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ASSESSMENT OF THE ROLE OF THE AFRICAN UNION IN PEACE INTERVENTIONS: THE CASE OF AMISOM

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A mamma, papà e Felice,

Agli amici vicini e lontani,

A chi mi ha sempre supportato.

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Introduction

The African Union is the final product of a sum of Pan-African and multilateral ideals that have been present in the continent since the beginning of the decolonisation process, and have had as first example the Organisation of the African Unity. This organisation was paralysed by intergovernmental methods and by the unwillingness of leaders to intervene in other countries affairs in order to prevent drawbacks at home, condoning some of the worst atrocities committed in the last century; we can mention the 1994 Rwandan Genocide as the main example, but violations of human rights and other atrocities have been committed in many countries by corrupted and totalitarian regimes, without any opposition from the African community of States. The immobilism and low flexibility of this institution mostly in the context of the resolution of conflicts and the prevention of gross violations of human rights has caused a renewed feeling for a further step forward, creating an international organisation that could really be multidimensional and addressing different challenges coming from different sectors of the African countries. The African Union has been created taking inspiration from different successful multilateral institutions around the globe, among which the European Union seems the main model. This led to the acceptance of a wide spectrum of competences and objectives.

The AU today is involved in many aspects of the political agenda of its Member States, and it tries to increase the cooperation in sectors like transport, financial and monetary issues, the respect of human rights and social objectives, among the others. However, the purpose of protecting peace and security in the continent is probably the most important, and addressing the African challenges appears a complicated task, considering the presence of authoritarian or weak States, different violent factions and grievances related to the control of resources. This makes important to see how the AU responds, entering in the system of peace interventions in which other regional organisations are already acting. This domain sees the United Nations as a paramount actor, and the African Union may constitute either a resource and a challenge for the UN control in the support of peace and security around the world. The African Union is involved in several operations, spanning from peace interventions conducted in the territory of some of its member States to other involvements: since the AU inception in 2002 peace operations have been conducted in Burundi, Comoros, Darfur, Somalia, Mali and the Central African Republic. This is only the list of countries that have experienced an intervention by the AU, but this IO is also involved in many monitoring missions, task forces in cooperation with other IOs and States like the Lord's Resistance Army Task Force in Uganda or the Multinational Joint Task Force against Boko Haram, acting in a multitude of countries in the sub-Saharan region.

All the activism that has started over the issue just a few years after the establishment of the organisation is surprising considering the challenges and problems of the African continent, and it may be necessary to analyse the powers possessed by the African Union in the conduction of peace and security support missions. For this reason, this dissertation aims to analyse the framework of peace interventions followed by the African Union, trying to evaluate the operations that it has already conducted. In doing this, the dissertation will considering different dimensions, among which the most important are the legal and the practical ones. The legal framework behind peace operations is fundamental, since it is through legal norms that the process of conducting said interventions is structured. By looking into the

normative domain, it is possible to see which limitations or strengths are endowed to the organisation before analysing any practical application into reality. However, some problems arise from the way norms apply in different environments, with different actors and different circumstances governing the conduction of operations; for this reason, all of these elements that constitute the practical dimension are going to be extensively discussed as well, always bearing in mind that the two dimensions are often intertwined and affecting each other.

The analysis of all the elements connected with AU peace operations has the final purpose of finding solutions and prospects for future reforms, trying to overcome the problems that will be encountered along this dissertation, but also to strengthen the positive elements that already constitute the mechanism of peace and security protection. Instead of providing a unique research question, every critical element of the AU framework that will be mentioned will be seen in light of what it causes for the AU conduction of peace interventions and what can be done with such element for the future improvement of the whole picture. This dissertation will use some sources from scholars that have dealt with the African Union both as an international organisation and as an actor interested in peace and security protection; both voices from inside and outside Africa have been considered, in order to provide elements from scholars that have a deep knowledge of the insights of the AU activities and effects, but also a more detached point of view that can make an analysis of the African Union actions in comparison to global trends and practices.

In the realisation of this work, I have found a proliferation of works on the matter of AU peace operations, and many times single aspects are considered, like for example the relationship with the UN, the characteristics of the primary law for interventions or the funding, among the others. This dissertation aims to bring all of these elements together in an extensive analysis of this subject. The use of legal documents will be always done in the said analysis, since the writing of a norm is very important and many implications may derive from the reading of the legal norms that frame the practical constructs that we analyse. Thus legal documents will be accompanied by sources by experts or scholars, like research papers, monographs or articles. The present dissertation tries to do a multidimensional work and take elements from different points of departure, in order to consider all the possible relevant factors that compose the multifaceted object of the dissertation, peace operations of the African Union.

The methodology used in this dissertation comes mostly from an inductive approach, where from different examples general trends are to be found. For this reason, no assumption is made before a prior description of the African Union, its legal framework for peace operations and the different operations conducted during the last twenty years is done. An analysis of the different elements will try to recognise common patterns and find solutions if these patterns prove to systematically jeopardise the activity of the AU related to the matter. In the analysis of some of these elements, like the securitization of a country, the methodology will also include the use of empirical data taken from influential databases like the Uppsala Data Conflict Program, in order to give an objective confirmation of the trends that are to be found through the description of events and characteristics of the situation on the ground. This whole work will be schematised through a division in three chapters.

The first chapter serves the purpose of giving an introductory portrait of the African Union. However, since many times the notion of peace operations is not universally used, the first section will analyse the definition of peace operation and the different kinds of peace operations, in order to depart from the notion of peacekeeping that this dissertation only considers a subset of the total of peace operations, and also to give the legal basis of the international system of peace operations. The model of the United Nations will be the first to be presented, since from the UN involvements all the others have derived, and then the difference between international and regional peace operations will be provided, in light with the UN Charter, other legal documents and the consolidated practice. The remaining sections of the chapter revolve around the African Union, always narrowing the attention to the subject of interest of the dissertation. A first historical remark about the establishment of the Union and the precedent multilateral projects will be done, before the extensive description of the legal basis of the AU. Three elements of the legal basis of the AU and of the IOs in general are considered in three separate sub-sections. These sub-sections refer to the statute of the AU, called Constitutive Act and constituting the main piece of legal document of the organisation; secondly, all the institutions of the AU will be discussed, with those that have a role in peace and security protection but also those that have different tasks, in order to give an idea of the multidimensionality of tasks and responsibilities that the Member States have endowed to the AU. Finally, a set of legal elements will be considered, being International Legal Personality, liability and responsibility for internationally wrongful acts and the supranational character of the Union. In this section these different elements will be considered in order to ascertain that the AU is to be considered fully among the IOs having a role in peace and security, and underlining some weaknesses that may be relevant in followingly analyses.

The last section of the chapter explains the legal basis of the powers of the AU in the deployment and conduction of peace operations. The said section is the most important of the chapter because it gives an extensive legal perspective that would help to understand the complicated dynamics affecting the AU role in the other two chapters. Firstly, this section discusses the provisions contained in the legal documents made by the AU and concerning the domain of peace and security protection. Two main legal sources may be found, firstly the AU Constitutive Act and secondly the Protocol Establishing the Peace and Security Council, and will be analysed in two separate parts. The second of these two parts will also explain the functioning of the Peace and Security Council, one of the main bodies responsible for decisions over peace interventions, and also consider its founding document and other AU documents that are relevant in this domain. Secondly, the focus will shift on the relationship of the AU with the so-called Regional Economic Communities, explaining what these actors are and why they influence the conduction of peace operations. Lastly, the legal relationship existing between regional organisations and the United Nations will be discussed, referring to the provisions of the UN Charter, mostly Chapter VIII, and how they affect the so-called regional arrangements; moreover, a brief mention will be given to the role of practice in order to overcome differences in the deployment of regional missions.

The second chapter, differently from the first, has a more inductive way of developing and consists in a first summary of the peace operations conducted by the AU since its establishment, and from this some macrotrends that affect systematically the action of the Union will be drawn, before addressing them over the dissertation in order to find possible

solutions. The descriptions of the missions, mostly from an historical point of view, are divided according to the results that they have achieved, and whether they have been successful or not, according to scholars and the practical evidence. Some of these operations have either positive and negative results, so sometimes the evaluation will have mixed considerations.

After such a summary is provided, different elements of the mission will be addressed, starting from those elements that are considered in order to say whether a mission was successful or not. The first element is the assessment of the security results that the missions have accomplished, basing the analysis on some empirical data that may help to give evidence of what may be observed. Secondly, the analysis will go to the extent to which the AU missions have brought effective stabilisation and political results, following on changes of government, elections and more in general the quality of the institutions after the missions' end. To conclude this first set of elements, a remark will be given on exit strategies and the preventive operational planning of the missions, mostly seeing how much such plans were respected and with which results to the final results.

