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Addis Insight

Burkina Faso: where does it leave the AU norm on unconstitutional changes of government?

The African Union (AU) response to events in Burkina Faso since the ousting of former president Blaise Compaoré on 31 October raises a number of important questions for the AU. This was the first time sanctions were not automatically applied after the AU found the occurrence of a coup d'état. Does this mean a two-week delay will now become norm? The High Level Panel on Egypt had already suggested there should be guidelines for the AU to follow in cases of popular uprising, but these have not yet been drawn up.

The Peace and Security Council (PSC) on 18 November held a session to review the situation in Burkina Faso. This came at the end of the two-week deadline it gave to the Burkinabe military for the transfer of power to a civilian authority. In an earlier decision, on 3 November, the PSC had warned that if progress was not made in transferring power to a civilian authority, it would 'take all appropriate measures, including the suspension of Burkina Faso from participating in AU's activities and the imposition of targeted sanctions against all those who would be obstructing efforts' for transition to civilian authority.

The AU was not alone in expressing the urgency for transfer of power to a civilian authority. As people protested against the army's assumption of power, discussions for a civilian led transition started in earnest. Following consultations, on 9 November political parties, civil society organisations and religious leaders adopted a plan for a return to civilian rule. Complying with the PSC's 3 November decision that affirmed the continuing validity of Burkina Faso's constitution, on 15 November the army announced the restoration of the 1991 Constitution. Two days before the PSC's meeting for reviewing progress, the various political and social forces in Burkina Faso signed a transitional charter that sets the framework for a civilian led transition that is tasked with the responsibility of organising free, fair and credible elections.

According to the transitional charter, a 90-member transitional council will serve as the country's parliament, while the prime minister will head a 25-member government. Reflecting the spirit of the AU norm on unconstitutional changes of government, it is further stipulated that the interim president and ministers in the transitional government are barred from standing in elections expected to be held a year from now.

Compliance with the PSC's request

On 17 November, a day before the end of AU's two-week deadline, the various stakeholders overcame their differences that stalled the naming of the interim civilian leader and announced that Michel Kafando, a former career diplomat, will be the interim president.

By the time the PSC convened its meeting, the only step that was left was the swearing in of the interim president. Accordingly, the PSC decided 'in anticipation of the transfer of power to the newly-designated Transitional President, scheduled to take place on 21 November 2014, not to take the measures that were envisaged in paragraphs 9 (iii) and 14 of communiqué PSC/PR/COMM.(CDLXV), including the

PSC Chair for November

H.E Simeon Oyono Esono

Ambassador of Equatorial Guinea to the AU

Current members of the PSC

Algeria, Burundi, Chad, Ethiopia, Equatorial Guinea, The Gambia, Guinea, Libya, Mozambique, Namibia, Niger, Nigeria, South Africa, Tanzania, Uganda

suspension of the participation of Burkina Faso in the activities of the AU’.

There were no differences among members of the PSC during the deliberations. Although some members, expressed concern over the reference to the ECOWAS Memorandum on Burkina Faso, the wording in the statement that the Council ‘takes note of’ the Memorandum was agreed as acceptable.

Implications for the AU norm

Despite the successful AU engagement in the Burkina Faso crisis, without having to resort to the use of sanctions, the case has raised a number of questions on the AU’s norm on unconstitutional changes of government.

First, this was the first case in which the AU did not use sanctions immediately after making a determination that the army’s seizure of power in Burkina Faso was a coup. This raises questions on whether this will be a precedent that the AU will follow in other instances of unconstitutional changes of government in the future. If this was going to happen, it would amount to a complete revision of the provisions of the AU norm and AU’s long established practice that envisaged the automatic application of sanctions once a determination was made regarding the occurrence of unconstitutional changes of government. The legal norm and practice in this regard has been for the AU to work towards the restoration of constitutional order in the affected country, after sanctioning it.

If circumstances are such that the AU does not want to have the automaticity of sanctions, the best thing to do would have been to suspend both the determination of the occurrence of unconstitutional change and the sanctions for the duration of the two week period.

Second and significantly, the experience in Burkina Faso highlighted gaps in taking early action from the time early warnings are issued and before the situation reaches a crisis level. In this regard, the PSC itself acknowledged that there is ‘need for renewed efforts towards conflict prevention, based on the relevant AU instruments and Council’s communiqués’.

Third and most importantly, the AU remains ambivalent, if not completely reluctant, to reject attempts by incumbent leaders to amend their constitutions in order to remove presidential terms limits, which has now become a trigger of instability and violence in Africa. A clear position by the AU on this would have enabled it to dissuade member states from making such constitutional amendments. In this context, the clear statement rejecting such constitutional amendments in the ECOWAS memorandum is a policy position worthy of emulation by the AU. As no fewer than eight African presidents are nearing the end of their term limits in the next three years, from Benin, Burundi, the Republic of Congo,

the Democratic Republic of Congo (DRC), Liberia, Rwanda, Sierra Leone and Tanzania, the importance of such an AU stance cannot be overemphasized. Given that movements for extending presidential term limits in the DRC and Burundi have already triggered protests and tension, such a position would enable the AU to engage these countries early enough and work towards preventing such moves from pushing these and other countries to the brink, as was the case in Burkina Faso.

The AU remains ambivalent, if not completely reluctant, to reject attempts by incumbent leaders to amend their constitutions for removing term limits

Fourth, the crisis in Burkina Faso once again highlighted the difficult and controversial role of the army in politics. Although the PSC’s requirement of a civilian-led transitional administration was met with the assumption of power by the interim president in Burkina Faso, the army has become powerfully embedded in the transitional government. Apart from military strongman Lieutenant Colonel Isaac Zida who received the powerful portfolio of prime minister and minister of defence, three other army officers have posts in the 25-member cabinet. This includes the interior ministry. Although these officers are barred from participating in the election that will be held at the end of the one year transitional period, their membership in the cabinet will entrench the army in the country’s transitional politics and beyond.

Fifth and finally, Burkina Faso again put the spotlight on the question of popular uprisings in relation to the AU’s norm on unconstitutional changes of government. Taking note of the difficulties encountered in applying the AU norms on unconstitutional changes of government in the context of popular uprisings, the AU High Level Panel on Egypt in its final report recommended the elaboration of a guideline for determining when popular uprisings would be compatible with AU norms on unconstitutional changes of government. In the light of the events in Burkina Faso, it is worthwhile to follow up on this recommendation and articulate such a guideline.

In this regard, as suggested by the High Level Panel on Egypt and endorsed by the PSC when it adopted the report, the elements for such a guideline are (a) the descent of the government into total authoritarianism to the point of forfeiting its legitimacy; (b) the absence or total ineffectiveness of constitutional processes for effecting change of government; (c) popularity of the uprisings in the sense of attracting a significant portion of the population and involving people from all walks of life and ideological persuasions; (d) the absence of involvement of the military in removing the government; and (e) peacefulness of the popular protests.



On the Agenda

Speedy deployment of pledged health workers and coordination key to success of AU's Ebola mission

The African Union (AU) is set to scale up its response to counter the Ebola outbreak by deploying up to 1 000 health workers to Liberia, Guinea and Sierra Leone in the next few weeks. Experts on the ground, however, say coordination among the various organisations fighting Ebola is key to making sure the help is effective. There is also an apparent need to work on the speedy preparation (in terms of training and equipment) of the health workers pledged by member countries and their movement to the AU Support Mission to Ebola Outbreak in West Africa's (ASEOWA) area of operation.

