

Peace, security and democracy in Africa?

A summary of outcomes from the 2002 OAU/AU summits in Durban¹



Jakkie Cilliers, Institute for Security Studies

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INTRODUCTION AND PURPOSE

The final Summit of the Organization of African Unity (OAU) and inaugural Assembly of the African Union (AU) presented an interesting strategic interplay of continental politics, competing alliances and national agendas. In the process, however, African leaders made it clear that they are embarking upon new paths that may, in time, further strengthen the cause of peace, security and democracy. Indeed, the Durban summit had a number of concrete and positive outcomes, such as:

- the launch of the key structures of the AU;
- the adoption of a protocol relating to the establishment of a Peace and Security Council. The protocol is now open for signature and ratification;
- a decision by the Assembly to strengthen the role of the AU in election monitoring and observation;
- approval by the Assembly on a range of benchmarks to monitor issues relating to security, stability, development and co-operation within the context of the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA); and
- approval of the New Partnership for Africa's Development (NEPAD) African Peer Review Mechanism and related documentation.

On the negative side, it is evident that NEPAD has been dealt a potentially severe blow by the enlargement of the implementation committee from 15 to 20 countries (to inevitably include countries with doubtful democratic credentials or ambitions). Related to this is an apparent divergence in views between key countries—South Africa, Nigeria and Egypt in particular—on the nature, rigour and transparency of peer review under the NEPAD. The emerging nature of the NEPAD African Peer Review

Mechanism (APRM) as a political 'discussion forum' and the apparent reduction in the role of the UN Economic Commission for Africa are additional areas of concern in this regard.

Some of these developments reflect the extent to which South Africa may have underestimated Nigeria's commitment to its own foreign policy initiatives, particularly the CSSDCA, and potentially also to the Abuja Treaty establishing the African Economic Community.²

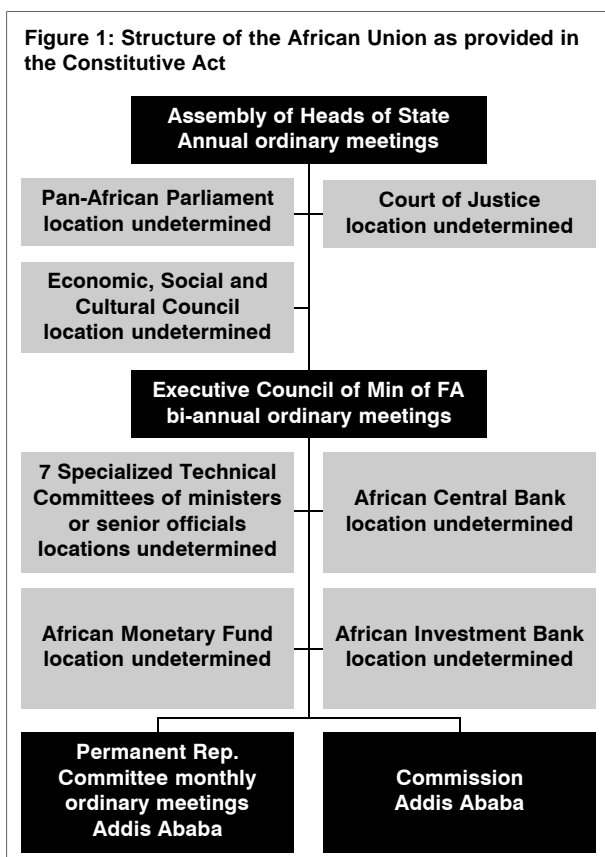
This paper summarises the most important developments and outcomes following the recent meetings of the OAU/AU in Durban. Some remarks on the role of Libya are included in the interpretation, given the extent of the publicity (and confusion) this created. However, the focus is on the transition to the new institutions of the AU, particularly as they relate to peace, security and democracy issues. The intention is to provide a ready reference for scholars, practitioners and policymakers who need a timely update on the evolution of the increasingly complex continental mechanisms for the pursuit of peace and security in Africa.

THE LAUNCH OF THE KEY STRUCTURES OF THE AFRICAN UNION

The structure of the AU, as determined in the Constitutive Act, is schematically summarised in Figure 1.

Article 22 of the AU Act establishes the Economic, Social and Cultural Council of the Union as an advisory organ composed of different social and professional groups of the Member States. The Assembly determines the functions, powers, composition and organisation of the Council. Work has started on a draft protocol for ECOSOCC, as well as work on a draft protocol for the establishment of the Court of Justice.

Figure 1: Structure of the African Union as provided in the Constitutive Act

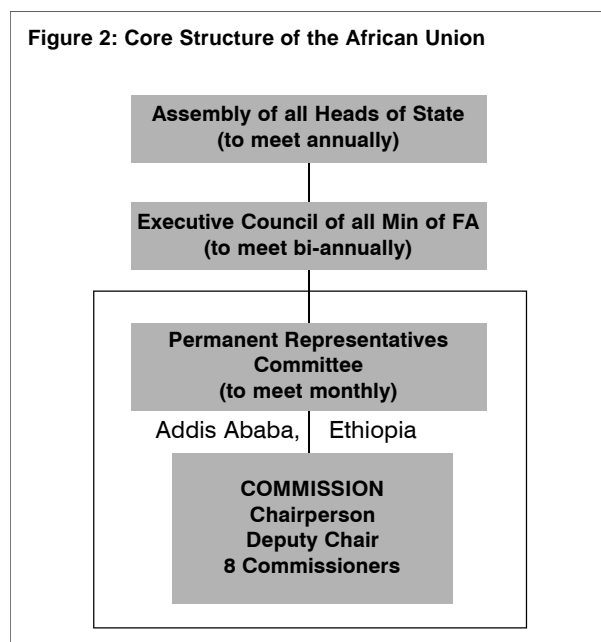


Four countries have ratified the Protocol on the Pan-African Parliament (27 ratifications are required for it to enter into force). However, this paper focuses on the decisions made in Durban that pertain to derivatives/extensions of existing organs of the OAU, that are in effect up and running, and that are key to the pursuit and maintenance of peace, security and democracy—the Assembly, the Executive Council, the Permanent Representatives Committee, and the Commission. Indeed, Durban approved the following key documents:

- *Rules of Procedure of the Assembly of the Union.* These Rules may be amended by a two-thirds majority of the Assembly.
- *Rules of Procedure of the Executive Council.* These Rules may be amended by a two-thirds majority of the Executive Council and are approved by the Assembly.
- *Rules of Procedure of the Permanent Representatives' Committee.* The Executive Council approves the Rules of Procedure of the PRC and amendments thereto.
- *Statutes of the Commission of the AU.* The Statutes are adopted and amended by the Assembly. (The Commission is to adopt its own Rules of Procedure).

Diagrammatically, the core structure of the AU may

Figure 2: Core Structure of the African Union



be represented as follows (see figure 2), and each of the organs is discussed in some detail hereafter.

The Assembly of the Union

According to the Constitutive Act, the Assembly is the supreme organ of the Union and consists of the Heads of State or Government or their duly accredited representatives.³ The Assembly meets at least once a year in ordinary session and in extraordinary sessions at the request of any Member State and on approval by a two-thirds majority.⁴

Unlike the existing practice of rotating the annual Summits of the OAU among Member States, the intention is that the Assembly will meet in Addis Ababa at least every other year. This is subject to the calendar for future meetings already established (which is up to 2008). Meetings outside of Addis require, amongst others, “adequate logistical facilities and a conducive political atmosphere”.⁵ The conference facilities presently under construction within the compound of the AU in Addis Ababa will, once completed, facilitate the implementation of this decision. Although regular meetings at a single venue will undoubtedly be more effective, the changing location of the annual Summit meetings had in the past been the most important OAU popularisation event on the African calendar. This was, for example, evident in the educative effect that the Durban Summit has had on South Africans, and the new rule may be a stipulation eventually noted more in abeyance than obedience.

The clear intention here, and elsewhere, is a reduction in the premier role accorded to the Chairman of the OAU Summit in between Summits. Hitherto, the Head of State who chaired

the Summit has served as the political representative of the OAU for that year. Not only will the Chairman of the Assembly be elected in future (based on geographical representation and following consultations) by open ballot,⁶ but his/her role will be substantially diminished in favour of the Chairperson of the Commission of the AU who, in consultation with the Chairperson of the Assembly, will in future represent the Union in between ordinary Assembly meetings.⁷

This bolsters the stature and powers of the Chairperson of the Commission, as do the provisions of the PSC protocol (see below). This interpretation tallies with the informal feeling amongst a number of key countries that the Chairperson of the Commission should have presidential status. This view may play an important role when it comes to electing a new Chairperson for the Commission in Maputo next year. The name of the former President of Mali, Alpha Konare, has been mentioned in this regard.