The following section will start discussing general patterns and challenges encountered during the missions. The first and most recurrent is the funding of peace operations, that will give many sources for discussion and whose relevance will be stressed many times also after along the dissertation; in this case, only the recurring problems will be mentioned, also concerning the equipment, before going in deep the relationship with external contributors like the UN and third States and organisations, over whom the AU has often been dependent due to its difficulties of attracting or generating financial premises to fund its own missions. The last dimension of funding will be the relationship with external donors, and why many times relying on these sources may constitute a problem for the AU.

The section on general trends will continue, analysing how the setting up of mandates has varied in the different missions and what negative results a bad mandate may cause. Followingly, other elements will be considered, like the impartiality and credibility before the local population and the disciplinary issues that may have been present in the missions; again, the analysis will provide some trends and explain why they constitute a danger for the future. Last but not least, the section concludes with the relationship with the host-State, highlighting the shortcomings that may arise from a negative relationship with the host.

The last two sections will discuss two of the major and most unsettled issues concerning AU peace operations. The first is the responsibility for wrongful acts. After giving a further outline of the current legal regime for responsibility, the section will enquire which are the most likely issues in which a regional organisation and, specifically, what issues have been waived against the AU or which kind of wrongdoings may create a responsibility to the AU.

The last section of the chapter will expand the concept of funding. After providing a general picture of how the peace operations are funded, mostly referring to the legal basis and practical features of the funding scheme for UN mission, the section will shift to regional operations, firstly considering how the funding of these operations vary from the UN model. Then, the funding of the AU operation is considered, explaining the legal and practical aspects and also considering, separately, how the system of funding by the AU is affected by its same MSs

The third chapter consists in a case-study, concerning the AU Mission in Somalia. The need for a case-study comes from the necessity of analysing more in dept a peace intervention and, since this mission has been the most important and long-lasting of the AU, whether some lessons come from this involvement, seeing if possible models may be created. The chapter starts with an historical summary of the mission, that however will also provide many practical elements that will be considered in the other sections of the chapter.

After this, a complete analysis of the actors involved in the mission will be provided, dividing them into three categories. The first category encompasses all the African countries that have contributed to the mission, starting from the troops contributing country and then shifting to those that had a smaller or indirect role. Secondly, the subject will be those external countries and institution that have been relevant in different dimensions of the mission. Among these, we will analyse the UN, also considered the role in mandating and supporting materially the mission, but also major financial and influential contributors like the European Union and the United States. Finally, the main enemies of the mission will be described, analysing why such actors pose threats also to future missions due to their way of opposing the mission.

The following sections will resemble the way in which the second chapter has been structured. Firstly, the third section of the chapter will insist in the security, stabilisation and institutional results, using the same methodology as used for Chapter II. Another section will consider the same recurring patterns considered before, and in which light they will be compared. The said trends are mandates, the international support to the mission, the relationship with the host government and population. A last sub-section will describe problems that may be encountered only in the mission in Somalia, reflecting to the ideals with which stabilisation has been planned, considering if the traditional methods of State-building have been successful. Further, this subsection will consider how much the role of the UNSC has provided a source of disturbance to the mission, and which problems have been related to the troop contributing countries and other MSs.

The last section of this chapter and also of this dissertation discusses the two elements of responsibility and funding. The first element will consider both the legal progresses done with the missions, and also which legal evolution have arisen. Secondly, the analysis of the funding of the mission will describe the system of financing the operation, that has never been used neither before nor after, in order to see if such a model could be used also in future involvements.

The dissertation will end with a conclusion, where the main lessons will be listed and the future prospects that are likely or necessary for the future of the AU will be briefly mentioned.

Chapter I

The African union and its role in peace operations

The aim of this first chapter is to introduce the African Union ('AU') and its role in peace interventions. For this purpose, a clarification about the nature and the different aspects that peace interventions have is needed; from this point of departure, the object of analysis, that is the African Union as actor of peace interventions, will be presented, taking into account mostly the legal basis that supports peace interventions and the dimension of security in the African continent in general. The history and the ideals behind the AU will also be explained briefly, since this can help to understand the motivations lying behind many of the provisions that sustain the action of the AU.

The last part of the chapter will start by going in depth on the topic of the dissertation, *i.e.* the peace interventions of the AU, from a legal point of view from which all the other dimensions emanate; as a matter of fact, the origin of most of the strength and weaknesses of the Pan-African international organisation can be drawn from the legal elements that shape and sustain its day-by-day activities. However, references to events that involved the AU will also be added to analyse the reflections that the legal basis of the African Union have on the reality. This focus on events will be more developed in the following chapters. The two legal points that will be presented in the last part of the chapter, and that can be taken as an element of the ambiguity of the legal basis of the AU, namely responsibility for wrongful acts and funding of the peace operations, will be the main legal arguments that will be expanded also *infra* in the dissertation. What is important to note is how the reality on the ground can be shaped and affected by norms and provisions. These reflections of norms on reality will be often present in the interventions of the AU, as it will be pointed out in this dissertation.

1.1 BRIEF OVERVIEW OF PEACEKEEPING AND PEACE INTERVENTIONS IN GENERAL

The analysis of the role assumed by the African Union in the protection of peace, security and human right in the continent through peace interventions is important, since it shows how the AU contributes to shape the entire present and future of entire countries of the African continent, being it for the better or for the worse.

However, before going in depth in the AU structure and its peace interventions capabilities, it is worth giving a brief premise about what are peace interventions in general. This term encompasses a broad spectrum of categories of intervention that could be undertaken by actors of the international arena, and each of these categories has its own different traits and can proceed in different ways from the other. It can be said without any doubt that the term peace intervention is often confused with other terms, being them its subcategories or totally different elements.

As pointed out by Mateja Peter:

> "The terminology of [post-]conflict intervention is confusing and confused. Even experts in international relations would be hard pressed to explain the difference or the similarity between peacekeeping and peacebuilding and often equate the two without much thought. Similarly, in UN hallways, many

would find it difficult to articulate any difference between peace operations and peacekeeping. As international interventions diversify, new terms emerge"[1].

In order to better understand these differences, it is important to look first at the main terms that are mostly used when talking about interventions. As previously remarked, much confusion often occurs in terminology, and so it is important to clarify the various dimensions of peace interventions.

1.1.1 Definition of peacekeeping and other types of peace interventions

Many definitions of peace interventions have been provided by several sources. Undoubtedly it is important to rely on the sources that have an actual role or leverage on the implementation of the said interventions; from this, it follows that the best definitions and clarification of the multidimensional term peace interventions should be drawn from the United Nations ('UN') and its institutions. As a matter of fact, the UN claims and is given by its Member States the primacy on the protection of international peace and security, and this also means a primacy on the application of the measures needed in order to ensure it. This is grounded on the provisions of the UN Charter, that is now signed by the vast majority of the States of the world, as a prerequisite for the membership within the UN.

The protection of international peace and security is listed among the functions of the UN in Article 2 of the Charter; to fulfil this task the Charter empowers the UN Security Council with the primary role of maintaining international peace, and this power is entrusted and recognised by the Member States ('MSs'), according to Article 24 of the Charter. From this it flows that the doctrine and practice of the UN about peace interventions should be considered with the utmost consideration.

In this vein, an effective attempt to define the different dimensions of peace interventions comes from the work of former UN Secretary General Boutros Boutros-Ghali. In 1992, during his mandate as Secretary General, Boutros-Ghali presented his report on the future of peacekeeping and peace-making missions, An agenda for peace, after request formulated during the January 1992 Security Council Summit where a report on the future of protection of peace and security within the UN system was requested. The report is very important and interesting since it lays down some fundamental distinctions concerning peace interventions and foresees quite precisely the evolutions of the challenges of the UN in the post-Cold War period. The report enumerates four main actions that can be taken in order to provide peace and security protection: peacekeeping, peacemaking, peace enforcement and post-war reconstruction. To these it should be added, according to Boutros-Ghali, preventive diplomacy, used before resorting to the use of armed forces[2].

Starting with peacekeeping, this can be considered the most known dimension of peace interventions, and often the term peacekeeping is used in substitution for the broader category of peace interventions. However, this is not the case since the term implies the existence of a condition of peace to keep, without which the term makes little sense. A peacekeeping mission, then, can be defined as the process through which an external contingent of armed forces monitors and sustains the existence of a situation of peace, stipulated by any kind of truce or agreement, between two or more parties. It

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[1] PETER (2019: 9).
[2] Report of the UN Secretary General, 17 June 1992, UN Document A/47/277 - S/24111, *An Agenda for Peace. Preventive diplomacy, peacemaking and peace-keeping.*

comes without saying that this process cannot come before the settlement of the peace process. Peacekeeping according to Charles Majinge is:

> "the need to halt armed conflict in order to create a semblance of a stable environment in which negotiations can occur. The second purpose is to function as a deterrent against the outbreak of armed hostilities, following arrangement of ceasefire. Traditionally it has been the responsibility of the United Nations (UN) to maintain peace and security"[3].