On Friday 28 November, the Peace and Security Council (PSC) held an open session on the Ebola outbreak in West Africa and ASEOWA. The accelerated deployment of health workers from across Africa and cooperation between the AU and the private sector were on the meeting's agenda.

Experts on the ground say coordination among the various organisations fighting Ebola is key to making sure the help is effective

Establishment of AU-private sector Ebola Fund

In a statement on 18 November, AU Commission (AUC) Chairperson Nkosazana Dlamini-Zuma said African businesses and the African Development Bank (AfDB) have so far pledged US\$32,6 million to the AU-private sector Ebola Fund. This follows a fundraising meeting with business executives from across the continent, which the AU Commission had convened together with the United Nations (UN) Economic Commission for Africa (UNECA) and the AfDB in Addis Ababa on 8 November.

The move to draw on private business in Africa for funding AU activities like ASEOWA is a first for the continental organisation, which remains heavily dependent on European and other outside funding for its peace support operations.

Among the biggest contributors to the AU-private sector Ebola Fund are cellphone companies MTN and Econet, which gave US\$10 million and US\$2,5 million respectively; business philanthropists Aliko Dangote and Patrice Motsepe, who pledged US\$3 million and US\$1 million respectively; the CocaCola company (US\$1 million); and Old Mutual, Nedbank and Barclays Bank, which pledged US\$500 000 each. The AfDB is donating US\$10 million to the fight against Ebola.

A campaign to raise more funds from the African private sector will be launched by a group of telecommunications companies, which will be working together to convince Africans and those in the diaspora to donate to the fund, Dlamini-Zuma said. The campaign was set to start on 1 December.

US\$32,6
million

PLEGGED TO THE AU – PRIVATE
SECTOR EBOLA FUND

Show of solidarity: high-level visits to affected countries

After the start of the Ebola outbreak, the first senior AUC official to visit West Africa, including the affected countries, was the Commissioner for Social Affairs, Dr Mustapha Sidiki Kaloko who is the lead person on the AU response to Ebola. This visit was done in pursuance of the implementation of the decisions of the Executive Council, such as those pertaining to flight cancellations and closure of borders.

Dlamini-Zuma, accompanied by Dr Carlos Lopes, the Executive Secretary of UNECA, and Dr Donald Kaberuka, the President of the AfDB, have since also visited the Ebola-affected countries. During their visit, apart from drawing attention to the need for heightened action in the fight against Ebola and showing solidarity with the affected communities, Dlamini-Zuma campaigned to have flights resume to the affected countries and borders re-opened.

Operationalisation of ASEOWA

Following an evaluation undertaken by the AU assessment team in the Ebola-affected countries at the end of August, the PSC decision to establish ASEOWA was operationalised. Since the deployment of the first ASEOWA team (consisting of 19 epidemiologists, clinicians and communications personnel) on 19 September to Liberia, the AU has deployed the second and third ASEOWA teams of 27 and 38 personnel respectively to all three affected countries.

Dlamini-Zuma says the AU expects to have 'at least' 1 000 health workers on the ground by Christmas. The mobilisation of health workers and their speedy deployment are important if this target is to be met.

Although the pace of deploying personnel to ASEOWA has been slow, AU members' pledges for deployment are increasing. Nigeria has already pledged US\$3.5 million and to deploy about 506 volunteers. The Gambia has provided US\$1 million, half of it to Sierra Leone and half to Guinea. Côte d'Ivoire pledged US\$1 million to the three affected countries and promised to send doctors. On 24 October, Ethiopia announced it would send 200 volunteer health personnel and donate US\$500 000 to the affected countries. South Africa has pledged US\$4 million, which includes US\$1 million from the local business community. Teams of experts have also been sent from South Africa to the affected countries to build a crematorium. The Democratic Republic of the Congo also expressed its willingness to send up to 1 000 volunteers to the region.

As can be gathered from the pledges of member countries, the Chairperson's target of deploying 1 000 health workers

by Christmas is not unrealistic. However, much depends on the pace of deployment. In this respect, there is an apparent need to work on the preparation of the pledged personnel (i.e. providing the proper training, equipment and supplies) and on moving personnel to ASEOWA's theatre of operation.

So far, Nigeria has been the most active and an estimated 200 Nigerians of the 500 that the country has pledged have been preparing for deployment. The group was expected to leave for the Ebola-affected countries from Abuja on 28 November. Its deployment was expected to be funded by the AU-private sector Ebola Fund.

Dlamini-Zuma says the AU expects to have 'at least' 1 000 health workers on the ground by Christmas

RECs' contributions

Support is also being mobilised by regional economic communities (RECs). The Economic Community of West African States (ECOWAS) is training 150 health workers from Benin, Niger, Côte d'Ivoire, Ghana, Nigeria and Mali to be deployed in the Ebola-affected countries. The five-day training session, which started on 24 November, took place at the Kofi Annan International Peacekeeping Training Centre in Accra, according to a statement by ECOWAS. The training is being done in conjunction with the West African Health Organisation, based in Burkina Faso – one of the regional institutions criticised for its slow response to the Ebola outbreak.

The East African Community also announced that more than 600 health professionals, including 41 medical doctors, would be sent to the affected countries.

International support for ASEOWA and affected countries

ASEOWA works in coordination and partnership with relevant partner agencies. It receives assistance from these partner organisations in the discharge of its mandate. These partners include the World Health Organisation (WHO), the UN Office for the Coordination of Humanitarian Affairs (UNOCHA), the International Federation of Red Cross and Red Crescent Societies, the United States (US) Mission to the African Union and the US Centers for Disease Control. ASEOWA also gets financial support from the US, the European Union (EU), China, Norway and Canada.

Much more, however, is necessary to respond adequately to the needs of the countries struck by Ebola. World Bank president Jim Yong Kim said in Addis Ababa on 28 October

that around 5 000 more health workers would be needed on a rotational basis to keep the disease under control. UN Secretary-General Ban Ki-moon also said that with increased effort the disease could be under control by the middle of next year. However, according to a BBC report, the head of the UN Mission for Ebola Emergency Response, Anthony Banbury, has warned that the disease is still far from being defeated. So far more than 7 000 people have died of the disease. More than 400 of them were health workers.

Apart from the AU and UN, many other organisations and countries have since answered the call for help by the leaders of the affected West African countries. China, for example, which has donated US\$2 million to the AU's Ebola effort, is building a 100-bed hospital in Liberia. The US, France and the United Kingdom have also contributed with health centres, volunteers and equipment. However, aid workers who have returned from the area say overall coordination of these efforts is needed to make sure the help is effective. 'Slowly the mechanisms are being put into place to fight Ebola, but [these have] to be coordinated,' said a representative of a non-governmental organisation who had just returned from Sierra Leone and preferred not to be named.

In September during a visit to the US, WHO director-general Margaret Chan also called for a 'well-coordinated global response' to the disease. The WHO, however, has been slammed for not taking the lead in the response to Ebola. The organisation only set up a coordination centre in Conakry, Guinea in July this year, while it had been aware of the Ebola outbreak in the country since March. The first Ebola death occurred in Guinea in December 2013.