Decisions of the Assembly are taken as follows:

- For substantive decisions, by consensus or at least a two-thirds majority of those Member States eligible to vote.⁸
- Procedural issues require a simple majority of those Member States eligible to vote. Abstentions by Member States eligible to vote may not prevent the Assembly from adopting decisions by consensus.⁹
- Two-thirds of total membership of the Union forms a quorum for any meeting.¹⁰
- An additional Rule (introduced and accepted in Durban) states that a draft decision may only be adopted after the Commission has provided a report on its financial implications.¹¹

Only Member States not under sanction may vote, and voting on substantive issues and during elections (such as those for the Commissioners) are by secret ballot.¹²

The powers and functions of the Assembly include the following:¹³

- to determine the common policies of the Union;
- to establish any organ of the Union (such as the decision to establish the Peace and Security Council);
- to monitor the implementation of policies and decisions of the Union as well as to ensure compliance by Member States;

- to give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace;
- to appoint and terminate the appointment of judges of the Court of Justice (once established); and
- to appoint the Commissioners of the Commission and determine their functions and terms of office.

The Assembly decides on:¹⁴

- appropriate peaceful means of conflict resolution among Member States (once enacted, the Protocol on the PSC will effectively give this responsibility to the Chairperson of the Commission and to the PSC itself); and
- intervention in a Member State in respect of grave circumstances; namely war crimes, genocide and crimes against humanity.

The Assembly determines:¹⁵

- appropriate sanctions to be imposed on any Member State that defaults on the payment of its contributions to the budget of the Union; for example, by denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments from the Union;
- the imposition of these and other sanctions against any Member State that fails to comply with the decisions and policies of the Union. These may include the denial of transport and communications links with other Member States, and other measures of a political and economic nature. When taking any decision in this regard the Assembly shall stipulate the time frame for compliance and indicate when the failure to comply with that decision will trigger the sanctions;¹⁶ and
- sanctions against Member States that undergo unconstitutional changes in government (see below).

Different levels of sanctions for defaulting on membership contributions apply depending on the number of years that Member States are in arrears with their contributions. An important incentive is that sanctions may be lifted temporarily if the Member State pays at least half of its outstanding arrears 30 days before the commencement of the session of the Executive Council preceding that of the Assembly.¹⁷ (During May 2002 Libya paid \$2,2

million on behalf of eleven other Member States following promises it had made during the Sirté and Lusaka Summits.¹⁸⁾

The Rules of Procedure of the Assembly appear to add to the powers and functions¹⁹ contained in the Constitutive Act the responsibility to accelerate the political and socio-economic integration of the continent; and the power to give directives to the Executive Council, the Peace and Security Council or the Commission on the management of conflicts, wars, acts of terrorism, emergency situations and the restoration of peace.

The Assembly may, of course, delegate any of its powers and functions to any organ of the Union and this is, in part, reflected in the content of the Protocol establishing the PSC.²⁰

An interesting debate was precipitated by the fact that Libya tabled two sets of proposals in Durban, both directly to the Heads of State.

- The first set relates to proposed Amendments to Articles of the Constitutive Act of the AU.²¹ This proposal was tabled at the OAU Summit with the obvious intention that leaders should amend the Constitutive Act of the AU prior to meeting under that framework the day thereafter (as the Assembly of the AU). Ghadaffi argued that since the Assembly was the supreme organ of the AU it could simply adopt these amendments and refer them to the national parliaments for subsequent approval.
- The second set relates to the establishment of a single African Army (discussed later, under the Peace and Security Council).

The Libyan proposals on the amendment to the Constitutive Act provided for:

- Extraordinary meetings of the Assembly to occur at the request of the Chairperson of the Assembly without the requirement for approval by a two-thirds majority of Member States. By implication the country chairing the Assembly could 'summon' a meeting of African Heads of State.
- The office of the Chairperson of the Assembly to be held for a period of one year *or more* and that "from *one* of the headquarters of the Union, the Chairperson shall direct the affairs of the Union, oversee its organs, implement its decisions and represent the Union abroad." (The AU Act provides that the Office of the Chairman of the

Assembly be held for a period of one year only by a Head of State elected after consultations. Furthermore, according to Article 24, the Headquarters of the Union is in Addis Ababa²² although the Assembly may establish other 'offices' of the Union on the recommendation of the Executive Council.)

- Libya also proposed that the Executive Council meet in extraordinary session at the request of its Chairperson *or* any member of the Council, or upon approval by a simple majority without the blanket requirement for approval by a two-thirds majority.
- The final proposal was for Article 31 of the Constitutive Act relating to the ability of a Member State to withdraw from the Union to be deleted, making membership of the Union irreversible.

Despite the obvious contradictions between the Libyan proposals and the various provisions in the Act and Rules of Procedure then under consideration by Heads of State, the proposals were eventually deflected on the basis of procedural arguments and not on substantive issues.

At least one Commissioner from each region must be a woman

Key here is that Rule 8 of the Rules of Procedure of the Assembly, requires that items proposed by a Member State must be submitted 60 days before a meeting and supporting documents and draft decisions communicated to the Chairperson of the Commission 30 days before the session.

Despite protestations to the contrary by Libya, the proposed amendments to the Constitutive Act were not received and distributed ahead of the Summit in conformance with this requirement.

Member States argued that since the Constitutive Act was already in force, any proposed amendment had to comply with the provisions for amendment reflected in the Act itself.

The subsequent decision by the Assembly was that the Libyan proposals for amendment first be examined by the Executive Council (in accordance with Article 32 of the Act) and submitted for consideration by an Extraordinary Session of the Assembly to be held in six months' time.²³

No venue for the extraordinary session of the Assembly was proposed or decided upon, although the general expectation is that this will be held in Sirté.²⁴

The Executive Council

The Executive Council is composed of the Ministers of Foreign Affairs and meets at least twice a year in ordinary session,²⁵ normally during February and July.²⁶ Council may also meet in extraordinary session at the request of any Member State and upon approval by two-thirds of all Member States.²⁷ Like the Assembly, the Council must meet in Addis Ababa at least once every two years,²⁸ but during the Durban meeting it was agreed to next meet in Ndajema, Chad.

The Executive Council takes its decisions by consensus, or failing that, by a two-thirds majority of the Member States. Procedural matters require a simple majority. Two-thirds of the total membership of the Union forms a quorum at any meeting of the Council.²⁹

The functions³⁰ of the Executive Council are to coordinate and take decisions on policies in areas of common interest to the Member States ranging from trade, energy, industry, food, agriculture, water resources, transport, insurance, education, nationality, immigration, social security, etc. No reference is made to issues that affect conflict prevention, management or intervention since they fall within the purview of the Assembly (as delegated to the PSC, once the Protocol is in force).

More specifically the Council:³¹

- prepares the sessions of the Assembly;
- examines the Programme and Budget of the Union and submits it to the Assembly for consideration;
- approves the Rules of the Specialised Committees, and oversees, monitors and directs their activities;
- considers the Staff Rules and Regulations and the Financial Rules and Regulations of the Commission and submits them to the Assembly for adoption;
- considers the structures, functions and Statutes of the Commission and makes recommendations thereon to the Assembly;
- determines the conditions of service (including salaries, allowances and pensions) of the Staff of the Union.
- may delegate any of its powers and functions to the Committees;
- may give instructions to the PRC; and

- may assign tasks to the Commission.

The Executive Council elects (through secret ballot) and recommends to the Assembly for appointment:

- eight Commissioners (i.e. excluding the Chair and Vice-Chair);³²
- members of the African Commission on Human and People's Rights;³³ and
- the African Committee of Experts on the Rights and Welfare of the Child.³⁴

The country that Chairs the Assembly also Chairs the Executive Council, assisted by three Vice-Chairpersons and a Rapporteur, one each from the other four regions. The latter are elected, after consultation, through an open ballot.³⁵

The Council may delegate any of its powers and functions to one or more of the seven Specialised Technical Committees established under Article 14 of the Constitutive Act.³⁶

The Permanent Representatives Committee

The AU Act establishes a Permanent Representatives Committee composed of the Permanent Representatives to the Union. The Committee is responsible for preparing the work of the Executive Council (including the provisional agenda for Council meetings), and is to act on the instructions of the Executive Council.^{37, 38}

The PRC acts as an advisory body to the Executive Council, makes recommendations to it, facilitates communication between the Commission and Member States, monitors the implementation of the budget of the Union, etc. The text of all proposed decisions must be submitted in writing to the Executive Council for consideration and adoption.³⁹

The PRC meets monthly in Addis Ababa. Those sessions preceding the Executive Council may be held at the same venue as those of the Council.⁴⁰

The Commission of the Union

The Commission serves as the secretariat of the Union and is composed of a Chairperson, a Deputy Chairperson and eight Commissioners.⁴¹ In terms of the Rules of Procedure, the Chairperson and Deputy Chairperson of the Commission are elected by the Assembly. The other eight Commissioners are elected by the Executive Council and appointed by the Assembly.