This type of operation probably is the mostly used one, and different means can be provided for undertaking a peacekeeping mission; it must be said that peacekeeping missions can start directly with this mandate, or they can come as evolution of the conditions or the mandate of a mission of a different kind, like the one that will be mentioned *infra*. It is however important to note, as pointed out by Boutros-Ghali, that a peacekeeping operation needs the consent of all the parties of the conflict to be considered as such[4].

Keeping in mind what was just mentioned, it is easy to understand that many times the possibility of an agreement between the parties of a conflict must be constructed and is not given in advance. This makes other types of missions necessary to reach a truce or an agreement. The two types of interventions that may be seen as propaedeutic to this end are peace enforcement and peacemaking missions.

The former category usually refers to those interventions that require the use of heavy armed contingents since the consent of the parties of the conflict, being them the host State or other actors, is lacking. Consequently, the parties of the conflict must be brought to an agreement through the use of force, in order to ensure the re-establishment of peace and security. The mentioned operations have to be authorised by the United Nations Security Council ('UNSC') with resolutions that fall under Chapter VII of the UN Charter, containing among others all the provisions for the use of force as a means of conflict resolution. Peace enforcement missions may evolve in peacekeeping ones if the parties are brought back to the respect of peace and security[5].

The latter category, peacemaking, involves traditional means of conflict resolution that usually do not provide for the use of force. These solutions fall under Chapter VI of the UN Charter and sometimes can be applied by the parties or other actors without referring to the UNSC; the Security Council, upon request by a member State, may call for an application of these measures. These may include mediation, negotiation, good offices, conciliation, judicial settlement by international tribunals (e.g., the International Court of Justice), but also monitoring or enquiry missions established by the Security Council in concert with other actors, being them regional or international[6]. These two categories have opposite grades of intensity, since peace enforcement missions can be seen as a measure of last resort to provide peace and security in an endangered environment, while peacemaking measures are usually used before an armed confrontation escalates or as a preliminary measure before applying more intensive solutions. What differentiates peacemaking from traditional means of dispute settlement, that Boutros-Ghali makes fall under the term "preventive diplomacy", is the fact that, in the former case, the conflict between hostile parties has already started, while in the latter the conflict is not erupted yet

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[3] MAJINGE (2010: 466).
[4] Report, *An agenda for peace.*
[5] DOYLE AND SAMBANIS (2008: 324).
[6] *Ibid.*

and these measures are used to prevent this occurrence, finding a solution to a dispute. Without this distinction, the two categories would be the same since the same set of measures is applied both in peacemaking and in preventive diplomacy. In the former scenario the conflict, when ascertained, is at a level of intensity that does not require further actions, according to the UN Security Council issuing the decision, and the solution can be found without recurring to stronger means, even if the conflict is already present. As already mentioned, this is a preliminary measure that is often undertaken before resorting to other ones when these have no success.

The last category, post-war reconstruction, involves all measures aiming to avoid the recurrence of a threat to peace and security. It may also involve the same measures involved in the peacemaking category, but the difference stands in the timing, being issued after a conflict and not before. More than the military dimensions, here the political action is the focus since the main purpose is leading to the reconstruction of an environment after that peace has been restored; this means, rebuilding economic activities as much as strengthening the political institutions, in order to avoid recrudescence of tensions between armed actors. These tasks are those that the UN has started to introduce most lately, and include actions that before the 90's were not undertaken, like supervising land reforms, monitoring and organising elections, delivering humanitarian protection, etc[7]. As it will be seen, elements of the different categories of peace interventions may be present at the same time in the same mission, making it more difficult to define it on a case-by-case basis.

This evolution of peace intervention in general created, according to many scholars, a difference between traditional and modern peace missions; the former were based on consent between the parties and the functions of the UN contingents were mostly of monitoring ceasefires and creating buffer zones, in order to facilitate the process of peace; in practice, it is the definition of peacekeeping mentioned before. On the other hand, the latter evolution of peacekeeping includes all the other tasks that were not implemented by the UN missions in the past[8]. In brief, we can say that these tasks are summarised mostly by the terms "peace-enforcement" and "post-war reconstruction". To add confusion comes the improper use of the term peacekeeping to define all kinds of peace intervention.

In the following section, these definitions will be analysed in light of the UN legal framework, from which most of peace interventions should derive theirs legitimacy.

1.1.2 Legal basis of peacekeeping: the UN model

After defining the different dimensions of peace interventions, it is important to describe how these different types of missions are implemented by the United Nations. As it has been mentioned before, the UN has the primacy on the creation of peace missions, and in the wording of the Secretary General Boutros-Ghali, peacekeeping itself is an "invention of the United Nations"[9]. This affirmation is quite accurate since the UN was the first international actor to foresee the use of military personnel for peace purposes[10]. In addition, the UN, as it will be pointed out in this section, is or at least claims

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[7] Tharoor (1995: 411).
[8] Mohamed (2005: 817-819).
[9] Report, *An agenda for peace.*
[10] Howard and Dayal (2018: 71).

control, being direct or indirect, on peace interventions all over the world. This is why understanding its model is of utmost importance.

The distinction between different kinds of peace operations is one that comes from the work of scholars and influential figures within the UN, like in the case of Boutros-Ghali. However, the UN Charter, that is the main legal document governing the activity of the UN, peace interventions included, remains tacit on the issue, leaving just some suggestions on measures that can be taken by the Security Council. By the way, it is important to first mention the parts of the Charter that serve as legal basis for peace interventions.

Notably, the parts of the UN Charter that concern the protection of international peace and security are Chapter VI and VII, already mentioned before. Moreover, Chapter VIII should be mentioned as well, and it will have its relevance later in the dissertation since it deals with regional arrangements.

Chapter VI deals with the methods of dispute settlement that do not envisage the use of force. It includes the articles from number 33 to number 38. Given the right of any Member States to refer a dispute to the UN Security Council, the UNSC is the main institution since it has the power to recommend action, to investigate disputes and, more importantly, to take actions, through UNSC Resolutions. The Security Council can update its decision and take further actions, resorting to different sets of solutions, like Chapter VII of the Charter[11]. Resolutions under Chapter VII are considered as binding by the actor to whom they are addressed.

Chapter VII provisions, from Article 39 to Article 51, are those referring to the maintenance of international peace and security. Art. 39 gives to the UNSC the power and the responsibility to ascertain the existence of any threat to peace and security and take action in this sense; the Chapter mentions among the possible actions the UNSC can take, after a recall to restore peace under art. 40 turns unanswered, some involving the presence of military personnel and some that do not. Among the latter, in Article 41 complete or partial interruption of economic relations or communications of any kind are mentioned. If these too turn out to be ineffective, the UNSC is empowered to take any action deemed necessary to restore the respect of peace and security, including "demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations" (art. 42). When the UNSC takes such a decision, it instantly calls upon the member States of the UN to contribute to the action with any means required, the amount of which is decided by a special agreement on a case-by-case basis, but always according to the voluntary participation of the MSs. The details of the action undertaken are made clear by the UNSC resolutions[12].

The interesting thing about these two sections of the Charter is that it is impossible to find either in Chapter VI or in Chapter VII a provision that deals with peacekeeping interventions. For this reason, the term Chapter VI and a half was coined by former Secretary general of the UN Dag Hammarskjöld in 1956, in the context of one of the first peacekeeping missions, UTEF I in Egypt[13]. The term shows that the notion of peacekeeping lies between the lines of the two chapters, without the possibility of referring directly to one of the two. This comes from the fact

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[11] Charter of the United Nations Organization, San Francisco, 26 June 1945 1 UNTS XVI, Chapter VI.
[12] Charter of the United Nations Organization, Chapter VII.
[13] GILL *et al.* (2017: 7).

that peacekeeping missions are hardly similar to the other peaceful means of conflict resolution, since they see the use of armed forces and a mandate that often exceeds the traditional means provided in the wording of the Chapter; on the other hand, peacekeeping cannot be included neither in the Chapter VII provisions, since its mandate is too narrow in comparison to response to threat against peace[14]. It should be recalled, according to subsequent and repeated UN doctrine, that the three main prerequisites of peacekeeping operations are (i) the consent of the parties, (ii) impartiality, and (iii) non-use of force except in self-defence and defence of the mandate[15], as referred also by many reports of UN agencies, like the 2008 so-called "Capstone doctrine" drafted by the Department of Peacekeeping Operations of the United Nations in order to give a summary of principles and requisites of peacekeeping operations. These documents are useful to conceptualise precedent practice and update it with more recent evolutions. In this particular case, they show how the UN norms are not fully comprehensive of the plethora of actions the Organisation can take.