Sustaining the mobilisation of support from Africa

Although there are signs that the efforts of national, regional and international actors to counter the Ebola outbreak are finally producing some results, the outbreak will not be successfully contained without sustaining the mobilisation of resources, the deployment of health workers and the establishment of care centres in the affected countries.

Although it started slow, the AU has now built up a good momentum in mobilising support and keeping the Ebola outbreak high on the continental agenda. It is critical that it keeps this momentum.

In this context, the PSC could consider undertaking a field visit to the affected countries to show its solidarity with them and keep the fight against Ebola high on the continental agenda. The Council could also urge member states to implement the decisions of the extraordinary meeting of the Executive Council, including those pertaining to the resumption of flights to the affected countries. Additionally, the PSC could request the AU Commission to start making plans to develop a post-Ebola support plan, including international pledging conference, to enable the affected countries to recover from the consequences of the Ebola outbreak and rebuild their health and social infrastructure.

With respect to the deployment of additional personnel to ASEOWA, the PSC could urge the speedy preparation and deployment of the pledged health workers by member states. The Council could also have the AUC ensure deployments are made to areas where the demand is highest and personnel could contribute the most, and that these deployments are undertaken in close cooperation with the relevant governments and other partner organisations undertaking similar activities.

5 000

THE NUMBER OF HEALTH WORKERS
NEEDED TO FIGHT EBOLA

Situation Analysis

Dilemma of how to deal with Libya's two parliaments



The decision by the Libyan Supreme Court on 6 November to declare the secular parliament in Tobruk unconstitutional means that the international community faces a dilemma regarding the conflict in Libya. Should it take sides against the Tripoli-based government, or stay neutral? While some actors, like France, have called for military action, the African Union (AU) insists on dialogue to resolve the devastating conflict in the country.

At its 459th session on 23 September 2014, the Peace and Security Council (PSC) of the AU called for the lasting cessation of hostilities and the start of an inclusive dialogue in Libya. The PSC called for the creation of an International Contact Group for Libya, in partnership with the United Nations (UN), comprising all Libya's neighbours and other relevant countries and international organisations. It also endorsed the establishment of a High-Level Committee of Heads of State to forge a continental response to the Libyan crisis.

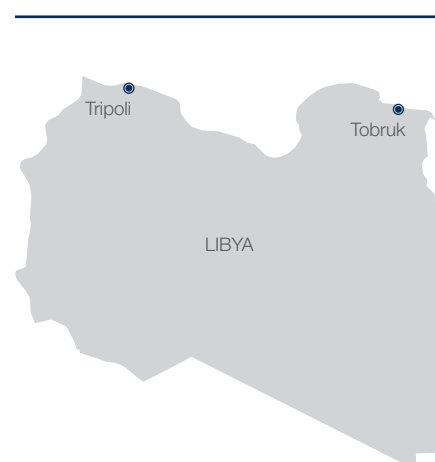
This High-Level Committee has, however, not been established yet. On 15 November the AU Special Envoy to Libya, Dileita Mohamed Dileita, again asserted the AU's position rejecting the possibility that the conflict in Libya could be resolved militarily. He stated that dialogue was inevitable to resolve the Libyan crisis. Dileita said a political solution was the only option and announced that the AU would present a road map for ending the conflict in Libya.

Meanwhile, there continues to be violent confrontations between the ever-increasing political, interest and ideological groups in Libya. Security is deteriorating while divisions are deepening. The country has two governments and lists of militias controlling various pockets of territory. Most of the major cities are subjected to devastating violence. The recent weeks also saw a rise in the use of suicide attacks and other terrorism tactics. The violence is leading to loss of life and the destruction of basic and major infrastructure, and is also widening differences between warring groups, making the possibility of cessation of hostilities and peace a distant hope.

The PSC called for the creation of an International Contact Group for Libya in partnership with the United Nations

No sign of compromise as violence continues

According to reports, more than 350 people were killed in Benghazi alone from mid-October to mid-November 2014. Most parts of the capital Tripoli, Misrata and Benghazi are controlled by militias fighting the internationally-recognised but weak government based in Tobruk. There is no sign of concessions from the major parties to the conflict, which are increasingly using violence and brutality to pursue their respective agendas.



TWO CENTRES OF POWER

Political institutions in Libya are either severely weakened or non-existent. The state is losing control of not only the security but also the socio-economic pillars of the country. The central government has been reduced to just one of many political and security actors, with decreasing visibility and capacity. The security situation is deteriorating with the proliferation of arms and armed groups and the escalation of violence. Political and social divisions are also deepening with the emergence of rival governments. Meanwhile, the conflict is fast becoming a regional one as regional powers continue to entrench their proxy war by supporting different factions.

There is no sign of concessions from the major parties to the conflict, which are increasingly using violence and brutality to pursue their respective agendas

A country with two governments

Libya is now a country with two governments and two parliaments. The parliament that won the latest election is being challenged by the Islamist-dominated General National Congress (GNC), whose mandate ended in August 2014. Despite the elections in June that saw the defeat of most GNC candidates, the GNC resumed its parliamentary meetings in Tripoli, claiming that the process through which the new parliament, the House of Representatives, had been elected on 25 June 2014 had been unconstitutional. The divisions and differences between the two parliaments deepen by the day as both claim to be the legitimate representatives of the people of Libya and try to assert their authority.

To the satisfaction of the GNC and its supporters, on 6 November the Libyan Supreme Court in Tripoli invalidated the election of the Tobruk parliament. The House of Representatives has challenged the ruling and claims the decision was made while the court, surrounded by militias supporting the GNC, was under duress. However, the Tripoli-based government has welcomed the verdict and is using it to further its claim to be the only legitimate authority in Libya.

The Tobruk parliament is considered to be the centre of secular forces fighting the Islamist forces based in the west. In May 2014 forces loyal to former Libyan army General Khalifa Haftar, who accuses the GNC government of appeasing and supporting terrorism, launched a campaign to cleanse Libya of 'terrorism and extremism' with attacks on radical armed groups in Benghazi. The military campaign in Benghazi was accompanied by the invasion of the GNC parliament in Tripoli. The coalition of secular forces includes tribal groups, officers

who defected from former Libyan leader Muammar Gaddafi's forces and militias from the western mountain city of Zintan.

The Tripoli-based group, which named itself after its 13 July 2014 operation Fajr Libya (Libyan Dawn), consists of diverse Islamist groups with strong support from militias in Misrata, and has made significant gains in Tripoli.

Calls for a ceasefire ignored

Both parties have ignored repeated calls from the international community, including the UN, for a ceasefire and a negotiated end to the conflict. The international community is faced with an increasingly complex and dynamic conflict situation with serious regional and global implications. The 6 November decision by the Libyan Supreme Court that the internationally accepted and moderate parliament in Tobruk is unconstitutional places the international community in an even more difficult position.

There are also concerns that the conflict has turned into a proxy war, with regional rivalries in the Middle East and Mediterranean being played out in Libya. Outside intervention from countries like Qatar and Turkey, which are regularly accused of supporting Islamist-linked forces, is also believed to be playing a role in escalating the violence. Meanwhile, Egypt and the United Arab Emirates (UAE) are accused of backing more secular rivals.