Each of Africa's five regions is entitled to two Commissioners. The Chairperson and Deputy Chairperson may not be from the same region and at least one Commissioner from each region must be a woman.⁴² (None of the acting Commissioners of the AU are female.)

The detailed guidelines and procedures for the election of the 10 Commissioners are important to note, given that the first elections are to be held in less than a year's time. According to the Rules of Procedure of the Assembly:⁴³

- Candidates must be circulated to Member States at least three months before elections.
- The Assembly elects the Chairperson and then the Deputy Chairperson of the Commission by secret ballot. Both require a two-thirds majority of Member States eligible to vote.
- All 10 Commissioners are required to be "competent women or men with proven experience in the relevant field, commensurate leadership qualities and a good track record in government, parliament, international organisations or other relevant sectors of society".
- The Assembly endorses the eight Commissioners elected by the Executive Council. According to the Rules of Procedure of the Executive Council these are elected, on a regional basis, by secret ballot.⁴⁴
- Commissioners may serve for a maximum of two terms of four years.

The functions of the Commission include:⁴⁵

- implementing the decisions taken by other organs;
- co-ordinating and monitoring the implementation of the decisions of the other organs of the Union in close collaboration with the PRC, and reporting regularly to the Executive Council;
- assisting Member States in implementing Union programmes and policies, including the CSSDCA and NEPAD;
- preparing strategic plans and studies for consideration of the Executive Council;
- taking actions where a common position has been established;
- mobilising resources and devising appropriate strategies for self-financing, income generating activities and investment for the Union;

- ensuring the promotion of peace, democracy, security and stability; and
- providing operational support to the PSC.

The Chairperson of the Commission is directly responsible to the Executive Council for the effective discharge of his/her duties and serves as:⁴⁶

- the Chief Executive Officer;
- the legal representative of the Union; and
- the Accounting Officer of the Commission.

If the spirit of the Act and PSC protocol is translated into practice, the Chairperson of the Commission will eventually assume much of the political leadership regarding conflict prevention and mediation previously assigned largely to the (annual) Chairperson of the Assembly.

The Chairperson of the Commission is assisted by a Deputy Chairperson in charge of the administration and finance of the Commission, also acting as Chairperson when required.⁴⁷

The portfolios of the eight remaining Commissioners are as follows:⁴⁸

1. *Peace and Security*: (Conflict Prevention, Management and Resolution, and Combating Terrorism ...);
2. *Political Affairs*: (Human Rights, Democracy, Good Governance, Electoral Institutions, Civil Society Organisations, Humanitarian Affairs, Refugees, Returnees and Internally Displaced Persons);
3. *Infrastructure and Energy*: (Energy, Transport, Communications, Infrastructure and Tourism...);
4. *Social Affairs*: (Health, Children, Drug Control, Population, Migration, Labour and Employment, Sports and Culture...);
5. *Human Resources, Science and Technology*: (Education, Information Technology Communication, Youth, Human Resources, Science and Technology...);
6. *Trade and Industry*: (Trade, Industry, Customs and Immigration Matters...);
7. *Rural Economy and Agriculture*: (Rural Economy, Agriculture and Food Security, Livestock, Environment, Water and Natural Resources and Desertification...); and

8. *Economic Affairs*: (Economic Integration, Monetary Affairs, Private Sector Development, Investment and Resource Mobilisation...).

Since gender issues are cross-cutting through all the portfolios of the Commission, a special unit will be established in the Office of the Chairperson to coordinate all activities and programmes of the Commission.⁴⁹ This item was introduced in Durban after extensive and lengthy statements by heads of delegation, each trying to demonstrate their verbal commitment to gender issues despite the obvious lack of evidence when considering the masculine composition of the various delegations themselves, with the obvious exception of the South African Minister of Foreign Affairs.

The procedure for the nomination and central pre-selection for the Commissioners prior to election by the Executive Council and Assembly is rather complex. For example:⁵⁰

- Following pre-selection, each region nominates two candidates for each portfolio.
- A Ministerial panel of two representatives from each region, assisted by independent consultants, then selects, and submits to the Executive Council, a list of two candidates for each portfolio.
- The shortlist must take regional geographic distribution into consideration.

Commissioners must:⁵¹

- have at least a basic tertiary degree or equivalent;
- possess a significant and wide-ranging working experience with a good track record in government, parliament, international organisations, a recognised university, multinational or private sector organisations;
- be a national of a Member State; and
- be at least 35 years of age.

It is unclear how the Executive Council will be able to follow the election procedure outlined above without prior knowledge of the region of origin of the choice of Chairperson and Deputy Chairperson of the Commission since the latter are only subsequently elected by the Assembly (and the former by the Council).

Senior administrative, professional and technical

staff of the Commission must be appointed in accordance with the following criteria:⁵²

- equitable geographical representation;
- gender equality;
- a quota system, to be approved by the Assembly on the basis of a minimum number of posts allocated to a Member State; and
- countries under sanctions for defaulting on payment of assessed contributions may not have nationals appointed to the Commission.

According to the Statutes of the Commission: "The Commission shall maintain a package of remuneration and conditions of service comparable to those obtained in other international organisations, multilateral institutions and the private sector organisations of equivalent status, in order to attract and retain the appropriate calibre of employees."⁵³ The Secretary General of

the OAU and OAU staff have long been of the view that their remuneration does not compare with other organisations such as the UN Economic Commission for Africa, also located in Addis Ababa. In fact, the request to the Durban Council of Ministers meeting was for a 70% increase, although only 15% was approved, pending a detailed post evaluation for the AU Commission.

In Durban, the financial year of the AU was changed to correspond to a calendar year.⁵⁴ A number of key decisions were also adopted regarding the transition from the OAU to the

AU. In summary, these are as follows:

- The transitional period from the OAU to the AU has ended, therefore the OAU no longer exists and has been replaced by the Union.
- An interim period of one year (starting on 9 July 2002) is designated to allow for the conversion of the structures inherited from the OAU, following which the elections for the 10 Commissioners will occur in Maputo (during July 2003). This followed a substantial and lengthy debate within the Council of Ministers during which those arguing in favour of elections after a six-month period (led by South Africa) were eventually overruled by the majority of countries arguing in favour of elections after 12 months.
- The Secretary-General of the OAU is designated as the Interim Chairperson of the Commission,

OAU staff have long been of the view that their remuneration does not compare with other similar organisations

and the Assistant Secretary-Generals (ASGs) as acting Commissioners.⁵⁵

- The secretariat of the OAU will act as the interim Commission of the Union, but that substantial additional preparations now have to occur including staff structure, job descriptions, etc.
- The Interim Chairperson must prepare a report on the financial implications of the structure of the Commission and present this to the Executive Council (probably during their meeting in February 2003) and thereafter to the Assembly during July 2003.
- Pending the ratification and entry into force of the Protocol on the Peace and Security Council (PSC), the Cairo Declaration on the OAU Mechanism for Conflict Prevention, Management and Resolution remains valid.

Despite criticism from some Member States, Mr Amara Essy will therefore continue as interim Chairperson of the Commission of the AU for the next year. His job will not be easy, not least because morale is extremely low within the General Secretariat due to:

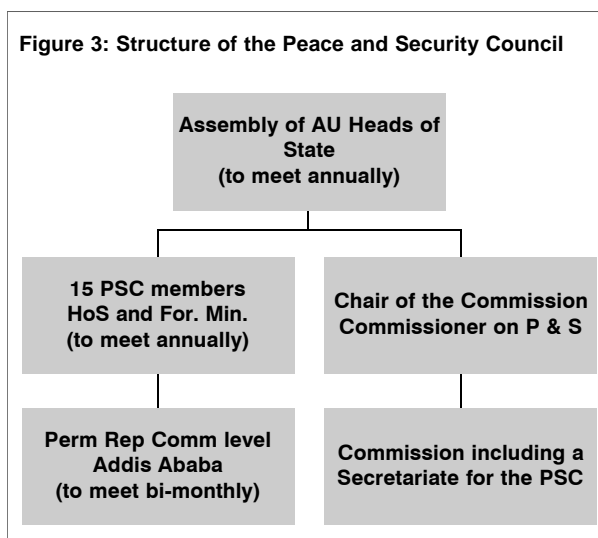
- Public accusations by Mr Essy to the effect that the General Secretariat is deliberately undermining his position;⁵⁶
- An overwhelming work schedule (an already heavy normal work schedule made punishing by the requirements of transition); and
- A pervasive sense of job insecurity (all staff have had to resign and re-apply for their jobs).