The UN complements its activity with the work of different agencies, subsidiary institutions and boards of experts. Concerning the system of peace interventions, two main bodies used to exist, each having growing relevance in the subject of UN peace missions. The first is the already mentioned Department of Peacekeeping Operations ('DPKO'), while the second is the Department of Field Support ('DFS'). The role of these two bodies was complementary. The former took the responsibility of drafting good practices and recommendations, but also to provide military, political and executive guidance for what concerns all peace interventions. The DFS, on the other hand, had its main objective in providing support in the logistical and administrative dimensions of peace operations[16]. Since the 2019 reform of peace interventions, both departments have been reformed, including a name change. The DPKO became the Department of Peace Operations ('DPO')[17] while the DFS was split in two different bodies, the Department of Operational Support ('DOS'), and the Department of Management Strategy, Policy and Compliance ('DMSPC')[18]. While the new DPO maintained the same responsibilities of the DPKO, the two successors of the DFS were given two different objectives. The DOS has the task of providing operational support not only to field missions but to all entities across the Secretariat, thus having an augmented role, while the DMSPC is responsible for establishing the overall administrative policy framework in the Secretariat and monitoring compliance with that framework, being also responsible of monitoring the compliance during the peace interventions of the rules of conduct and the principles of the UN[19].

The UN has also another body, the Department of Political and Peacebuilding Affairs ('DPPA') which takes all the function of monitoring and supporting for what concerns the activities of peacemaking but also post-conflict reconstruction, like supporting the realisation of elections[20]. This body is also a result of the reform of 2019, being the merging of two

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[14] KRISHNAN (2020: 123).

[15] Guidance material of the Department of Peacekeeping Operations, 18 January 2008, *United Nations Peacekeeping Operations, Principles and Guidelines (Capstone Doctrine).*

[16] *Ibid.*

[17] Resolution of the United Nations General Assembly, 18 July 2018, A/RES/72/262C, *Special subjects relating to the programme budget for the biennium 2018–2019.*

[18] Resolution of the United Nations General Assembly, 18 July 2018, A/RES/72/262B, *Special subjects relating to the programme budget for the biennium 2018–2019.*

[19] Report of the UN Secretary General, 5 November 2018, UN Document A/73/480, *Implementation of the recommendations of the Special Committee on Peacekeeping Operations: report of the Secretary-General.*

[20] *Ibid.*

old bodies of the UN, the Department of Political Affairs ('DPA') and the Peacebuilding Support Office ('PSO'). All the four departments mentioned in the last paragraphs support the activity of the Secretary General of the UN, to whom they are accountable. This gives a higher role of responsibility to the Secretary General, who should supervise the missions decided by the UNSC, assisted by the Under-Secretaries of the mentioned departments.

The 2019 UN's reform of peace operations is important, since it shows that the UN is recognising the changing nature of conflicts and peace operations and consequently tries to re-adapt its institutions dealing with it. The removal of the word Peacekeeping in the transition between the DPKO to the DPO may be seen as a way to recognise the increasing presence of missions different from the traditional peacekeeping ones.

In the opening of this section, Chapter VIII of the UN Charter was mentioned. This part of the main piece of law of the United Nations is very important, since it deals with the relationship between the UN and the regional international organisations that have similar functions to the UN. Chapter VIII is formed just by 3 articles, 52, 53 and 54. The articles also mention the reliance of the UN on regional arrangements for what concerns the protection of peace and security, being it as conflict prevention or by addressing existing conflict. Since this part is important for what concerns the peace interventions of the African Union, the relationship of the UN with regional arrangement for what concerns peace missions will be covered in a separate section.

1.1.3 International and regional peacekeeping

The UN expanded a lot of its activities since its foundation in the 40s, but the same is true for what concerns regional organisations. If we think about organisations like the North Atlantic Treaty Organisation ('NATO'), that have been involved in many operations concerning peace and security, like in Afghanistan or in Kosovo, or the African Union that since its birth in 2002 has been involved in several operations in the African continent, we can have clear evidence of this. Moreover, other actors have a role in the protection of peace and security, like the European Union ('EU') that is increasing its capabilities in this sense, or smaller organisation that still have big impulse in the creation of peace operations, like the Regional Economic Communities ('RECs') of the African continent, whereof more will be discussed in this dissertation. In 2014 it existed up to 29 international organisations which possessed, among their functions, powers and means concerning the protection of peace and security, being more pacific ones or more reliant on the presence of military personnel[21]; this shows how the international organisations different from the UN have increased their relevance in the protection of international peace and security, and this has its effects on the actions of the United Nations.

This increasing role of international organisations in the protection of peace and security is not matched by an evolution in the UN primary law, i.e., the Charter of the United Nations, that did not undergo relevant evolutions since its adoption. The Charter, as already mentioned, deals with regional arrangements only through the three articles of Chapter VIII: Art. 52, 53 and 54. Art. 52 gives the possibility to the regional arrangements to take actions directed to the maintenance of international peace, also enforcement ones but

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[21] WELLESTEEN (2014: 11-26).

with the premise of always trying to find a pacific settlement. Art. 53 on the other hand, states that the UN may resort to regional arrangements for enforcement action under its authority. Art. 54 just mentions the need to inform the UN Security Council on all activities related to peace and security operations. Both articles 52 and 53 give to the regional organisations the power of responding to threats to peace, under the prerequisite of having been authorised so by the UN Security Council. This is a fundamental point, since from this it follows that the UN through the Security Council supervises all the peace interventions and has a share of control also on those where it is not the main actor. However, as it will be pointed out, sometimes this authorisation by the UNSC is not always conceded, and this gives rise to different consequences.

By the way, it is clear that the Charter does not give full coverage of all the different ways in which the regional organisations may be involved. For example, it is unclear how much the regional arrangements can go with the use of force, or even which organisations may be considered legitimised to use this power and which are not[22]. The doctrine in this sense is quite unclear, and this gives room to interpretations of Chapter VIII that enlarge the responsibilities of the Regional organisations.

We can divide peace operations into two types. The first type are the operations under the aegis of the UN, authorised by the Security Council and whose troops contributing countries ('TCCs') are "hatted" under the blue helmet of the UN. The UN has control over the operation, even though the direct control on the troops is always a matter of compromise, with the decision-making by national authorities being usually predominant. The second type is the one of non-UN interventions, being those that are organised in the territory of a State by a regional organisation, and which are authorised by the UNSC; the Security Council here should be informed on the evolution of the operation and its transitioning, but the control remains in the hands of the regional organisation.

Corinne Bara and Lisa Hultman, from the Uppsala University, divide the non-UN operations into two types: regional operations and international operations. Regional operations are defined as those operations that are undertaken by a regional organisation, or a coalition of States, in the territory of one of its member States. An international operation, otherwise, is defined as an operation undertaken by a regional organisation outside its region or by a coalition of States of different regions; an example of this may be the ISAF mission undertaken by NATO in Afghanistan, with the support of other partners[23].

The UN may prefer to resort to regional arrangements for many reasons. The first one may be to circumvent vetoes of the UNSC for missions under Chapter VII that cannot reach the threshold for approval[24]. Many countries sitting in the Security Council, most relevantly the five permanent members (P-5), may prefer not getting involved directly in missions that come in difficult circumstances or where the risk of political failure is too high; nonetheless they may resort to regional organisation to resolve the issues on their behalf without getting directly involved. Another reason may be to

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[22] Paliwal (2010: 189-196).
[23] Bara and Ultman (2020: 351).
[24] Findlay (2002: 387).

share the burden for what concerns funding, capabilities or legal responsibility[25].

Even though the need for an authorisation is mandatory according to the UN Charter, this did not impede the beginning of missions conducted by regional organisations but not authorised by the UN Security Council. We can mention many cases, involving either regional organisation and coalitions of States. An example of the latter is the 2003 intervention in Iraq to overthrow the regime of Saddam Hussain; in this case, the US-UK led multinational coalition decided to bypass the UNSC, whose authorisation of the operation was never requested officially, even though many members of the Council informally expressed their reluctance to participate to an intervention against Iraq. The UNSC only gave the authorisation to give the status of occupying forces to the United States and the United Kingdom after that the Iraqi opponents were defeated[26].

Two other relevant cases of unauthorised missions are those of the NATO intervention in Kosovo in 1999 and the ECOWAS intervention in Liberia in 1990. Both cases are reported as special cases of a supposed power of retroactive authorisation from the UNSC; as a matter of fact, both interventions occurred without an authorisation by the Security Council and were authorised subsequently. In the case of Kosovo, NATO initiated an intervention bombing the Serbian territory since March 1999, considering Serbia had committed gross violations of human rights against the Albanian Kosovars, while authorisation by the UN arrived only in June through Resolution 1244, after the international agreement for the withdrawal of the Serbian troops from Kosovo. Said resolution both issued the UN mission UNMIK and authorised the NATO military intervention, named KFOR[27]. In the case of Liberia, the Economic Community of West African States ('ECOWAS') intervened to stop the violence deriving from the clash for power in the West African country. ECOWAS, that is a regional organisation of west African States, intervened in the territory of one of its MSs because of fears of breach of humanitarian law, and never requested authorisation by the UNSC. This endorsement eventually came more than one year later with Resolution 866, praising the intervention[28] and the role that the regional organisation had in protecting the Liberian people.