In August 2014, reports emerged of Egyptian and UAE airstrikes on Islamist-linked Libyan groups. The attacks appeared to be in support of the militia led by Haftar, who was also responsible for two of the 2014 coup attempts (the common ground between Haftar and the Egyptian-UAE leadership being an aversion to the rise of political Islam in the region). On 13 November, car bombs exploded outside the closed embassies of Egypt and the UAE in Tripoli. The attacks show the increasing regional tensions amid the growing allegations of a proxy war.

The Tobruk parliament is considered to be the centre of secular forces fighting the Islamist forces based in the west

UN frustration

In September 2014, the UN appointed Bernardino Leon as the new Special Representative of the UN Secretary-General in Libya and Head of the UN Support Mission in Libya (UNSMIL).

The UN and its agencies are becoming increasingly frustrated with developments in the country. On 11 November, 2014 Fatou Bensouda, the chief prosecutor of the International Criminal Court, announced that there were indications of war crimes being committed in Libya. In her briefing to the UN Security Council, the chief prosecutor said the violence in Libya had

worsened over the past six months. She said, 'There are, indeed, indications that crimes that fall within the jurisdiction of the International Criminal Court are being committed.' There are also growing concerns over the ongoing spate of assassinations in Benghazi, Libya's second city, as well as threats to journalists, human rights activists, prosecutors, judges and lawyers, in particular women.

The UN Office of the High Commissioner of Human Rights (OHCHR) also noted increased human rights abuses, beheadings of activists and the recent closure of Libya's national human rights institution in Tripoli. In addition, the OHCHR is concerned about the 'continuing threats, intimidation and other repressive measures' being taken against Libya's National Council of Civil Liberties and Human Rights.

Fatou Bensouda, the chief prosecutor of the International Criminal Court, announced that there were indications of war crimes being committed in Libya

The international community is clearly divided on how to respond to the Libyan crisis. French Defence Minister Jean-Yves Le Drian recently warned that the world had to act in Libya as it was quickly turning into a major 'terrorist hub' on Europe's doorstep. He called for a French-led intervention in Libya. However, this call was rejected by countries like Algeria and Tunisia. Algerian Prime Minister Abdelmalek Sellal said, 'We don't accept a foreign intervention on our borders, we want a regional solution.' Algiers' view is shared by Egypt's President Abdel Fattah al-Sisi, who spoke out against the involvement of external powers in the region. Following a meeting in Paris on 1 November, the United States (US), the European Union (EU), the AU and the Arab League condemned the violence in Libya, as well as any foreign involvement in the crisis. The position of the international community is, however, fragmented because various countries in the region are giving support and engaging in military action on opposite sides of the conflict.

The US government announced that it was considering imposing unilateral sanctions against Libya's factions. Washington says such an action is important to prevent the proxy conflict from erupting into a full-blown civil war and force militant leaders to the negotiation table.

Major issues for the PSC

A general issue for the PSC is how to contain the deteriorating security and humanitarian situation in the country and avoid Libya's potential balkanisation, with various militias and armed forces establishing control over different parts of the country.

In the political sphere, a major concern for the PSC is how to create the conditions that can lead to national dialogue and peace talks between the various political forces.

A further issue for the PSC is how to channel the efforts of various regional countries to tip the balance of power in favour of either one of the parties to the conflict in Libya into a concerted regional process for a peaceful resolution of the crisis.

Options for the PSC

The PSC could consider adopting a road map for the resolution of the crisis in Libya, building on the initiatives of countries of the region and with inputs from the UN, EU and the Arab League.

The PSC could encourage the AU Commission to initiate the establishment of a joint political framework between the AU, UN, EU and the Arab League to harness the leverage of all these institutions for creating the conditions for national dialogue and peace talks.

Another option for the PSC is to effect the speedy implementation of the decisions it adopted at its 459th meeting, most notably the establishment of the international contact group and the High Level Committee of Heads of State.

Documentation

AU documents

- PSC/MIN/COMM.(CDLIX) (23 September 2014) Communiqué on the Situation in Libya
- Press Release (11 June 2014) The African Union Appoints Mr Dileita Mohamed Dileita as Special Envoy for Libya
- PSC/PR/BR.(CDXXXVI) (23 May 2014) Press Release on the Situation in Libya

UN documents

- Resolution 2014S/RES/2144 (14 March 2014) Extension of the mandate of UNSMIL until 13 March 2015 and the mandate of the Panel assisting the 1970 Libya Sanctions Committee until 13 April 2015

Others

- Is military intervention in Libya the answer?, *ISS Today*, 29 October 2014



Situation Analysis

PSC field visit to South Sudan still pending despite 'enormous suffering'

Hopes for a lasting peace agreement in South Sudan were again dashed in mid-November when the ceasefire was broken shortly after it was signed. Details of the new power-sharing deal, with a new prime minister post for former vice-president Riek Machar, also remain scant. Despite the dire political and humanitarian situation in South Sudan, however, the Peace and Security Council (PSC) has yet to undertake its planned field visit.

Meanwhile, the report of the African Union Commission of Inquiry on human rights violations in South Sudan, led by former Nigerian president Olusegun Obasanjo, still has to be released. As the commission is said to have concluded its work, the PSC could ask for a briefing on the status of the report.

During a briefing in Addis Ababa on 25 November, the United Nations (UN) assistant secretary-general for humanitarian affairs, Kyung-wha Kang, told the PSC that 'the suffering of people in the year-long conflict in South Sudan has been enormous'. Conflict has devastated economic activity and the provision of social services, she said. 'Countless have perished, some brutally killed. Others have survived appalling abuses.' Kang had just returned from a visit to South Sudan and neighbouring countries.

The UN estimates that over 470 000 people have fled from South Sudan to Ethiopia, which houses around 40% of the South Sudanese refugees, as well as to Kenya, Sudan and Uganda.

PSC reiterates its concern

At its 5 December 2014 meeting on the situation in South Sudan, the PSC expressed deep concern over the failure of the parties to conclude consultations within the two-week deadline and reach a political settlement. It also warned all South Sudanese parties that 'stern measures will be taken'. Most notably, the PSC, in an attempt to scale up its support for IGAD's efforts, decided on the establishment of an AU High-level ad hoc Committee of Heads of State and Government comprising of representatives of the five regions of Africa.

Renewed violence amid a dire humanitarian crisis

Despite some progress having been made in bridging the gap between the government and the opposition on the division of power in the transitional national unity government, the two-week extension that IGAD had granted the parties upon their request on 7 November, to allow them to finalise the formation of the transitional government, has come and gone. In a development that once again showed the complete lack of commitment on both sides to honour the undertakings they had made, various violent clashes were reported in November. At the end of November,

470 000
SOUTH SUDANESE

HAVE FLED TO ETHIOPIA,
SUDAN, KENYA AND UGANDA

the military spokesperson for the Sudan People's Liberation Movement in Opposition (SPLM-IO), Brig. Lul Ruai Koang, accused government troops of attacking its positions in Jonglei state. The accusation and reports of renewed violence in South Sudan came amid attempts to implement the January 2014 Matrix on Cessation of Hostilities agreement.