THE PROTOCOL ON THE PEACE AND SECURITY COUNCIL

The PSC Protocol requires a simple majority to enter into force and is to submit its own rules of procedure for consideration and approval by the Assembly.⁵⁷ By the time that Heads of State left Durban, 27 leaders had already signed the Protocol, indicating that ratification would be a relatively speedy process. Only Kenya had spoken out against the rapid approval of the Protocol, but was a lone voice in its call for caution and referral to legal council for finalisation at a later stage.

The AU Act does not provide for the PSC with the result that it is established in terms of the 'other'

Figure 3: Structure of the Peace and Security Council



provision, contained in Article 5(2) of the Constitutive Act, as a standing decision-making organ for the prevention, management and resolution of conflicts. The Council is defined as a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.

The PSC will serve as a standing decision-making organ for conflict prevention, management and resolution

The Council is supported by the Commission, a Panel of the Wise, a Continental Early Warning System, an African Standby Force and a Special Fund.

Earlier drafts of the Protocol had proposed three options regarding the tenure on the Council: five permanent seats, a suggestion unanimously rejected, a longer elected term of five years for the five key states; and a term of two years for all 15 elected members.

It was eventually decided that 10 countries will be elected to the PSC for a term of two years, and five countries will be elected for a term of three years.⁵⁸ Retiring Member States will be eligible for immediate re-election—a provision clearly aimed at providing permanency to those countries enjoying a three-year term. It is important to note that all countries will have equal voting rights and that there is no provision for veto rights or permanent seats on the Council.

The Protocol also provides for the principle of equitable regional representation and rotation of members. By implication there will be a single country elected for three years from each of Africa's five regions—and these countries will probably be re-elected in perpetuity. The remaining 10 seats will probably rotate on the basis of two per region. Nigeria and South Africa will obviously be two the front-runners for the three-year slots, and the

requirement for East African representation is sure to bring Kenya into contention. North Africa will probably be the most hotly contested region, with competition to be expected between Algeria, Libya and Egypt—each intent on staking its claim in terms of leadership on the continent and in the region.

In electing the members of the Peace and Security Council, the Assembly will apply the principle of equitable regional representation and rotation, and satisfy the following criteria:⁵⁹

- a. Commitment to uphold the principles of the Union;
- b. Contribution to the promotion and maintenance of peace and security in Africa—particularly experience in peace support operations;
- c. Capacity and commitment to shoulder the responsibilities entailed in membership;
- d. Participation in conflict resolution, peace-making and peacebuilding at regional and continental levels;
- e. Willingness and ability to take up responsibility for regional and continental conflict resolution initiatives;
- f. Contribution to the Peace Fund and/or Special Fund created for specific purpose;
- g. Respect for constitutional governance, in accordance with the Lomé Declaration (see below), as well as the rule of law and human rights;
- h. Having sufficiently staffed and equipped Permanent Missions at the Headquarters of the Union and the UN; and
- i. Commitment to honor financial obligations to the Union.

Periodic reviews by the Assembly will assess the extent to which the members of the PSC will continue to meet the requirements listed above and 'take action' as appropriate.⁶⁰

Once established, the objectives of the PSC include:⁶¹

- co-ordination and harmonisation of continental efforts in the prevention and combating of international terrorism;
- development of a common defence policy for the Union, in accordance with Article 4(d) of the Constitutive Act; and

- promotion and encouragement of democratic practices, good governance and the rule of law, the protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law.

The functions of the PSC are:⁶²

- a. the promotion of peace, security and stability in Africa;
- b. early warning and preventive diplomacy;
- c. peace-making, including the use of good offices, mediation, conciliation and enquiry;
- d. peace support operations and intervention, pursuant to Article 4(h) and (j) of the Constitutive Act;
- e. peace-building and post-conflict reconstruction;
- f. humanitarian action and disaster management; and
- g. any other function as may be decided by the Assembly.

The Protocol repeats, amongst others, the provisions on intervention contained in the AU Act, namely:⁶³

- 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, in accordance with Article 4(h) of the Constitutive Act; and
- the right of Member States to request intervention from the Union in order to restore peace and security, in accordance with Article 4(j) of the Constitutive Act.

The PSC, in conjunction with the Chairperson of the Commission, is to:⁶⁴

- authorise the mounting and deployment of peace support missions;
- recommend to the Assembly intervention in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity;
- institute sanctions whenever an unconstitutional change of Government takes place;
- implement the common defence policy of the Union;

- ensure the implementation of the OAU Convention on the Prevention and Combating of Terrorism and harmonise and co-ordinate efforts at regional and continental levels to combat international terrorism;
- ensure that any external initiative in the field of peace and security on the continent takes place within the framework of the Union's objectives and priorities;
- follow-up the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by Member States; and
- support and facilitate humanitarian action in situations of armed conflicts or major natural disasters;

The final sections of Article 7 of the Protocol on the PSC provide that Member States:

- agree that in carrying out its duties the PSC acts on their behalf;
- agree to accept and implement the decisions of the PSC, in accordance with the Constitutive Act; and
- shall extend full co-operation to, and facilitate action by the PSC for the prevention, management and resolution of crises and conflicts.

The PSC shall function continuously, meeting⁶⁵ at least twice a month at the level of Permanent Representatives, and annually at the level of Ministers and Heads of State and Government. All these meetings are to be in Addis Ababa except by agreement of two-thirds of the members of the PSC to meet elsewhere.

The annually elected Chair of the Assembly and the PSC are not the same. The chair of the PSC rotates monthly in the alphabetical order of country names.⁶⁶ This stipulation is sure to undercut the role of the Chair in favour of the continuity provided by the Commission.

One (informally mooted) idea that may further strengthen the role of the Council is for the Foreign Minister of the country chairing the PSC to spend much of that month in Addis Ababa, effectively chairing meetings at the level of Permanent Representatives to the PSC. Regarding decisions:

- Two-thirds of the members of the PSC (i.e. 10) constitute a quorum.

- Decisions are generally guided by the principle of consensus, but where this is not possible, decisions on procedural issues may be adopted by simple majority and others by two-thirds majority of members voting.

Other interesting provisions in the PSC protocol are as follows:⁶⁷

- The agenda of the PSC is determined by the Chairperson of the PSC on the basis of proposals submitted by the Chairperson of the Commission and Member States. The inclusion of an item in the provisional agenda may not be opposed.
- The PSC may hold informal consultations with parties concerned by or interested in a conflict or a situation under its consideration, as well as with Regional Mechanisms, international organisations and civil society organisations as appropriate.
- The PSC shall use its discretion to effect entry, whether through the collective intervention of the Council itself, or through its Chairperson and/or the Chairperson of the Commission, the Panel of the Wise, and/or in collaboration with Regional Mechanisms.

It should be evident from this summary that the PSC Protocol expands the role of the Chairperson of the Commission considerably.⁶⁸ He/she, assisted by the Commissioner in charge of Peace and Security:

- must, under the authority of the PSC, and in consultation with all involved parties, deploy efforts and take all appropriate initiatives to prevent, manage and resolve conflicts;
- must bring to the attention of the PSC any matter, which, in his/her opinion, may threaten peace, security and stability in the Continent;
- may bring to the attention of the Panel of the Wise any matter which deserves their attention;
- may, at own initiative or when so requested by the PSC, use his/her good offices, either personally or through special envoys, special representatives, the Panel of the Wise or the Regional Mechanisms, to prevent potential conflicts, resolve actual conflicts and promote peace-building and post-conflict reconstruction; and
- must ensure the implementation and follow-up of the decisions of the PSC, including mounting and deploying peace support missions authorised by the Council.

The Panel of the Wise will support the efforts of the

PSC and those of the Chairperson of the Commission, particularly in the area of conflict prevention.⁶⁹ The Panel will be composed of five highly respected African personalities selected by the Chairperson of the Commission (on the basis of regional representation) after consultation with the Member States concerned, and appointed by the Assembly to serve for a period of three years. The modalities for the functioning of the Panel of the Wise are still to be worked out by the Chairperson of the Commission and approved by the Council.