Both cases present an intervention conducted without an authorisation by forces of a regional organisation. Moreover, both were authorised afterwards. However, it cannot be said that the authorisation was given retroactively, since this is something never proved in UN practice and in both cases an authorisation came when a change in circumstances for the better, even if temporarily, occurred. What is clear in the practice is that any authorisation to use force has to be made explicit by the resolution conceding it, since the fact that an intervention is adopted under Chapter VII does not mean *ipso facto* that it authorises the use of force, and in both cases this was not explicitly and retroactively given[29].

Another category that has emerged since the XXI century is that of hybrid missions. A notable example is UNAMID, the UN-AU hybrid mission in Darfur, that succeeded to a previous mission of the African Union (AMIS) in 2007. The reasons behind the establishment of a mixed operation lied mostly

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[25] *Ibid.*
[26] HOWARD and DAYAL (2018: 95).
[27] TSEGA (2021: 310).
[28] PALIWAL (2010: 209-210).
[29] LIND (2014: 27-30).

in the need to get mutual legitimation, first to the UN since it relied on the knowledge of the AU on the field and with the better diplomatic relations with the host State (*i.e.* Sudan), and secondly to the African Union since it relied on an increased potential thanks to the UN support, funding and equipment. The hybrid mission delegated to the AU the majority of military and political activities while leaving to the UN the administrative and tutoring roles. The main element of this kind of intervention is the equal relationship between the UN and the regional partner, overcoming the previous hierarchy existing between the two actors. Nevertheless, the hybrid mission was created as a last resort to obtain acceptance of the Sudanese regime in order to resolve the humanitarian crisis in Darfur, so it was not the first strategy of resolving the conflict; moreover, its failure in the issue of civilian protection has been pointed out as the main reason for the little success of hybrid missions in the following years[30].

The differences between all the interventions enumerated is now buffering, and this is well evident by the emergence of hybrid missions. What is important to stress, maybe more than the typology of the mission in a static sense, is the relationship between the UN and the regional organisation supporting it, concerning peace interventions. Hikaru Yamashita talks about two different kinds of relationship between these two actors: subcontracting and partnering.

Subcontracting is defined as:

> "an arrangement whereby regional organisations are responsible for the main onus of peacekeeping and yet authorised, monitored and directed by the Security Council. In the subcontracting mode of global-regional cooperation, regional peace operations are *in essence* UN operations delegated to regional organisations"[31].

Subcontracting then practically consists in a pure delegation. The UN is exempted from giving its full effort on the mission but still retains authority, while the regional organisation sees its action legitimised while still maintaining control and discretion on the ground, always remaining within the lines of the UN principles. Most traditional operations under Chapter VIII follow this background, with actual delegation of power. From this element a substantial principle of subsidiarity by the UN may be drawn, even though this principle is never mentioned expressly.

On the other hand, Yamashita defines partnership as a relationship where the two entities lie on the same ground, where the burden of the operation is shared, and functions are defined and divided. Here the hierarchy between the two does not exist. The UNAMID mission may be considered a mission following this idea. Moreover, this kind of relationship may exist in other contexts, like the operation in the Democratic Republic of Congo where both the UN and the European Union were present, along with other organisations, but their presence and their relationship were well defined, leading in the end on the signing of many agreements defining the cooperation between the two. Of course, partnering differs a lot depending on the regional organisation involved, since the needs and the capabilities of IOs like the African Union are totally distinct from those of IOs like the EU or NATO[32].

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[30] SPANDLER (2020: 187-195).
[31] YAMASHITA (2012: 169).
[32] *Ivi*, pp. 170-185.

These two concepts give a different light to the kind of relationship existing between regional organisations and the UN. As from the next sections, the main focus will shift on the African Union and its role on peacekeeping.

1.2 HISTORICAL REMARKS AND FOUNDING PROSPECTS OF THE AU

The African Union finds its origin as the successor of the Organisation of the African Unity ('OAU'), created in 1963 by 32 African States in Addis Ababa (Ethiopia) as a first attempt of African regional organisation. The OAU was conceived as a result of Pan African ideals of its founders, in order to strengthen and solidify the independence newly obtained at that time by most of its members from the European colonial powers. Pan-Africanism and anti-imperialism were the main guiding ideologies behind the creation of the OAU.

In order to maintain pacific relationships between the States and to give an idea of a strong and independent continent, the main principles were the inviolability of national borders and the principle of non-interference in domestic affairs, along with the equality of the member States and the pacific settlement of disputes. These principles were enshrined in the Charter of the OAU, main legal document of the organisation[33].

The first two principles, probably, are those that have doomed the whole existence of the OAU. The first legitimised the borders of the African States even if they were inherited from the colonial past; they were drawn without taking in consideration the ethnic and religious divisions within many regions of the continent and eventually creating roots for conflicts that have characterised most of the history of post-colonial Africa. The second principle avoided the power of the organisation to boost the protection of human rights and intervene to avoid gross violations; it also directed the peacekeeping structure of the OAU, quite blurred and poorly institutionalised, towards ineffectiveness. The consensus method finally impeded an evolution of the situation, giving room for authoritarian regimes to rise and consolidate without caring about the remarkable principles of the OAU Charter[34].

These structural problems eventually ended up in a broad movement among African leaders seeking to reform the African multilateral framework, mostly because of the end of the bipolar world after the Cold War and the necessity to find a direction for the continent in the new international arena. This led to the 1999 OAU Summit in the Libyan city of Sirte, where the leaders of the African continent were hosted by the Libyan president Muammar Ghaddafi. On this occasion the dissolution of the OAU was decided, and a new International Organisation was to be set. The reasons behind this reformation were mostly lying on the will to strengthen the powers of the OAU concerning conflict resolution, peace interventions and socio-economic development. The OAU had a very bad record concerning the protection of human rights and its involvement in preventive diplomacy, conflict resolution and peacekeeping was often too weak[35]; this is well evident in the huge number of events involving gross violations of human rights in the years from the 60's to the 90's in post-colonial Africa. The reform was needed mostly on the normative point of view, and this was thought to be achievable through the reform of the OAU institutions. This

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[33] Charter of the Organisation of the African Unity, Addis Ababa, 25 May 1963, Article III.
[34] MAJINGE (2010: 475).
[35] KUMAR (2008: 111-118).

reforming process was made in different steps and is still in process: it will be discussed in the following section for what concerns the AU institutions.

Between 1999 and 2002 the preparation for the establishment of the new organisation occurred. In the July 2000 Assembly of the Heads of State of the OAU in the Togolese capital, Lomé, the Constitutive Act of the African Union was presented to the leaders of the African countries. Just a year later, the act was ratified by 2/3 of the MSs, making possible the entry into force of the main piece of law of the African Union. Eventually, the AU was launched in the July 2002 Durban Summit in South Africa. The main political actors that pushed for the renewal of the African multilateral outlook were the presidents of Libya, Nigeria and South Africa, respectively Muammar Ghaddafi, Olusegun Obasanjo and Thabo Mbeki[36]. The African Union continued to evolve over the years, since many of its institutions started to be effective also after 2002 and reforms have gone on all around the last 20 years.

The founding principles of the African Union show a mix of old principles also inspiring its predecessor, the OAU, and new ones that came from the new objectives and priorities existing in the period of its inception in the late 90's. The four main principles that have been mentioned before were still present in the Constitutive Act of the new organisation, therefore the inviolability of borders and the non-interference principles, that caused many problems to the OAU, were not overcome. However, new principles were introduced on the Constitutive Act, in order to fix the previous flaws and give legal basis for more activism in order to halt the problems in the African scenario[37]. The new principles include participation of the African people in the activities of the Union, prohibition of the use of force amongst Members and the right of the Union to intervene in a member State on the occurrence of grave circumstances such as war crimes, crimes against humanity and genocide. The Constitutive Act also mentions the right of member States to request intervention from the Union to restore peace and stability; other principles worth mentioning are the promotion of gender equality and social justice, condemnation and rejection of unconstitutional changes of government, respect for the sanctity of human life and creation of a common defence policy[38].