The renewed fighting is taking place in the midst of a dire humanitarian crisis caused by the conflict in the country. A report released by 22 humanitarian agencies in April 2014 entitled 'Loaded guns and empty stomachs' estimated the number of people who could be affected by the humanitarian crisis at 7 million, unless a swift international response is provided.

The humanitarian agencies, which used a scale of one to five phases to measure food insecurity, with one being 'famine', announced that most of the conflict areas in South Sudan now faced 'phase five' food crises. The report confirms that nearly 4 million people are facing crisis or emergency levels of hunger, with high levels of death, malnutrition and the collapse of livelihoods. The agencies warned that they would not be able to prevent a famine unless they could get US\$600 million by February 2015.

The renewed fighting is taking place in the midst of a dire humanitarian crisis caused by the conflict in the country

Power-sharing agreement lacks clarity

Early in November 2014, the warring parties reached agreement on the division of power in the proposed transitional national unity government and recommitted to previous deals on the cessation of hostilities. The IGAD-mediated negotiations led to a power-sharing arrangement between President Salva Kiir and the leader of the opposition Riek Machar. The groups agreed to split executive power between the president and prime minister, and to command separate armies during the initial phases of the transitional period. IGAD gave the parties a 15-day deadline to discuss the details of the deal and to reach a consensus on its implementation.

The new deal keeps Kiir as president of the transitional government while Machar will be prime minister – a new position in the South Sudanese government. Although some progress has been made in articulating divisions of labour, there is a lack of clarity on the mandate and responsibilities of the prime minister in relation to the president. The rebels rejected three other proposed vice president and two deputy prime minister posts, claiming that these additional posts would create further confusion and complications.

Besides reaching a conclusive deal on ending the violence and on the details of the transitional government, the negotiating parties also need to decide on the contentious issues of impunity and a credible justice process.

The negotiating parties also need to decide on the contentious issues of impunity and a credible justice process

Talks again postponed

On 16 November, Kiir accused IGAD of delaying the peace talks. Speaking to top South Sudanese officials while inaugurating a new ward at Juba military hospital, the president said that whenever the parties to the conflict were about to reach a peace agreement, 'IGAD imposes [a] recess and holidays'. He said the regional body was losing the momentum to consolidate the gains of the latest negotiations.

On 21 November, the government and rebels confirmed that the peace talks scheduled for 24 November in Addis Ababa had been postponed for another week. It was announced that the request for the postponement came from the rebels, who needed more time to hold discussions in Pagak in Sudan's Upper Nile state about the details of the terms of the latest agreement and its implementation. A statement by the SPLM-IO requested the delay until it had 'completed internal talks on the recently concluded intra-SPLM dialogue in Arusha, Tanzania, and other issues arising from earlier rounds of negotiations'.

Demonstrating growing divisions in the government, on 21 November the deputy head of mission at South Sudan's embassy in Ethiopia, David Dang Kong, announced that he was leaving the South Sudanese foreign service and joining the SPLM-IO. South Sudan's foreign affairs ministry ordered Dang Kong to return to the capital, Juba, within 72 hours. In a media interview Dang Kong, who is an ethnic Nuer, accused the Juba government of systematically forcing Nuer diplomats out of South Sudanese embassies. Unconfirmed reports previously alleged that Dang Kong had links with the rebels and had leaked sensitive and classified diplomatic information to them, an allegation he denied.

Humanitarian catastrophe

For months the UN and international and local humanitarian organisations have warned of an imminent catastrophe in South Sudan. The UN is predicting an imminent famine affecting more than 4 million South Sudanese. More than 1.9 million people are displaced and unable to plant or harvest crops. Most are seeking shelter in remote rural areas, creating environmental and security stress in the new settlements. More than 10 000 South Sudanese have also been killed since the start of the

conflict. Agricultural production has dropped sharply and continues to fall as the instability and conflict continue. The food crisis in South Sudan is predicted to worsen if the violence continues after the rainy season. The World Food Programme (WFP) has warned that the famine will start at the end of 2014 and worsen in March/April 2015 if the instability continues and people do not return to their homes to cultivate crops.

The UN is predicting an imminent famine affecting more than 4 million South Sudanese

Humanitarian agencies and the international community have been calling on the warring parties to prioritise the wellbeing of the South Sudanese people by silencing the guns first. Efforts to respond to the looming famine and humanitarian crisis require that all parties immediately lay down their weapons and commit to an inclusive peace process. The areas most likely to face famine are those that have been at the centre and frontline of the conflict.

Fatalities	Internally displaced people	Refugees to neighbouring countries	People living in UN camps in South Sudan	People in need of emergency food aid	Amount of money needed to prevent famine
10 000	1,9 million	500 000	100 000	4 million	US\$600 million by February 2015

Still time to prevent famine

Aid agencies still face difficulties in accessing some of the most affected areas due to the insecurity. Although the situation has been worsening in recent months, famine has not yet been declared. The 'Loaded guns and empty stomachs' report also noted that there was still a chance to prevent a catastrophe, but warned that it required peace and an urgent response from the international community. International charities also expressed their concern over the safety of their staff and warned that increased harassment, surveillance and threats of expulsion from the government and rebels could harm their activities.

Neighbouring states feeling the heat

Neighbouring states are feeling the economic, environmental, security and political consequences of the conflict. South Sudan's neighbours are currently hosting more than 500 000 South Sudanese refugees. Ethiopia leads the list with close to 200 000, followed by Kenya with 89 529.

IGAD's efforts to find a lasting solution to the conflict in South Sudan have been recognised on several occasions

by the PSC and the international community. However, the regional body still finds itself in a difficult position as it works towards finalising the peace talks while calling on the parties to respect previous commitments under the Cessation of Hostilities Agreement and other subsequent agreements, including the Implementation Matrix signed under its auspices. The challenge of implementing these agreements, including sections on the protection of civilians and providing safe passage for humanitarian intervention, is exacerbating the crisis.

In the most recent round of talks, the parties recommitted themselves to ending hostilities. They also pledged to end 'the recruitment and mobilization of civilians'.

In a clear indication of the region's lack of confidence in the warring parties' commitment to peace, IGAD decided at its 28th extraordinary summit that concluded on 7 November that any violation of the cessation of hostilities would see collective action from IGAD, including 'a) enactment of asset freezes, b) enactment of travel bans, and c) denial of supply of arms and ammunitions, and any other material that could be used in war'. IGAD warned that the region would 'directly intervene in South Sudan to protect life and restore peace and stability'. It also called on the PSC and the UN Security Council to render all assistance in the implementation of these decisions.

Neighbouring states are feeling the economic, environmental, security and political consequences of the conflict

In the meantime, Tanzania facilitated parallel intra-party talks on 12–18 October in Arusha. The intra-party talks, hosted by Tanzania's ruling party Chama Cha Mapinduzi, brought together representatives of the SPLM, SPLM-IO and the group of 11 SPLM former detainees.

UN frustrated despite its large peacekeeping presence

In a press release dated 21 November 2014, the UN Office for Coordination of Humanitarian Affairs (OCHA), referring to assistant-secretary general Kang's visit to South Sudan, called on all parties to the conflict to respect their ceasefire commitments while urging the international community to continue providing support to enable humanitarian organisations to scale up and expand critical aid operations. In the press release Kang urges parties to respect international humanitarian and human rights laws that call for the protection of civilians and unhindered humanitarian access to people in need. The UN also recently called for the release of a staff

member abducted last month in South Sudan, warning that this jeopardised aid efforts. It noted that its workers now feared for their lives.