The existing situation room within the Conflict Management Division is to be converted into a fully-fledged Continental Early Warning System, consisting of:⁷⁰

- an observation and monitoring centre located at the Conflict Management Directorate of the Union, and responsible for data collection and analysis; and
- the observation and monitoring units of the Regional Mechanisms, to be linked directly to the Situation Room, to collect and process data at their level.

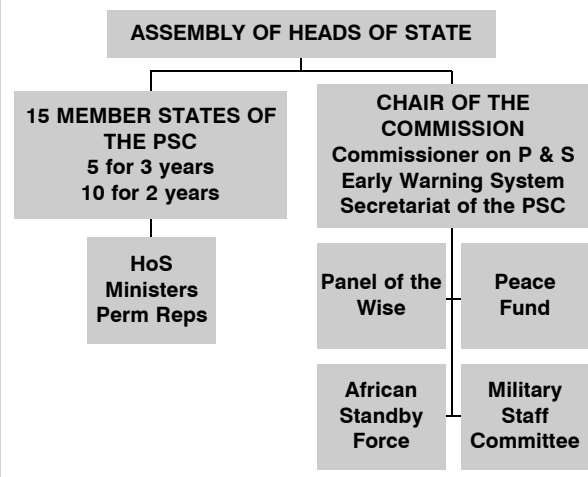
The Early Warning System is tasked with developing an early warning module based on clearly defined and accepted political, economic, social, military and humanitarian indicators, which shall be used to analyse developments within the continent and to recommend the best course of action. (With considerable donor assistance, the capacity of the Conflict Management Division has grown substantively over the last few years).

The Protocol also provides for the establishment of an African Standby Force composed of standby multidisciplinary contingents, with civilian and military components in their countries of origin and ready for rapid deployment at appropriate notice.⁷¹

The Force shall, *inter alia*, perform functions in the following areas:

- observation and monitoring missions;
- other types of peace support missions;
- intervention in a Member State in respect of grave circumstances or at the request of a Member State in order to restore peace and security, in accordance with Article 4(h) and (j) of the Constitutive Act;
- preventive deployment;
- peace-building, including post-conflict disarmament and demobilisation;

Figure 4: Provisions of the PSC Structure



- humanitarian assistance to alleviate the suffering of the civilian population in conflict areas and support efforts to address major natural disasters; and
- any other functions as may be mandated by the PSC or the Assembly.

These operations will be funded by assessed contributions from Member States based on their contributions to the regular budget of the Union.⁷²

The PSC will establish a Military Staff Committee to advise and assist in all questions relating to military and security requirements for the promotion and maintenance of peace and security in Africa.⁷³

The PSC is provided with wide-ranging peace building responsibilities during and at the end of hostilities and in co-ordinating and conducting humanitarian action.⁷⁴

The remaining articles of the PSC Protocol refer to:

- its relationship with regional mechanisms for conflict prevention, management and resolution;⁷⁵
- relationships with the UN and other international organisations;⁷⁶
- relationships with the Pan-African Parliament, the African Commission on Human and Peoples' Rights, and civil society organisations.⁷⁷
- the establishment of a Peace Fund made up of financial appropriations from the regular budget of the Union, voluntary contributions from Member States and other sources, including outside of Africa.⁷⁸

Libya's Draft Resolution on the Establishment of the African Army is interesting in this regard and provided for the following:

- One African Army to secure peace and stability in the AU, avert the outbreak of any internal armed disputes, and to safeguard the sovereignty, security and safety of the Union through deterring any acts of aggression.
- The Assembly would determine the size of the African Army and where it would be positioned.
- The Army would use the insignia of the Union.
- The Assembly would set up a joint command staff to organise and prepare the means and methods of defence and receive annual detailed reports on the achievements.

During the discussions of these proposals, a number of countries pointed to the fact that a single army presupposed a single country. Others raised issues of cost and employment. Mention was also increasingly made of a defence treaty, particularly along the lines of a non-aggression pact between African countries.

The subsequent Assembly 'Decision on a Common African Defence and Security' may not make grammatical sense, but it reads as follows:⁷⁹

- "Stresses the need for a common African defence and security in the context of the Constitutive Act of the AU.
- Requests the Chairman of the Assembly to establish a group of experts to examine all aspects related to the establishment of a common African defence and security and submit recommendations for the consideration of the next ordinary session of the Assembly."

The potential positive reorientation of a proposal (from a single army to a common defence treaty) that to many appeared completely unrealistic was a welcome development. Similar to the concept of the AU, originally touted by Ghadaffi as a United States of Africa, the final outcome of the proposal for the establishment of a single African Army may be very different to Libya's original intention.

THE DECLARATION ON ELECTION OBSERVATION AND MONITORING

This Declaration complements the earlier decisions and declarations by the OAU on unconstitutional changes in government. It was based on the specific interpretation of these provisions that the AU decided not to allow the government of Marc Ravalomanana of Madagascar to take up its seat within the AU, although this decision was strongly resisted by countries such as Senegal and Ghana.

Following the Lomé Declaration of July 2000, the AU Act now provides that governments that come to power through unconstitutional means may not participate in the activities of the Union.⁸⁰ The situations considered as unconstitutional change are subsequently included in the Rules of Procedure of the Assembly and include:⁸¹

- military and other coup d'états against a democratically elected government;
- intervention by mercenaries to replace a democratically elected government or by elements assisted by mercenaries;
- replacement of democratically elected governments by armed dissident groups and rebel movements; and
- refusal by an incumbent government to relinquish power to the winning party after a free and fair election.

According to these Rules of Procedure, the Assembly has a set of clear tasks. The Chairperson of the Assembly and the Chairperson of the Commission must:⁸²

1. condemn the change of government, call for a return to constitutional order, and warn that the Union will neither tolerate nor recognise the government;
2. ensure consistency of action at the bilateral, interstate, sub-regional and international levels; and
3. convene the PSC to discuss the matter and suspend the Member State from the Union and from participating in the organs of the Union.

The Assembly must also immediately apply sanctions against the regime, including:

- visa denials for the perpetrators of the unconstitutional change;
- restriction of government to government contacts;
- trade restrictions;
- the sanctions provided for in Article 23(2) of the Constitutive Act; and
- any additional sanction as may be recommended by the PSC.

The Chairperson of the Commission, in consultation with the Chairperson of the Assembly, must further:

- do fact-finding and establish contact with the perpetrators;
- seek the contribution of African leaders and eminent persons, in order to get the perpetrators of the unconstitutional change to co-operate with the Union; and
- enlist the co-operation of the RECs to which the concerned country belongs.

Madagascar was discussed at length and the decision that was eventually taken was to endorse that of the Central Organ at Heads of State level, despite the number of non-African countries that have decided to accept the *de facto* government on the island. Furthermore, shortly after the Durban summit Senegal recognised Ravalomanana.

The major problem with this declaration remains the prospective application thereof since it places no pressure on existing Heads of State that have assumed power unconstitutionally (such as Muammar Ghadaffi, Gnassingbe Eyadema, Joseph Kabila, Paul Kagame, *et al*) to move towards elections and legitimacy, nor on systems such as that in Swaziland, to democratise.

The Declaration Governing Democratic Elections in Africa

In Durban Heads of State agreed on a Declaration Governing Democratic Elections in Africa⁸³ following the Report of the Secretary-General on Strengthening the Role of the OAU/AU in Elections, Observations and Monitoring and the Advancement of the Democratisation Process in Africa.⁸⁴ A Declaration is not, however, binding on Member States, but is intended to guide and harmonise viewpoints.⁸⁵ Although ground breaking, it is also weakened by the repeated reference to the national regulatory framework that permeates all sections of the Declaration, which consists of:

- agreed principles of democratic elections;
- the responsibilities of Member States;
- the rights and obligations under which democratic elections are conducted;
- the role of the AU in election observation and monitoring; and
- the role and mandate of the Commission.

By setting national legitimacy as opposed to objective standards, time will tell if the AU will

apply the letter or the spirit of these provisions. Each section is summarised below.

Principles of Democratic Elections

The Declaration views democratic elections as the basis of the authority of any representative government and an essential ingredient for good governance, the rule of law, and for the maintenance and promotion of peace, security, stability and development.

Democratic elections should be conducted:

- freely and fairly;
- under democratic constitutions and in compliance with supportive legal instruments;
- under a system of separation of powers that ensures in particular, the independence of the judiciary;
- at regular intervals, as provided for in national constitutions; and
- by impartial, all-inclusive, competent and accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.

Member States' commitments

Amongst others, Member States committed themselves to the establishment of:

- appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters, compilation of voters' registers, etc. would be addressed;
- impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel; and
- competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections.