These new principles foster the will from the new African Union to increase its powers in different sectors. The expansion of functions of the AU follows a global pattern of expansion of the role of regional organisations in a different set of fields out of the one for which they were established, being for example economic integration, security or protection of human rights, making them acquire a multidimensional purpose. The main model that should come into mind is the European Union, whose transition from a prevalently economic and commercial organisation to a multi-faceted supranational organism inspired several integration movements all around the world. The resemblance of many functions and institutions of the African Union to those of the EU is a clear example of this. Some scholars even considered the AU to be a mimicry of the EU, causing a model that does not take in consideration the differences of the African continent with other areas of the world[39].

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[36] JENG (2012: 160-161).
[37] *Ivi*, pp. 167-170.
[38] Constitutive Act of the African Union, Lomé, 11 July 2000, Article 4.
[39] SESAY (2008: 21).

This dissertation will focus mainly on the peace and security protection, leaving a deep analysis of the other functions of the AU to other works. It must also be added that many similarities with the EU revolve around socio-economic functions, while a better model for peace and security protection may be found in other organisations, mostly the United Nations.

In the next section, the legal basis and the normative framework of the AU will be discussed, now focusing mostly on the object of this dissertation.

1.3 LEGAL BASIS OF THE AFRICAN UNION

After having provided a general background for what concerns the characteristics of peace interventions in the international arena, and having briefly mentioned the inception and the principles guiding the African Union, the present section will investigate the normative domain of the mentioned organisation, through an analysis of the legal *corpus* of the AU.

This section will be divided into three different parts. The first one is going to deal with the statute of the African Union, namely the Constitutive Act, that will be analysed in order to give a precise outlook of the organisation. The different parts of the Constitutive Act will be covered in order to stress the multidimensional nature of the AU, even though the main point of view is still the protection of peace and security. In the second part, the institutions of the AU are going to be listed and discussed, focusing more on the bodies that have an active role in peace interventions but also mentioning others, that still have a relevant role in other domains but are not fundamental for the topic of intervention. The last point, from a pretty legal background, will discuss the legal issues of legal personality and responsibility for wrongful acts related to the AU, and also the amount of supranational character that the organisation holds. Referring to the established practice of the organisation and other legal sources; some of these arguments are going to be discussed specifically in a separate subsequent section. The last point, dealing with the level of supranational powers, is also important in order to introduce the Regional Economic Communities ('RECs'), that are fundamental actors for the sake of discussion about peace interventions and will be an important kind of actor also in the other chapters.

This premise on the set of characteristics, powers and competences of the AU is necessary before going on the practical analysis of the actions on the ground, since every action of the organisation is grounded on institutional premises and from these it should be possible to uncover the strengths and weaknesses behind the activity of the African Union.

1.3.1 The statute of the AU

The first part of this section will deal with the statute of the African Union. It is highly important to analyse the statutes of international organisations, since from this all the pieces of law of an IO derive. As a matter of fact, statutes are defined as part of primary law, since they do not depend on other legal documents while they are the basis for other derivate documents, called secondary law[40].

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[40] BENZING (2007).

The statute of the AU, as already mentioned, is called Constitutive Act. It substitutes the Charter of the Organisation of the African Unity and constitutes the main source of primary law of the Union. As mentioned, it was presented on the summit of the OAU assembly on the 11th of July 2000 in Lomé. After having reached the threshold for approval, the OAU survived for a transitional period of one year in order to settle some bureaucratic issues and transfer funds from the OAU institutions to the newly settled AU ones. The charter eventually came into force since the last summit of the OAU, on the 38th session of the Assembly on July the 8th 2002, followed by the first inaugural session of the AU, on the two following days, in Durban, South Africa[41].

The Constitutive Act is composed of 33 articles concerning the general direction that the AU aims to take and the norms governing its institutions. The first four articles are more about the values and objectives of the Union and less about its functioning. Article 3 enumerates the fourteen objectives of the African Union; some inspiration is taken by the objectives of the OAU, but new ones are listed like the need for greater integration and the bigger relevance of peoples over States. Three more objectives have been added up to 2003, and we can mention mostly principle (i) that refers to increased participation of women in the African political leadership and decision-making. Article 4 contains sixteen principles, plus two added by amendments; the new principles of the AU have already been mentioned, but it is important to stress that the AU aimed through this article to give to itself an increased plethora of competences that derive from these principles, like the principle of intervention in case of breach of peace and security and the creation of a common defence framework[42]. The list of principles and objectives is pretty high, and this abundance probably creates a gap with the scarcity of information contained in the following articles.

Article 5 mentions the nine organs of the AU. The tenth organ, the Peace and Security Council, was added later through amendment. These institutions will be discussed more in the part related to the institutions of the African Union. All the provisions from Article 6 to Article 22 deal with the functioning of the organs cited in Article 5. Articles from 6 to 9 explore the functioning and the powers of the Assembly of the Union, main decisional body of the organisation. On the other hand, Articles 10 to 13 deal with the Executive Council, its composition and its powers. The same applies for articles from number 14 to number 16 referring to the Specialized Technical Committees. Articles from 17 to 22 refer to all the other institutions still not mentioned; what is interesting is that along all these six provisions none explains the role of these institutions, but rather they refer to protocols establishing them, which did not exist at the time of writing the Constitutive Act and had to be drafted subsequently[43]. The same applies for the Peace and Security Council: even though its creation was decided afterwards, the amendment relative to it is phrased in the same way of these six provisions. All of this creates a bit of confusion, since referring to other documents leaves the main document with little explanatory power concerning the institutional framework of the Union. If we compare the European Union to the AU, also keeping in mind the inspirational role that the former had to the latter, we can see a huge difference between the long set of provisions governing the EU and its institutions and the scarcity of information present in the Constitutive Act of the AU. The same applies both if we compare the

[41] MALUWA (2012: 31).
[42] BISWARO (2012: 82).
[43] PACKER and RUKARE (2002: 371-378).

Act with the Treaty on the European Union, better known as Maastricht Treaty, of 1992, that was the main source of primary law existing at the time of the inception of the AU, and comparing it with the Lisbon Treaty of the 2009 and the two primary documents that after that reform form the main pieces of EU primary law (TEU and TFEU).

The remaining articles deal with the instruments useful for the functioning of the AU. Article 23 refers to the power of sanctions of the AU; sanctions are decided by the Assembly and can be of different kinds, from bans from voting to any further economic and political decision decided by the Assembly, leaving high discretion to this body. Article 24 states that the headquarters of the Union shall be in Addis Ababa, capital city of Ethiopia, that was also where the OAU used to be. This country was fundamental for the creation of the OAU, and even if its regional pre-eminence may be less than in the 60's it is still a very powerful actor in the African multilateral dimension.

Articles 25 and 26 refer to the working languages and the power of interpretation held by the Assembly. Articles from 27 to 32 refer respectively to the signature and ratification of the Constitutive Act (Art. 27), entry into force of the CA (Art. 28), admission to be a member of the AU (Art. 29), suspension of members for reasons of unconstitutional transitions to power (Art. 30), cessation of membership, amendment and revision (Arts. 31 and 32); Article 31 was deleted by subsequent amendment 12. The last article is Article 33 that, like in other constitutions or founding charters, deals with transitional and final provisions.

The Constitutive Act of the AU is undoubtedly an incomplete statute in some of its parts. It is probably too wide in the part concerning objectives, and also some principles seem more like purposes since they do not match with the reality of the continent. Moreover, the Constitutive Act looks too vague or tacit in many points, like on the parts relating the majority of its institutions or those relative to an increased economic integration, whose path for accomplishment is not expressly supported by procedural provisions[44]. The Constitutive Act then, even being already an important document, is not sufficient alone for giving a clear practical direction to the Union but rather gives some principles and some general framework, like the institutions, and leaves to the political actors the mission of turning the ideals into practice.

From this statute the main conclusion is that the founders, even if they understood the need to reach a new level of integration in the continent, did not want to reach a stronger supranational attitude, leaving the organisation merely to intergovernmental purposes[45]. However, as it will be pointed out in the section about the institutions of the AU, encouraging signs of supranationalism are present in the functioning of the organisation

The Constitutive Act has also some remarkable elements. One of the most relevant aspects is that the Constitutive Act tries to operate a break with the defunct OAU and its Charter, while still keeping some basic principles that are still necessary in the present[46]. In this vein, we can mention the insertion of economic objectives, like objectives (j), (l) and (p)[47] related to the promotion of sustainable development and economic integration,

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[44] MALUWA (2003: 167-170).
[45] *Ibid.*
[46] JENG (2012: 167-170).
[47] Constitutive Act of the African Union, Article 3.

harmonisation of policies with the regional economic communities and promotion of common policies on trade. Here we see that through the Constitutive Act the Union aims to foster a more communitarian approach in order to increase its power of making binding policies and decisions for its MSs, getting close to its model, the European Union[48]. On the Charter we can see many remarks to the will of accomplishing self-sustainment of the African continent, something that was also present in the OAU charter in other terms and whose reframing may be seen as a confirmation of the failure of the predecessor of the African Union.