The UN, which has 12 500 peacekeepers in South Sudan, is becoming increasingly frustrated with the situation. The UN Security Council may consider a draft resolution on South Sudan that would impose sanctions targeting the two camps of Kiir and his rival former vice president Machar. According to Australian Ambassador Gary Quinlan, whose country chaired the 15-member UN Security Council in November, there is 'considerable interest' in targeted sanctions and an arms embargo.

The UN, which has 12 500 peacekeepers in South Sudan, is becoming increasingly frustrated with the situation

On 1 December 2014, a spokesperson for UN Secretary-General Ban Ki-moon dismissed what he called 'false' media reports claiming that the UN planned to make South Sudan a trusteeship or protectorate due to delays in the peace talks. The statement announced that the UN had no such intention.

US proposing a UN sanctions regime

In early November 2014, the United States (US) delegation to the UN informed members of the UN Security Council that it would circulate a draft resolution establishing a sanctions regime for South Sudan. A US official speaking on condition of anonymity said that the US sanctions would 'establish a mechanism for targeting individuals undermining South Sudan's political stability and abusing human rights'.

Major issues for the PSC

The major concern for the PSC continues to be ending the fighting in South Sudan. The recent reports of hostilities mean that the continuing violence remains the PSC's top concern in South Sudan.

A related issue for the PSC is what leverage it can use to ensure the implementation of the peace deal that the warring parties have signed, particularly with respect to the speedy finalisation of the formation of the national unity government.

In the light of the dire humanitarian situation in South Sudan, there is also concern over the role that the PSC can play in ensuring unfettered humanitarian access, and that support is mobilised for those in need of assistance.

There is also the issue of accountability and national reconciliation on which the AU has been leading with the work that the AU Commission of Inquiry has been undertaking.

Options for the PSC

The PSC could follow up on its plan to undertake a field visit to South Sudan and use the visit to prioritise the provision of unfettered humanitarian access and to ensure that all factions guarantee the security of humanitarian agencies and workers.

The PSC could also task the proposed high-level ad hoc committee to serve as a platform to mobilise humanitarian support from across the continent to prevent a catastrophe.

The PSC could call on the AU Commission to hold consultations with IGAD on the steps to be taken at the level of the PSC with respect to the implementation of the IGAD summit decisions of 7 November 2014, including those relating to sanctions.

As the AU Commission of Inquiry has concluded its report, the PSC could also request a briefing on its status and on how best to address the challenges of accountability, reconciliation and national healing in South Sudan on the basis of the report.

Documentation

AU documents

- PSC/PR/COMM(CDLVIII) (17 September 2014), Meeting of the Peace and Security Council on South Sudan (<http://www.peaceau.org/en/article/press-statement-458th-meeting-of-the-peace-and-security-council-south-sudan>)

RECs Documents

- Resolution by the 28th Extraordinary Summit of the IGAD Heads of State and Government (7 November 2014) (<http://www.mareeg.com/resolutions-from-the-28th-extra-ordinary-summit-of-heads-of-state-and-government/>)

Others

- Senior UN relief official describes "bleak" situation in South Sudan after a year of conflict (<http://www.un.org/apps/news/story.asp?NewsID=49513#.VIHHcWe2-Ys>)



Situation Analysis

Military action against the FDLR looms large in the eastern DRC

On 2 January 2015, the Democratic Forces for the Liberation of Rwanda (FDLR) will have exhausted its options for a peaceful resolution to the conflict in the eastern Democratic Republic of the Congo (DRC) should it fail to voluntarily disarm and surrender. As the security situation in the region continues to deteriorate and as the FDLR appears to be regrouping and recruiting in anticipation of a United Nations (UN) military offensive, it is fitting that the Peace and Security Council (PSC) reminds actors in the Great Lakes region that success in permanently neutralising and eliminating the threat to security posed by the armed group will require the committed consensus of all parties involved.

While reviewing the implementation of the Peace and Security Cooperation Framework for the DRC and the Region (PSC Framework) on 22 August 2014, the PSC noted that there were still many challenges to overcome despite some progress having been made. These challenges include '(i) the continued presence of negative forces in [the] eastern DRC, including the FDLR; (ii) the delay in the implementation of the conclusions of the Kampala direct dialogue between the DRC government and the M23 rebels, as contained in their statements adopted in Nairobi on 12 December 2013; (iii) the illegal exploitation of natural resources in [the] eastern DRC; and (iv) the persistence of impunity despite the reforms that the Congolese government is endeavouring to bring about'. From the perspective of regional relations and the mandate of the UN Force Intervention Brigade (FIB), the threat associated with the FDLR has now become a major concern, not least because 2 January 2015, the deadline the international community has set for the FDLR to disarm, is fast approaching.

Continuing security concerns in the eastern DRC

While the defeat of the M23 rebel group at the end of 2013 was a significant accomplishment, it has not resulted in sustained or increased security in the eastern Kivu region of the DRC. Armed groups such as the Allied Democratic Forces (ADF), a Ugandan group, and the FDLR are still operating in the region. There have been several massacres and constant looting this year, and on 24 November Saïd Djinnit, the Special Envoy of the UN Secretary-General for the Great Lakes, said the security situation in the eastern DRC had been steadily deteriorating over the past few weeks and an 'escalating trend of massacres' was emerging. While the massacre of 20 November in Beni, North Kivu and the attacks of 7 December in the same area (in which dozens were brutally killed) have been attributed to the ADF, with the increased insecurity in the region, the FDLR's failure to disarm could further destabilise the eastern DRC.

Despite the FDLR's disarmament declaration last December, very little progress has been made. This delay may be attributed to a change in the approach to disarmament in the first six months following the declaration.

2 JANUARY
2015

THE DEADLINE FOR THE
FDLR TO DISARM

In May this year, the Congolese government first presented a rapid 22-day voluntary disarmament plan. However, a June 2014 report by the Group of Experts on the DRC stated that the FDLR continued to recruit and train combatants, including children. On 2 July, a joint ministerial meeting of the Southern African Development Community (SADC) and the International Conference of the Great Lakes Region (ICGLR) extended the timeline for voluntary disarmament by another six months, to 2 January 2015. However, there has been little progress since then. Only 156 combatants and their dependents have voluntarily surrendered and disarmed, raising serious questions about the FDLR's intentions.

Despite the FDLR's disarmament declaration last December, very little progress has been made

Disarming or taking a stand?

The victory of the Congolese army – the Forces Armées de la République Démocratique du Congo (FARDC) – over the M23 rebels in October 2013 with the support of the FIB (deployed as part of the UN Stabilisation Mission for the DRC [MONUSCO]), created the possibility of progress in the quest to neutralise all armed groups in the eastern DRC. In December 2013, with decisive military offensives waged against the armed groups in the region by the FARDC, the FDLR issued a statement expressing its commitment to voluntarily disarming and surrendering. This move had the potential to alter significantly the security situation in the region and was welcomed by the PSC as a rare opportunity to break the cycle of violence in the eastern DRC.