Other commitments include freedom of movement, assembly, association, expression, and campaigning; as well as access to the media on the part of all stakeholders during electoral processes. There are also provisions for civic and voters' education, and for precautionary measures to prevent the perpetration of fraud, vote rigging or any other illegal practices throughout the electoral process. In respect of political parties, Member States agreed to provide

funding for all registered parties to enable them to organise their work and to participate meaningfully in the electoral process, and also agreed to provide security to all parties participating in elections.

Finally, Member States agreed to ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers/monitors.

Rights and Obligations guiding Democratic Elections

The affirmation by Member States includes the right of individuals to:

- participate freely in the government of his or her country;
- fully participate in the electoral processes, including the right to vote or be voted for, according to the laws of the country and as guaranteed by the Constitution, without any kind of discrimination;
- free association and assembly in accordance with the law;
- establish or to be a member of a political party or organisation in accordance with the law;
- freedom of movement, to campaign and to express political opinions with full access to the media and information within the limits of the laws of the land; and to
- appeal to the competent judicial authorities and to obtain timely hearing on all electoral malpractices in accordance with the electoral laws of the country.

Member States agreed that candidates or political parties have the right to be represented at polling and counting stations by duly designated agents or representatives, and that no individual or political party shall engage in any act that may lead to violence or deprive others of their constitutional rights and freedoms.

All stakeholders in electoral contests must publicly renounce the practice of granting favours to the voting public for the purpose of influencing the outcome of elections, and shall agree to accept the results if proclaimed to have been free and fair by the competent national bodies as provided for in the Constitution and the electoral laws. They will either respect the final decision of the competent

Electoral Authorities, or challenge the result according to the law.

In respect of the media, parties and individuals should:

- maintain impartiality and refrain from using abusive language, incitement to hate, and other forms of provocation that may lead to violence; and
- refrain from any act which might constrain or limit their electoral adversaries from using the public media, facilities and resources to air their campaign messages.

Every individual and political party participating in elections is obliged to recognise the authority of the Electoral Commission or any statutory body empowered to oversee the electoral process and accordingly render full co-operation to such a Commission/Body in order to facilitate their duties.

Guidelines for Observing and Monitoring Elections

In accordance with the Declaration, the observation and monitoring of elections are to be undertaken subject to a memorandum of understanding between the Commission of the AU and the host country.

Invitations to the AU to participate in election observation or monitoring must be issued at least two months before the date of the election, and Member States should refrain from imposing any fees and/or charges on AU observers such as registration/accreditation fees, and facilitate easy access in the performance of their tasks.

The Commission has the right to decline invitations to monitor elections which in its opinion, do not measure up to the normative standards enunciated in the Declaration.

The Role and Mandate of the Commission

The Declaration seeks to strengthen the role of the Commission in the observation and monitoring of elections and encourages the Commission to mobilise extra-budgetary funds. It also mandates the Commission to undertake a feasibility study on the establishment of a Democratisation and Electoral Assistance Fund and a Democratisation and Election Monitoring Unit; as well as to draw up a roster of African Election Experts.

The Commission is to work out standards of

procedures, preparations and treatment for personnel selected to serve on AU observer missions and is encouraged to promote co-operation and work in partnership with African organisations, international organisations, national institutions, non-governmental organisations and civil society groups involved in election monitoring and observation work.

Finally, the Declaration committed the Commission to making its reports public.

During the discussions on election monitoring, Libya proposed that non-Africans be prohibited from monitoring/observing elections in Africa, since electoral practices on the continent 'differed' from those elsewhere. This was not supported by others, and several countries (including Mauritius and Lesotho) spoke in favour of external election monitors and observers as a positive contribution to democracy on the continent.

The challenges that confront the AU in giving effect to this Declaration are reflected in the fact that each election monitoring mission costs roughly US\$200,000, and that requests for several such missions are received every year.⁸⁶

DECISION ON THE CONFERENCE ON SECURITY, STABILITY, DEVELOPMENT AND COOPERATION (CSSDCA)

The OAU Summit in Lomé during 2000 acknowledged the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) as creating a synergy between the various activities undertaken by the OAU/AEC to consolidate work in the areas of peace, security, stability, development and co-operation. The CSSDCA initiative predates NEPAD by several years and reflects the African version of the Organisation of Security and Co-operation in Europe (OSCE).

Practically, the CSSDCA provides a policy development forum for the elaboration and advancement of common values within the main policy organs of the OAU/AEC. In accordance with the decisions taken at the Lomé Summit, a CSSDCA Unit was recently established within the General Secretariat of the OAU and the CSSDCA had to convene a Standing Conference of Heads of State during the Durban Summit—the first of these to be held every second year. This event eventually proved somewhat disappointing with no substantive debate, despite the far-reaching and intrusive decisions that were tabled and adopted.

The CSSDCA Unit is basically funded by contributions from South Africa and Nigeria. Following successive workshops and meetings in Uganda, South Africa, Nigeria and Ethiopia, the Unit prepared a Memorandum of Understanding for consideration by the inaugural Assembly of the AU in Durban. This Memorandum consists of commitments to give effect to defined core values, key performance indicators, a framework for implementation and measures to monitor performance in each of the four areas (calabashes) covered by the CSSDCA. The intention of the CSSDCA Unit is that this provides a basis and framework for peer review for the AU—very similar to those proposed by NEPAD but with the difference that it is, by definition, Africa wide.

Within the framework of the CSSDCA the OAU has also provided for the structured engagement of civil society in the future activities of the Union.

Undoubtedly the most important development on this front in Durban was when the Assembly approved the Memorandum of Understanding on Security, Stability, Development, Cooperation as enriched by an earlier OAU-Civil Society Conference and recommended by the Council of Ministers.⁸⁷

The Assembly also reaffirmed the centrality of the CSSDCA Process as a policy development forum, a framework for the advancement of common values, and as a monitoring and evaluation mechanism for the AU, thereby staking its claim in relation to the African Peer Review Mechanism (APRM) in NEPAD.

The details contained in the CSSDCA Memorandum of Understanding⁸⁸ are divided as follows:

- 24 core values pertaining to the interrelated nature of security, the challenges of arms proliferation, importance of good governance, democracy, combating corruption, elections, civil society, RECs, etc.
- 46 commitments to give effect to the core values including the requirement for collective continental security architecture, strengthening of conflict prevention and management mechanisms, delimitation of borders, countering terrorism, arms proliferation, landmines, protection of refugees, organised crime, a bill of rights, free elections, independent judiciary, constitutionalism, human rights, good governance, an accountable civil service, domestic savings, development of communications, infrastructure, etc.

The CSSDCA Unit provides a basis and framework for peer review for the AU

- 50 key performance indicators on security, stability, development and co-operation. An example of each follows:
 - *Security*: Conclude and ratify bilateral and regional non-aggression pacts (where they do not yet exist) by 2006 on the basis of commonly agreed guidelines.
 - *Stability*: Adopt, sign and ratify an AU Convention on Combating Corruption and establish by 2004 in each African country (where it is not presently in existence) an independent Anti-Corruption Commission, with an independent budget that must annually report to the national parliament on the state of corruption in that country.
 - *Development*: Increase Africa's share of foreign direct investment (FDI) inflows from the current 1% of total global FDI, to a minimum of 2% in five years (this is to increase by 2% every year until it reaches 10% of total global FDI flows).
 - *Co-operation*: Complete, by 2005, the harmonisation and rationalisation of all RECs, in order to facilitate convergence into the AU.
- A framework for implementation, including the establishment of national focal points, mechanisms at regional level, best practices and enlargement and integration of the CSSCA unit within the Commission of the AU.
- Mechanisms for monitoring performance—including a standing conference, regular reviews, establishment of national mechanisms for evaluation and peer review, and visitation panels composed of eminent persons.

The Assembly requested Member States to take steps required for the implementation of the Memorandum of Understanding and to keep the Secretariat informed of the progress made in this direction in order to facilitate the monitoring and evaluation process of the CSSDCA, including through review conferences and meetings.

THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT (NEPAD)

During the July 2001 Lusaka Summit, African leaders adopted the New Partnership for Africa's Development (NEPAD). The Partnership provides a comprehensive, integrated development plan that addresses key social, economic and political principles for the continent. It entails a commitment by African leaders to African people and the international community to place Africa on a path of sustainable growth, accelerated by the integration of the continent into the global economy.

NEPAD determines that peace, security, democracy, and good economic and corporate governance are preconditions for sustainable development and proposes a system of voluntary peer review and adherence to a common governance and value statement (the Declaration on Democracy, Political, Economic and Corporate Governance adopted by the NEPAD Heads of State Implementation Committee in Rome and subsequently endorsed in Durban), backed up by 11 more specific codes and standards of conduct.⁸⁹ The Assembly of the African Union is the final governance structure of NEPAD.