On the political field, we can recall an increase of mentions to good governance, democracy and lawful governments; in this view, new provisions aiming at condemning unconstitutional changes of power, use of a MS's territory as base for subversion acts in some other State's territory or recall to the condemnation of political assassinations are a clear sign of rupture with the grave circumstances that halted the action of the OAU. These notions are made explicit through principles (m), (o), (p) and (r). Moreover, also new social principles and objectives are present. This is the case of principles like (l) and (m) that promote the protection of gender equality and human rights, or objective (i) relative to participation of women in politics[49]. It is possible to see an increased focus on social issues and the life of people, more than only revolving around States in opposition to the style of the old OAU.

Other encouraging factors may be found, paradoxically, on the relative scarcity on the AU Constitutive Act of norms about the implementation of common policies. This is maybe a cause of lagging for what concerns things like the creation of a common economic set of rules, that is still at an insufficient level, even if some new financial institution managed to be established in the last years. However, for what concerns the protection of peace and security in the continent, that is the main focus of this discussion, the Charter leaves a big discretion to the African leaders to address any threat in the way they deem more effective. The most important provision in this sense is principle (h) in Article 4 that affirms:

> "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 as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council"[50].

Through this principle we can see that the Assembly of the AU, that is formed by all member States' heads of State and government, may decide as it prefers the solution to adopt in case not only of gross violations of human rights, but also for any threat to security. This article, whose second part was added later, constitutes the basis for intervention by the African Union when other measures prove insufficient. This provision is very important and will be a fundamental one for all the assessment of the AU peace interventions. Article 4(h) gives power of intervention, but it must be seen in conjunction with Article 3(e) that calls for respect of the UN Charter and, therefore, of the necessity to have prior consent by the UN Security Council. So the power of the African leaders is balanced internally by the two-thirds approval threshold governing any decision of the Assembly and externally by the need for consent by the UNSC.

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[48] DOUMBÉ-BILLÉ (2012: 61-69).
[49] *Ivi*, pp 70-75.
[50] Constitutive Act of the African Union, Article 4(h).

Nevertheless, leaving discretional power to act in order to resolve big issues of security is very important and denotes a clear departure from the inactivity of the OAU in this sense, that was forced to act so for its own procedural and normative nature given by its founders. What we see in the end is that the Constitutive Act is a good instrument insofar it is used with a convinced trajectory by the African political leaders to increase the relevance of the AU *vis-à-vis* the MSs and the other actors that have a role in the international political arena[51]. However the Constitutive Act alone is not sufficient in this sense, but must be complemented by the legal norms governing its institutions and by the practice established over the years. This will be the object of a separate analysis.

In the next section an overview of the institutions of the African Union will be provided, in order to see how the bodies of the AU act in order to pursue its mission.

1.3.2 The Institutions of the AU

The analysis of the institutions of an international organisation is fundamental. It is through the institutions that the IO coordinates its activity and undertakes its functions. Analysing the institutional structure also gives a reflection of the powers that are given to the organisation, since the powers of an IO are transferred to the institutions in order to go outside the normative domain and turn into practice. The number of institutions, their functions and their mutual relationship is then necessary for any discussion related to an IO. The same applies in the case of the African Union.

The institutions of the African Union are denominated "Organs" and are enumerated inside the Constitutive Act in Article 5. They are (i) the Assembly of Heads of State and Government, (ii) the Executive Council, (iii) the Pan-African Parliament, (iv) the Court of Justice, (v) the AU Commission, (vi) the Permanent Representatives Committee, (vii) the Specialised Technical Committees, (viii) the Economic, Social and Cultural Council, (ix) the Financial Institutions. To these, it should be added the Peace and Security Council, that was inserted into the list of institutions as tenth organ with the implementation of the Protocol on Amendments, adopted on 11 July 2003[52].

The Constitutive Act of the AU, as said, does not give extensive explanation of the functions and composition of every organ, and the only ones that are clearly dealt with are the Assembly, the Executive Council and the Specialised Technical Committees. The characteristics of the other organs are not mentioned in the CA, even though for every organ there are specific articles with a remark about the fact that there will be either a specific protocol establishing the single organs, or these decisions are delegated to a subsequent deliberation by the Assembly.

The Assembly, as it occurs in the majority of international organisation, is the main policy and decision-making body of the Union. Inside the Assembly every Member State is represented by its Head of State or Head of Government. Since 2017 Morocco re-accession, all the 55 countries of the African continent are members of the AU, and their leaders sit in the Assembly. The functions, composition and voting system of the Assembly are mentioned in the Constitutive Act.

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[51] ANI and AKINOLA (2015: 40-41).
[52] Protocol on the Amendments to the Constitutive Act of the African Union, African Union, Maputo, 11 July 2003, Article 5.

Article 6 of the CA explains the composition of the Assembly, that is a plenary where the leaders of all the Member States sit and vote. Art. 6 vests the Assembly with the role of supreme organ of the AU. Moreover, this provision clarifies the frequency of its meetings, that shall be made at least once a year with the possibility of extraordinary sessions, prior to the approval of two thirds of the MSs. The Office of Chairman will be held by one of the Member States' leader prior consultations between them; the procedure of selection of the Chairperson has become more structured over time with the evolution of the rules of procedure of the Assembly and of its internal practice. Now the praxis of electing the next Chairperson in advance and the possibility of renewal of the mandate are consolidated. This organ is the successor of the Assembly of the OAU and for the most part it maintains the same features[53].

Article 7 of the Constitutive Act deals with the voting method to be applied for decisions of the Assembly. This method consists in a consensus; if consensus fails, the approval of two-thirds of the MSs is necessary for a decision to pass. Article 8 deals with the right of the Assembly to adopt its own rules of procedure.

Article 9 gives an overview of the functions of the Assembly. Respectively, they are (i) determining the main policies of the Union, (ii) receiving recommendations by the other organs of the AU, (iii) consider requests of membership, (iv) establish additional organs, (v) monitor compliance with policies and decision by the AU organs and by the MSs, (vi) adopt the AU budget, (vii) give directives to the Executive Council for matters of peace and security protection, (viii) appoint and terminate the mandate of the judges of the Court of Justice and (ix) appointing the Chairperson of the Commission and other staff of the mentioned organ.

In addition to these four articles, the functioning of the Assembly is extensively discussed in the Rules of Procedure of the Assembly. This document was issued in 2002 during the 1st Summit of the AU in Durban. The rules of procedure are particularly important for what concerns the decisions that may be taken by the Assembly, among all the clarifications given by these procedural norms. Rule 33 gives a categorization of the decisions that the Assembly may take; the rule states three categories: regulations, directives and non-binding decisions. Regulations are referred indistinctly to all the Members of the Union, its organs and the Regional Economic Communities; they are binding *erga omnes*, and they must be implemented by all the Member States. The directives, on the other hand, are specifically directed to a MS or to all of them, to undertakings and to individuals and they have binding effects only for what concerns the realisation of the objective that the directive refers to, leaving to the actor to whom the directive is addressed discretion on how to realise said objective[54]. Both regulations and directives constitute the binding documents that the Assembly may produce; the inspiration brought by the European Union through its legal acts is evident in this case, like in many other elements of the institutional framework of the AU.

The third category of decisions that the Assembly is empowered to take is that of non-binding decisions, namely recommendations, declarations, resolutions, opinions. These decisions are not binding and serve as a piece of guidance for the MSs or the organs of the AU[55]. These decisions may be

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[53] PACKER and RUKARE (2002: 375).
[54] Rules of Procedure of the Assembly of the African Union, Durban, 10 July 2002, A.U. Doc. ASS/AU/2(I)-a, Rule 33.
[55] *Ibid.*

delegated to other organs of the AU, like the Executive Council, if the Assembly decides so. The rules applicable for the approval of such decisions are the aforementioned ones: consensus, failing which a two-thirds majority is required. It is possible to see a similarity between the Assembly and the European Council, since the Assembly is also given powers for what concerns the nomination of the members of the AU Commission and is vested with a general function of emanation of policies, that in reality are many times delegated to the other organs of the AU, like in the case of the European Council, that however is not empowered to adopt independent policy by the treaties[56], and must refer to the legislative and executive organs of the EU, with some exceptions. The Assembly in this case has a stronger power of decision making, and since it is composed of the national leaders of the MSs this gives an idea of the stronger intergovernmental character of the AU compared to the European Union.