As stated above, indications are that the FDLR has instead been mobilising to galvanise support. Since June, the FDLR has been actively regrouping, recruiting and reaching out to the opposition in the diaspora. In fact, in March the FDLR joined the Coalition of Rwandan Political Parties for Change, which includes three other opposition parties in exile and is headed by former Rwandan Prime Minister Faustin Twagaramungu.

In addition to the political support it has received, the FDLR has forged alliances with other local armed groups. It has also continued to foster ties with certain Congolese officers who benefit from the revenue from the FDLR's illicit trade in gold and charcoal.

In recent months, the FDLR has been unresponsive to calls by the Congolese government, SADC/ICGLR and MONUSCO to attend meetings and move forward with the voluntary disarmament.

As the deadline to disarm approaches, the Guarantors of the PSC Framework, meeting for the first time on 1 December in

Addis Ababa, expressed their 'deep concern' over the slow pace of disarmament. They are also concerned about evidence brought before them that the FDLR is in fact reorganising in anticipation of a military offensive by the FARDC and the FIB. In their communiqué of 1 December, the Guarantors stressed that the 2 January deadline was non-negotiable and reiterated that following that date, MONUSCO and the FARDC would be called upon to use all means necessary to neutralise the FDLR.

Regional consensus amid continuing differences among key countries

There is consensus among regional actors that the FDLR needs to be neutralised in order to make headway in the stabilisation of the eastern DRC. The AU, SADC and the ICGLR also agree that the 2 January deadline for voluntary disarmament will not be extended. In recent months, all these actors have been very active in engaging in high-level meetings, monitoring the situation and pressuring the FDLR to abide by the established timeline.

On 20 October, the ICGLR and SADC held their third joint ministerial meeting. According to the ensuing statement, there has been no progress in terms of voluntary disarmament. The communiqué noted the efforts made by MONUSCO and the DRC government to create favourable conditions for FDLR elements at reception centres and transit camps. Most importantly, all participants agreed on the 'inevitability of military action for non-compliance' with the disarmament timeframe.

In December 2013 the FDLR issued a statement expressing its commitment to voluntarily disarming and surrendering

On 4 November, SADC and the ICGLR held a joint summit in South Africa, which was also attended by the AU Commissioner for Peace and Security, Sergui Smail, and the representative of the UN Secretary-General's Special Envoy to the Great Lakes Region. The summit was an opportunity to urge SADC and ICGLR member states to honour and implement the benchmarks of the PSC Framework.

Finally, as stated above, on 1 December the Guarantors of the PSC Framework met in Addis Ababa. The meeting was a clear indication of the 'non-negotiable character' of the timeline established. Should the FDLR fail to disarm, MONUSCO and the FARDC will use force to neutralise it.

Despite this apparent consensus at the regional level, differences remain between key countries in the region. President Jakaya Kikwete of Tanzania's recommendation that Rwanda opens negotiations with the FDLR has led to a fall-out between President Paul Kagame of Rwanda and Kikwete

and has caused tense relations between the two countries. Tanzania, like South Africa – also in a diplomatic row with Rwanda over allegations of the attempted assassination of political opponents in South Africa – is a major troop contributor to the FIB.

Determination of the international community

Given the central role of the UN, its Group of Experts and MONUSCO in the stability of the region, the UN Security Council has been briefed on a regular basis on developments.

The US Special Envoy for the Great Lakes Region of Africa and the DRC, Russell Feingold, and Djinnit have both travelled to the region in recent months and issued statements encouraging the FDLR to voluntarily disarm.

There is consensus among regional actors that the FDLR needs to be neutralised in order to make headway in the stabilisation of the eastern DRC

Emphasising that there should be no further delays beyond the 2 January 2015 deadline, the UN Security Council in a presidential statement on 5 November called on MONUSCO and the DRC government to update operational plans for military action against the FDLR that should begin no later than January 2015.

Major issues for the PSC

A major issue for the PSC is the continuing insecurity in eastern DRC including the recent spike in violence and the slow progress in the implementation of the PSC Framework agreement both nationally and in the region.

A further area of concern for the PSC is how to ensure that the 2 January deadline does not pass without significant progress in the disarmament of the FDLR, in order to avoid a relapse into military confrontation.

Another major issue for the PSC is to avoid a situation where ties between some elements in the FARDC and the FDLR and tensions among key countries in the region undermine the implementation of the PSC Framework and the necessary action and coordination to neutralise the FDLR, should the 2 January deadline not be met.

Options for the PSC

In the light of the challenges facing the PSC Framework and the continuing insecurity on the ground, the Council could follow up on the request of the Guarantors of the PSC Framework, made at their meeting of 1 December 2014 for it to consider the situation in eastern DRC.

Given the fast-approaching deadline, the PSC could encourage the Guarantors of the PSC Framework to rapidly implement the necessary assurances and incentives to encourage the FDLR's prompt disarmament.

The PSC could call on the ICGLR and SADC countries to scale up the regional consensus on extending full support for the efforts of FARDC and the FIB for neutralising the FDLR including through normalising regional relations.

The PSC could urge the countries in the region that the successful elimination of the FDLR as a security problem requires that the military action, if it comes to that, be accompanied by political processes. This includes security guarantees that facilitate the disarmament and return of ordinary FDLR members and other refugees.

The PSC could request the AU Commission to work with the Special Envoy of the UN Secretary General for the Great Lakes Region to initiate a broader regional dialogue. This will be part of the PSC Framework for addressing the regional root causes of the conflict, including the issues of refugees and the disarmament of all armed groups.

Important documents

- Statement by the President of the UN Security Council, S/PRST/2014/22, 5 November 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2014/22
- UN Midterm report of the Group of Experts on the Democratic Republic of the Congo S/2014/428, 25 June 2014, http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/428
- Joint Summit of the Southern African Development Community (SADC) and the International Conference on the Great Lakes Region (ICGLR), 4 November 2014, http://www.sadc.int/files/9613/8366/6022/FINAL_FINAL_SADC-ICGLR_JOINT_SUMMIT_COMMUNIQUE_-_4_NOVEMBER_2013.pdf
- UN Security Council Press Statement on Democratic Republic of the Congo, 25 November 2014, <http://www.un.org/press/en/2014/sc11675.doc.htm>
- Third Joint ICGLR-SADC Ministerial Meeting Communiqué, 20 October 2014, <http://www.dfa.gov.za/docs/2014/ango1021.pdf>
- Communiqué of the 1st meeting of the Guarantors of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region, 1 December 2014, <http://www.peaceau.org/uploads/com-1st-mtg-garantors-glc-1-12-2014.pdf>

PSC Interview

Making sure peacekeepers respect international humanitarian law



Interview with Bruce Mokaya, head of the International Committee of the Red Cross (ICRC) Delegation to the African Union (AU) following the annual briefing by the President of the ICRC, Peter Maurer, to the Peace and Security Council (PSC) on 29 October.

What is the relationship between the ICRC and the AU?

We have a Memorandum of Understanding with the AU that dates back to 1992 and looks at various aspects of cooperation, mostly in support of the implementation and promotion of international humanitarian law (IHL) on the continent.