One of the key decisions taken in Durban is to expand the Heads of State Implementation Committee, previously consisting of 15 countries, to four per region. This decision has already had a marked negative effect on external perceptions of NEPAD, as discussed in the introductory paragraphs of this paper.

The Committee meets once every four months and reports annually to the AU Summit. Prior to the decision to expand the Committee, it was composed as follows:

- *Chairperson*: Pres. Obasanjo (Nigeria)
- *Vice-chairs*: Pres. Bouteflika (Algeria), Pres. Wade (Senegal)
- *Central Africa*: Cameroon, Gabon, São Tomé and Príncipe
- *Eastern Africa*: Ethiopia, Mauritius, Rwanda
- *Northern Africa*: Algeria, Egypt, Tunisia
- *Southern Africa*: Botswana, Mozambique, South Africa
- *Western Africa*: Mali, Nigeria, Senegal

The AU Chair (now South Africa) and Chairperson of the Commission (Amara Essy) are ex-officio members of the Committee. The functions of the Committee are:

- identifying strategic issues that need to be researched, planned and managed at the continental level;
- setting up mechanisms for reviewing progress in the achievement of mutually agreed targets and compliance with mutually agreed standards; and
- reviewing progress in the implementation of past decisions and taking appropriate steps to address problems and delays.

NEPAD also has a Steering Committee that meets once every month. It is composed of representatives of the five founding countries; viz. South Africa, Algeria, Egypt, Nigeria and Senegal. The OAU/AU Secretariat also participates at Steering Committee meetings, although attendance has not been consistent due to the transformation pressures within the OAU.

The small NEPAD secretariat based in South Africa will continue to exist until at least the next Assembly meeting of the Union (July 2003 in Maputo) and the five founding countries of NEPAD have agreed to contribute financially as well as to second appropriately qualified professional persons as staff members. The role of the NEPAD secretariat is to co-ordinate the production of business plans for each of the six NEPAD priority areas.⁹⁰

It is unlikely, with President Mbeki in the position of Chair of the AU, that NEPAD will continue its engagement on peace and security issues outside the framework of the AU. It is more likely that Mbeki will seek to mobilise resources for his engagement in this field on behalf of the AU.

The AU Assembly in Durban also adopted the Declaration on the Implementation of NEPAD.⁹¹ The Declaration encouraged all Member States to adopt the Declaration on Democracy, Political, Economic and Corporate Governance and to accede to the African Peer Review Mechanism.

The Assembly noted and endorsed the progress report on NEPAD provided by President Obasanjo. While introducing the progress report, Obasanjo spoke at length about the CSSDCA, reaffirming the view that Nigerian commitment to NEPAD would not occur at the expense of the CSSDCA and the requirement for harmonisation between the two initiatives.

Evident from his remarks is the desire to extend the peer review process to Africa's development partners, particularly on issues such as natural resource exploitation practices. This was a theme subsequently picked up by a number of other countries.

An obvious feature of the debate amongst Heads of State in Durban was the interventions by countries presently not yet members of NEPAD (such as Libya, Sudan, Swaziland and Kenya), and their obvious fears of being somehow excluded from the Partnership—apart from the threat that adherence to standards of democracy and good governance would have for vested interests in these countries.

The purpose of the African Peer Review Mechanism is to:

1. enhance African ownership of its development agenda;
2. identify, evaluate and disseminate best practices;
3. monitor progress towards agreed goals;
4. use peer review to enhance adoption and implementation of best practices;
5. ensure that policy is based on best current knowledge and practices; and to
6. identify deficiencies and capacity gaps and recommend approaches to address these issues.

The key distinction between NEPAD's African Peer Review Mechanism and the CSSDCA version, is that Member States of the AU will voluntarily accede to the NEPAD mechanism for the purpose of self-monitoring, and will thereafter define clear time-bound programmes to meet commitments to required standards. Meeting such commitments would, however, require assistance (resources from the developed world) to overcome deficiencies and to provide incentives.

This being said, many issues remain unresolved, including the relationship with the AU Assembly, the role and appointment of the proposed Panel of Eminent Persons that will complement the base or technical components of the peer review, etc.

Nigerian commitment to NEPAD would not occur at the expense of the CSSDCA

Following an earlier meeting in Rome, the NEPAD Heads of State Implementation Committee had agreed that the secretariat of the NEPAD peer review mechanism will be located within UNECA and not in the OAU/AU as originally proposed. Although the UNECA has the technical competence and capacity for this task it would appear as if Nigeria's intervention in defence of the peer review process already located as part of the CSSDCA in the Commission of the AU may see this decision reversed.⁹²

Perhaps the most important development in Durban regarding NEPAD was the decision to increase the number of the members of the Implementation Committee by one per region of the AU, thus bringing the total number of members of the Committee to 20. These countries will, furthermore, relinquish their membership to others on a rotational basis.

CONCLUSION

Though the new commitments and structural changes made at the Durban summits are impressive, the resources made available to the Union will inevitably prove decisive to implementation.

In this respect, Africa's record is not very promising. For example, the OAU, with a \$32 million annual budget was carrying about US\$52 million in arrears from its member states during May 2002—a deficit that has been increasing annually, despite the significant increase in the tasks and functions that Member States earlier assigned to the OAU and now the Union. No decisions on the funding mechanisms for the AU were tabled in Durban, and this will obviously be a key focus of the Maputo meetings.

The history of the OAU Peace Fund (now the AU Peace Fund) is also instructive. Since its establishment in June 1993, the fund has attracted contributions amounting to US\$48 million (by the end of March 2002). Of this amount, US\$18 million was contributed to Member States as a proportion of their contributions to the general budget of the OAU. The remainder and much larger sum of US\$30 million had come from non-African countries and international organisations.

What is clear is that the AU will require a much larger budget than that of the OAU if it is to contribute to peace and security on the continent—leaving the bigger challenge of

development (and NEPAD ambitions) aside for the moment. The informal target figure is for an organisation that would require an annual budget that is at least double that of the OAU, probably in the region of US\$80 million. The most popular, if problematic, proposal to collect these resources is to impose a levy on all flights to and within the continent. A second proposal is to link membership of the PSC with enhanced membership contributions. Apart from the various options being developed by the special committee on funding, it appears inevitable that the AU will require substantial assistance from the international community.

These considerations aside, the Summit of the OAU/AU in Durban was undoubtedly one of the most productive and purposeful meetings yet held by African leaders at this level. On the other hand, the public launch of the AU at a gala event in the ABSA stadium on the morning of 9 July 2002 reflected one of the enduring realities of African politics.

While six presidents rose to deliver a succession of lengthy speeches—not in Zulu, but in English, French and Arabic (the latter two requiring laborious translation)—the crowd that had been enticed by the popularity of President Mbeki and by the offer of free food and T-shirts, sat politely nonplussed for three hours, patiently waiting for the displays, the singing and dancing that followed. Durban thus also provided a poignant illustration of the continuing gulf between Africa's political elite and the people they claim to represent.

ENDNOTES

- 1 This paper is published under the auspices of 'Training for Peace in Southern Africa', a collaborative programme involving ISS, ACCORD and NUPI, and funded by the Norwegian government. All the source documents referred to in this paper from the OAU/AU summit in Durban are available, in full text, on the ISS website (www.iss.co.za) under African Fact Files.
- 2 Admittedly, President Obasanjo's assertive foreign policy stance on these and other issues are not unrelated to his precarious domestic political position in the run-up to presidential elections in Nigeria during the first half of 2003.
- 3 Article 6 of the Constitutive Act of the African Union, hereafter 'AU Act'.
- 4 Article 6 of AU Act, Rule 7 of the Rules of Procedure of the Assembly of the Union, document ASS/AU(2)(I). Hereafter 'RoP of the Assembly.'
- 5 Rule 5 of the RoP of the Assembly.
- 6 Rule 19 of RoP of the Assembly.
- 7 Rule 16 of the RoP of the Assembly.
- 8 Article 7 of the AU Act and Rule 18 of RoP of the Assembly.

