the inevitability of certain fundamental questions: What constitutes “acting” in these circumstances? Does it mean that the organization *must* use force to dispose of a government adjudged to be problematic? Or does such an expectation include the prospect for peaceful settlement, no matter how long it takes to resolve the crisis, on the understanding that how a conflict is resolved will play a crucial role in securing the post-conflict peace in that country? Does “acting” embrace the possibility of methodological differentials and conceptual divergences between African regional organizations and other international actors when it comes to their responses to the same crisis? What role do

variations play in the approaches adopted by different actors, in their perceptions of a conflict, and in how they engage with the process—a factor that is crucial in any value judgment which we, as analysts, will make of such endeavors?

This panel, which I am very privileged to chair, will address some of these issues. The panelists will each consider the changing roles of regional organizations in African peace and security. The presentation will begin with Professor Ssekandi of Columbia Law School, who will speak to the tension between the prohibition of the use of force and Chapter VIII, as I have briefly remarked above. This will be followed by the remarks of Professor Christakis of the University of Grenoble-Alpes, who will ask whether “The Emperor Has No Clothes,” as an inquiry to discover whether African regional organizations have been able to match rhetoric with practice. Dr. Sarah Nouwen of Cambridge University will conclude the panel presentations by investigating, in the context of the UN/AU mission in Darfur, whether the manner in which an actor frames a conflict influences the nature of its intervention.

THE CHANGING ROLE OF REGIONAL ORGANIZATIONS IN MAINTAINING PEACE AND SECURITY

*By Francis M. Ssekandi**

The United Nations Charter preserves the right of states to form regional arrangements and 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.” This provision in paragraph 1 of Article 52 would suggest that the primary role of these arrangements and agencies is to promote pacific settlement of disputes, leaving enforcement action to the Security Council (SC). Article 52 reads:

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.
4. This Article in no way impairs the application of Articles 34 and 35.

The provisions of Article 52 are buttressed by the apparent prohibition in Article 53 of enforcement action by regional organizations without authorization by the Security Council. This article reads:

1. 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

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