We work together in the area of development of IHL in relation to peace support operations. We also collaborate with the AU in terms of defining the rules of engagement of AU peace support operations and support member states to put in place mechanisms and measures to implement IHL and address humanitarian issues in their respective countries.

What is the purpose of briefing the PSC?

For a number of years now, the ICRC president has been accorded the opportunity to annually address the PSC to raise humanitarian issues and to engage on more specific issues that require the engagement of the PSC. It also serves to draw the attention of the PSC to the problems that we are facing and to make proposals.

Do you see a change in the nature of hostilities and in the behaviour of actors involved in today's armed conflicts? What challenges do these present?

That really touches on the major issues we are observing today. These are challenges in contemporary conflicts not just in Africa but the world over. In the current international environment, particularly in the context of developments since 9/11, conflicts have become much more complex, the actors have multiplied, and the responses to the problems have also become more complex. The classic international armed conflict of two parties facing off no longer holds today. One could have a conflict that takes place entirely in one country that has become internationalised.

There is also a multiplicity of interested parties that respond in various ways, not only militarily but also in terms of a civil-military response, which is very dynamic. This affects not only the position of the actors in relation to the problem but also the extent of their cooperation for the purpose of resolving the crisis. We have seen these challenges in the crisis in the Central African Republic and elsewhere.

The challenge is also no longer limited to those we face in doing our work – the humanitarian response has also become a victim of other considerations linked to political or ideological factors. In recent conflicts, humanitarian actors have encountered greater threats than even combatants themselves. We have, for example, humanitarian actors being abducted and humanitarian facilities being looted.

There is also the issue of humanitarian access being confused with the process of resolving conflicts and thereby complicating the way humanitarian issues are addressed.

You have worked with the Organisation of African Unity (OAU) and now the AU.

How has the AU's institutional and normative developments changed the framework of cooperation and the level of the ICRC's engagement with the AU?

I think it is very clear that the agendas of the OAU and AU are markedly different, in terms of both the norms and the institutions of the AU. There are a number of institutional developments, including the establishment of the PSC and the deployment of peace operations and the African Standby Force (ASF), that have created the basis for further substantive engagement by organisations like us on a routine basis. The engagement is with African militaries at the country level and regionally at the AU level on issues related to the implementation of humanitarian law.

In recent conflicts, humanitarian actors have encountered greater threats than even combatants themselves

The ICRC, for example, provides technical and legal support to the AU peace support operations and supports the AU in the development of legal, normative and operational frameworks for peace support operations. Unlike in the past, we are not dealing only with specific crises but are also engaged in initiatives involving normative developments as the AU builds its institutional competence and capacity to deal with these issues.

The ICRC provides technical and legal support to the AU peace support operations

You mentioned that one area of collaboration between the ICRC and the AU relates to the development and operationalisation of the ASF.

How does the planned new African Capacity for Immediate Response to Crisis (ACRIC) affect the work that has been done on the ASF, particularly from the perspective of the work of the ICRC and IHL?

I think both initiatives are geared towards the same end. The initiative to create the ACRIC is part of the effort to implement the ASF. We have been associated with the process of the

operationalisation of the ASF, including in training and scenario development, especially when it comes to the humanitarian dimension of peacekeeping and the application of IHL norms.

Personally, I see that there is some convergence between the two, as the capacity for early deployment will then become what is already foreseen in the rapid deployment capabilities of the ASF. I think there are certain proposals contained in the ACRIC document that would give the AU and the regions flexibility, particularly in decision-making.

We also see willingness on the part of the AU to propagate and promote the applicable rules of international law

What progress have you observed in terms of the proper integration of IHL rules in the structures and processes of AU peace support operations and in the observance of those rules in the conduct of AU missions?

We see today that a conscious effort is being made by the AU, not only in developing its normative frameworks but also in terms of rules of engagement in peace support operations. We also see a strong collaboration between the AU and troop-contributing countries on this question. Apart from integrating IHL rules in the strategic frameworks of the AU, we also see willingness on the part of the AU to propagate and promote the applicable rules of international law.

It is well recognised that IHL applies in all AU peace support operations, and mechanisms are being put in place for integrating them into the various structures and frameworks of peace support operations. There is an on-going effort to ensure the integration of IHL in the rules of engagement and the Standard Operating Procedures (SOPs) of AU missions.

There may be some debate about of the actual implementation of the rules of engagement starting dates, but then there is an effort being made on the part of the AU to ensure the implementation of IHL rules.

On the part of the troop-contributing countries and member states, we also see that there is a strong effort to put in place mechanisms such as military-judicial processes for enforcing IHL. We are also working with countries in providing pre-deployment training before their troops are deployed. This has become a systematic process today, in that nearly all the troops that are deployed in the AU peace support missions undergo pre-deployment training in which IHL norms and the mandates of peace support operations are discussed.

In AMISOM [the AU Mission in Somalia], for example, we do systematic pre-deployment training for all the troop-contributing countries about the overarching mandate of AMISOM. We also go into the details of SOPs, for example those pertaining to the protection of civilians.

What are the challenges in terms of translating the normative commitment to IHL into the day-to-day realities of peace operations and the conduct of the peacekeepers on the ground?

Do you think that more needs to be done, particularly at the level of the AU?

I think there should be greater emphasis in pre-deployment training on the mandate and obligations relating to IHL and human rights. We can never emphasise this enough.

Secondly, the AU and the troop-contributing countries need to continue putting in place mechanisms to address violations of IHL and human rights. They do occur and we haven't yet reached a state where there are zero incidents. I think preventive measures but also corrective measures need to be regularly strengthened and enforced.

The main question is how the decisions and pronouncements of the PSC in respect of these issues can be translated into actionable points

In that context, do you feel that there is a clear mechanism available at the AU level to respond in a systematic and institutionalised rather than in an ad hoc way to violations of IHL and human rights by AU peacekeepers?

I think there is room for improvement in this regard. The necessary infrastructure for addressing breaches of IHL and human rights in AU missions can be found and made available within the ASF framework. Troop-contributing countries have to have the necessary legislation for prosecuting and punishing violations of IHL and human rights rules by their personnel in the mission area. The AU will have a residual role in this, such as the proper investigation and documentation of incidents of violations of these rules. As such, the availability of the necessary structure for undertaking such investigation and documentation at the strategic and mission levels is key. Sometimes the situation may be of such a nature that it requires ad hoc processes involving independent investigations.

How can the PSC improve when it comes to the implementation of IHL?

The main question is how the decisions and pronouncements of the PSC in respect of these issues can be translated into actionable points, either within the member states or in addressing a particular general issue.

The PSC has the mandate and the institutional framework. The challenge is really how do you actualise these very noble provisions. Member states and the AU will have to see that implementing 'African solutions to African problems' depends on how effective the PSC is or how effective AU organs and structures are. They have to give them the means to be able to do what they are mandated to do.

I think these are the critical questions the AU as a whole has to ask itself. Why is it that the pronouncements and decisions of the PSC don't have an immediate impact on a conflict or a situation? I think once those issues are addressed we might start to see the decisions the PSC makes having the desired impact.



About the ISS

The Institute for Security Studies is an African organisation that aims to enhance human security on the continent. It does independent and authoritative research, provides expert policy analysis and advice, and delivers practical training and technical assistance.

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