- 9 Article 7 of the AU Act, Rules 7 and 18 of RoP of the Assembly.
- 10 Art 7 of the AU Act.
- 11 Rule 19 of RoP of the Assembly.
- 12 Rules 30 and 31 of RoP of the Assembly.
- 13 Article 9 of the CA.
- 14 Article 4 of the AU Act.
- 15 Article 23 of the AU Act.
- 16 Rule 36 of the RoP of the Assembly.
- 17 Rule 22 of the RoP of the Assembly.
- 18 Report of the Eighteenth Ordinary Session of the Committee of Contributors, Council of Ministers, CM/2245(LXXVI), par 9 and Report of the Secretary General on the Financial Situation of the Organisation and on the Status of Arrears of Contribution to the OAU Regular Budget as at 31 May 2002, Council of Ministers, CM/2244(LXXVI), par 4. During the Lusaka Summit proceedings were regularly interrupted by announcements that Member States had paid (or an amount had been paid on their behalf) that now meant that they were no longer under sanctions. These funds would eventually only reach the OAU during May 2002

and the introduction of the 30-day rule is to avoid a repetition of these events.

- 19 Rule 4.
- 20 Article 9 of AU Act.
- 21 AHG/238 (XXXVIII).
- 22 Article 5 of the Statutes of the Commission of the African Union, ASS/AU/2(1) repeats a similar location. Hereafter 'Statutes'.
- 23 ASS/AU/Dec. 6 (I).
- 24 An extraordinary session may occur at the request of the Chairperson of the Assembly or any Member State (Rules 11 and 12 of the RoP of the Assembly) and requires: approval by a two-thirds majority of Member States; and notification of such a request to all Member States through the Commission within seven days of receipt, with a response within a set period. The Commission must subsequently communicate the agenda items to Member States at least 15 days before the opening of the session.
- 25 Article 10 of the AU Act.
- 26 Rule 8 of the Rules of Procedure of the Executive Council, doc ASS/AU(I). Hereafter 'RoP of the EC'.
- 27 Article 10 of the AU Act.
- 28 Rule 6 of the RoP of the EC.
- 29 Article 11 of the AU Act.
- 30 Article 13 of the AU Act.
- 31 Rule 5 of the RoP of the EC.
- 32 Rule 37 of the RoP of the EC.
- 33 Rule 5 of the RoP of the EC.
- 34 Rule 5 of the RoP of the EC.
- 35 Rules 16 and 32 of the RoP of the EC.
- 36 Rule 5 of the RoP of the EC.
- 37 Article 21 of the AU Act.
- 38 Rule 9 of the RoP of the EC.
- 39 Rules 4, 14 and 26 of the Rules of Procedure of the Permanent Representatives' Committee, ASS/AU2(I). Hereafter 'RoP of the PRC'.
- 40 Rule 5 of the RoP of the PRC.
- 41 Article 20 of the AU Act and Article 2 of the Statutes.
- 42 Article 6 of the Statutes. Rule 39 of the RoP of the Assembly.
- 43 Rules 38 and 39 of the RoP of the Assembly.
- 44 Rules 32 and 37.
- 45 Article 3 of the Statutes.
- 46 Article 7 of the Statutes.
- 47 Article 9 of the Statutes.
- 48 Article 12 of the Statutes.
- 49 Article 12 of the Statutes.
- 50 Articles 13 and 14 of the Statutes.
- 51 Article 15 of Statutes.
- 52 Article 18 of the Statutes.
- 53 Article 18 of the Statutes.
- 54 This is not reflected in Article 21(3) of the Statutes that still refers to 1st November as the first day of the financial year.
- 55 The existing ASGs and portfolios are: ASG Communication and Conferences—Amb Daniel Antonio; ASG Administration and Finance—Amb Vijay Makhan; ASG Political Affairs—Amb Saïd Djinnit; ASG Community Affairs—Amb Lawrence Abubuzu; and ASG Policy and Programme Co-ordination—Amb Habib Doutoum.
- 56 See, for example, the interview with him published in *New Africa*, 408, June 2002.
- 57 Article 8 of the PSC Protocol.
- 58 Article 5 of the PSC Protocol.
- 59 Article 5 of the PSC Protocol.
- 60 Article 5 of the PSC Protocol.
- 61 Article 3 of the PSC Protocol.
- 62 Article 6 of the PSC Protocol.
- 63 Article 4 of the PSC Protocol.
- 64 Article 7 of the PSC Protocol.
- 65 Article 8 of the PSC Protocol.
- 66 Article 8 of the PSC Protocol.
- 67 Article 9 of the PSC Protocol.
- 68 Article 10 of the PSC Protocol.
- 69 Article 11 of the PSC Protocol.
- 70 Article 12 of the PSC Protocol.
- 71 Article 13 of the PSC Protocol.
- 72 Article 21 of the PSC Protocol.
- 73 Article 13 of the PSC Protocol.
- 74 Articles 14 and 15 of the PSC Protocol.
- 75 Article 16 of the PSC Protocol.
- 76 Article 17 of the PSC Protocol.
- 77 Articles 18 to 20 of the PSC Protocol.
- 78 Article 20 of the PSC Protocol.
- 79 ASS/AU/Dec. 8(I).
- 80 Article 30 of the AU Act.
- 81 Rule 37 of the RoP of the Assembly.
- 82 Rule 37 of the RoP of the Assembly.
- 83 AHG/Decl. 1 (XXXVIII).
- 84 CM/2257 (LXXVI).
- 85 See Rule 33 of the RoP of the Assembly for the differences between regulations, directives, recommendations, declarations, etc.
- 86 The total budget available within the OAU for election monitoring during 2001/2 was only \$120,000 with the result that the AU will continue to have to rely on donor support to fulfil this crucial role.
- 87 AHG/Dec. 175 (XXXVIII).
- 88 OAU/CIVIL SOCIETY 3(II).
- 89 These are: Code of Good Practices on Transparency in Monetary and Financial Policies; Code of Good Practices on Fiscal Transparency; Best Practices for Budget Transparency; Guidelines for Public Debt Management; Principles of Corporate Governance; International Accounting Standards; International Standards on Auditing; Core Principles for Effective Banking Supervision; Principles for Payment Systems; Recommendations on Anti-Money-Laundering; and Core Principles for securities and insurance suspension and regulation.
- 90 Political governance, including peace, security and democracy; Economic and corporate governance; Infrastructure development (including information and communication technologies, energy, transport and water and sanitation); market access and agriculture; human development including health and communicable diseases, education and poverty; and capital flows including debt reduction and foreign direct investment.
- 91 ASS/AU/Dec. 1 (I)
- 92 UNECA has, for several years, been engaged in its Project on Monitoring Progress Towards Good Governance that makes use of three instruments to assess political representation, institutional effectiveness and accountability, and economic management. Instrument 1 seeks expert opinion from an expert panel. Instrument 2 seeks the perceptions of the general adult population. Instrument 3 is desk research. The instruments were developed through three workshops held in September 1999, March 2000 and April 2001. At present the study is conducted in 15 African countries, most also part of NEPAD, namely: Ghana, geria, Kenya, Tanzania, Uganda, Botswana, Malawi, Mozambique, Namibia, Benin, Mali, Senegal, Algeria and South Africa. (IDASA recently released the South African draft country report). In a next phase the project will be expanded to an additional 15 African countries.

The ISS mission

The vision of the Institute for Security Studies is one of a stable and peaceful Africa characterised by human rights, the rule of law, democracy and collaborative security. As an applied policy research institute with a mission to conceptualise, inform and enhance the security debate in Africa, the Institute supports this vision statement by undertaking independent applied research and analysis; facilitating and supporting policy formulation; raising the awareness of decision makers and the public; monitoring trends and policy implementation; collecting, interpreting and disseminating information; networking on national, regional and international levels; and capacity building.

About this paper

This paper summarises the most important developments and outcomes following the recent meetings of the Organization of African Unity and the African Union in Durban. The focus is on the transition to the new institutions of the African Union, particularly as they relate to peace, security and democracy. The intention is to provide a ready reference for scholars, practitioners and policymakers who need a timely update on the evolution of the increasingly complex continental mechanisms for the pursuit of peace and security in Africa. Apart from an introduction and conclusion, the paper is divided into the following sections:

- The launch of the key structures of the African Union (the Assembly, Executive Council, Permanent Representatives Committee and the Commission);
- The Protocol on the Peace and Security Council;
- The Declaration on election observation and monitoring;
- The Declaration on the Conference on Security, Stability, Development and Cooperation; and
- The New Partnership for Africa's Development.

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About the author

Dr Jakkie Cilliers is the executive director of the ISS.

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Tel: +27-12-346-9500/2 • Fax: +27-12-460-0998

Email: iss@iss.co.za • <http://www.iss.co.za>

67 Roeland Square • Drury Lane • Gardens • Cape Town • 8001 • SOUTH AFRICA

Tel: +27-21-461-7211 • Fax: +27-21-461-7213

Email: issct@iss.co.za