Another part of the rules of procedure that is worth analysing is the one related to sanctions. The rules of procedure deal with sanctions in Rules 35, 36 and 37. These three provisions mention three different cases in which the Assembly may impose sanctions, respectively (i) arrears in payments, (ii) failure in implementing AU decisions and (iii) unconstitutional change of government. Sanctions for arrears on payments usually may go from a suspension of voting rights to a ban from candidatures and employment for nationals of that State, depending on how long the arrear has been protracted[57]. The second case that may bring to the imposition of sanctions occurs when a MS fails in implementing a binding decision from the AU institutions; the sanctions in this case consist of denial of transport and communication links with other Member States and other measures of a political and economic nature to be determined by the Assembly[58]. The third case is the most interesting since it provides for strong measures to jeopardise the action of a government that turns into power through unlawful means. Rule 37 deals with this case; in the first part a summary of what can be considered an unconstitutional change of government is provided. The rule mentions circumstances like *coups d'état*, replacements of an elected government by dissidents or rebel armies or refusals by the incumbent government to cede power after a defeat in elections. The sanctions provided for these actions are strict against the perpetrator; they go from ban from issuing visas to the actors responsible of unlawful changes, trade restrictions, economic sanctions, an automatic suspension from the Union until the situation is restored and the possibility to refer to the Peace and Security Council for further actions[59], that may also contemplate armed intervention like it has occurred in the case of Ivory Coast or Comoros when their leaders refused to accept their defeat in democratic elections[60].

The rules of procedure are very important, since they "give flesh to the bare bones of the Constitutive Act"[61]. This type of norms is very important since it empowers and gives clarifications on how the Assembly can apply the vague requirements of the Act[62]. The Rules of Procedure of the Assembly have been published in a long document that deals with all the transitory requirements the Assembly has been given by the Constitutive Act; therefore, this document also comprises the rules of procedure of the

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[56] UDOMBANA (2002: 93).
[57] Rules of Procedure of the Assembly of the Union, Rule 35.
[58] Rules of Procedure of the Assembly of the Union, Rule 36.
[59] Rules of Procedure of the Assembly of the Union, Rule 37.
[60] DE WET (2021: 204-213).
[61] UDOMBANA (2002: 85).
[62] *Ibid.*

Executive Council, the statute of the Commission and the rules of procedure of the Permanent Representatives Council. These organs will be briefly discussed below.

The first organ that needs to be mentioned is the Executive Council. The Executive Council has the same configuration of the former Council of Ministers of the OAU, and it may be seen as resembling the Council of the EU, since it is a non-permanent body containing all the ministers of the member States that are responsible for the subject matter that is discussed[63]. This means that the Executive Council can have different configurations, like foreign policy, agriculture, finance, transport and others. This organ complements the action of the Assembly, since its role is to implement the general policies that are emanating from the Assembly. For this reason, the Executive Council is empowered with the same set of decisions, of three different types, that is given to the Assembly. The Constitutive Act of the African Union deals with this institution in articles 10 to 13; the voting method is the same as for the Assembly. Article 13 gives a summary of the subject matters that the Executive Council may deal with, that encompass all the sectors on which a government may be involved[64].

A clear overview of how this organ works is again given by the Rules of Procedure. From there, it is clear that the Assembly is vested with the power of giving a general impulse on policies, while it is the Executive Council that structures and harmonises the policies through its decisions[65]. The Executive Council is responsible with the monitoring of the policies and to deal with what is delegated to it by the Assembly. Therefore complementarity between these two organs is evident, and we can consider the Executive Council as the one that is really responsible for the practical functioning of AU policymaking. Since both organs are entitled to give binding decisions, the overlap of functions is precluded by the fact that the heads of State and the ministers in the Executive Council come from the same government, making the Executive Council a mostly diplomatic organ since its decisions still come from the leaders[66]. Last but not least, it is the Executive Council that proposes the budget of the Union to the Assembly, and has among its competences a role in the management of conflicts and wars in the continent, human rights and social issues or good governance ones[67].

The action of the Executive Council is supported by two organs, the Permanent Representatives Committee and the Specialised Technical Committees. The former, whose legitimacy is provided by the brief Article 21 of the Constitutive Act, consists of the meeting of all the Permanent Representatives of the MSs accredited to the Union, so it is a body composed of diplomats; it holds its meetings at least once a month and has the function of preparing the meetings of the Executive Council, making recommendations on the decisions to be taken by it and helping to draft the budget to be discussed by the Executive Council and approved by the Assembly. It is dependent on the said organ, and also works on the direct requests by the Executive Council[68]. On the other hand, the Specialised Technical Committees, that are extensively discussed in the Constitutive

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[63] *Ivi*, p. 94.
[64] Constitutive Act of the African Union, Article 13.
[65] Rules of Procedure of the Executive Council of the Union, African Union, Durban, 10 July 2002, Assembly of the AU, A.U. Doc. ASS/AU/2(I)-a.
[66] UDOMBANA (2002: 94-97).
[67] JENG (2012: 172).
[68] Rules of Procedure of Permanent Representatives' Committee of the Assembly of the African Union, Durban, 10 July 2002, A.U. Doc. ASS/AU/2(I)-a.

Act[69], are a fixed set of committees, each of them competent for a specific subject matter that coincides with one of the configurations of the Executive Council. These committees are composed of Ministers or experts from each MSs, and their role is to draft the *travaux preparatoires* for the summits of the Executive Council. The preparation of new projects, the reports and supervision of the existing ones and the specific implementation of the decisions of the executive bodies of the AU is up to these bodies[70]; this is the reason for the wording 'technical' in the name of this organ.

The AU Commission is one of the three organs that have been kept almost unchanged in the transition from the OAU and the African Union, the other two being the Executive Council and the Assembly. Even though the term Commission suggests a resemblance of this organ with the European Commission, the Commission of the African Union is instead the secretariat of the Union, being the successor of the OAU Secretariat[71]. The Commission is composed of a Chairperson, a Deputy-Chairperson and eight Commissioners that are elected by the Assembly vote, with a two-thirds majority required for the Chairperson and a requirement for regional distribution of the Commissioners. The Commission is responsible for the external representation of the Union, for the supervision of projects where it acts in collaboration with the Executive Council and the Permanent Representatives' Committee, for the attraction of funding and investment in Africa and for the redaction of the Budget of the Union that must be revised by the Executive Council and approved by the Assembly[72]. The Chairperson of the Commission is very important and has more duties than the Chairperson of the Assembly, since it is responsible to bridge the different organs of the Union, issue reports upon request and retaining all the responsibilities of the Secretary-General of any international organisation; the Commissioners and the Chairpersons are not directly accountable to their home nations and so retain more impartiality compared to the Assembly's Chairperson, who is still the political leader of one of the MSs.

These are the most relevant institutions of the African Union. However, the remaining institutions are also important and give a spectrum of the increased capabilities that the AU wants to give to itself. The Pan-African Parliament is probably the most interesting. This institution, that was envisaged by the African Economic Community, of which it will be said in the part related to the RECs, is mentioned into the Constitutive Act and eventually was born thanks to the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament, presented in the Sirte Summit in 2001 and entered into force in December 2003[73]. The Pan-African Parliament was foreseen before the establishment of the African Union, already in the African Economic Community Treaty of 1991; the main rationale behind its inception is to give to the Union an organ that would be directly elected by the people of its MSs. However, it cannot be said that the Pan-African Parliament ('PAP') was successful in this sense. The Constitutive Act of the AU mentions the PAP in Article 17, provision aiming to the establishment of a protocol dealing with the Parliament, to be done after the adoption of the Act. The Protocol establishing the Pan-African Parliament recognised the fact that it was impossible in the early 2000s to have a supranational parliament directly elected, mostly because in many

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[69] Constitutive Act of the African Union, Articles 14-16.
[70] PACKER and RUKARE (2002: 376).
[71] SESAY (2008: 19).
[72] Statutes Of The Commission Of The African Union, Durban, 10 July 2002, Assembly of the AU, A.U. Doc. ASS/AU/2(I)-a.
[73] MOHAMED (2012: 97).

countries the participation into politics and even the possibility of electing national representatives was full of problems and difficulties[74]. For this reason, the Pan-African Parliament is composed of 5 representatives from the national parliaments of each MS; this situation causes great unbalances, since the smallest countries have the same weight in terms of votes of the most populated ones. If we compare this organ to the European Parliament ('EP'), the difference is clear. The European Parliament has a method of allocation of seats, called degressive proportionality, that ensures a roughly proportional representation with the more populated countries having more members than the smaller ones in correlation to their weight. This is not present in the PAP.

Another difference between the European Parliament ('EP') and the African counterpart is in their functions. Even if both claim to be legislative organs, the EP sees this power recognised by the treaties. On the other hand, the PAP only claims to be a proper legislative supranational institution, while in reality it has only consultative and advisory powers, aiming for a future concession of true legislative powers[75]. Its functions, enumerated in the protocol, are mostly of giving recommendations to the other organs, even if this advice is not required. To implement this consultative role, the PAP has different committees, each reflecting a different sector. Every member of parliament joins one of these committees. The PAP is given powers of recommendation also in the creation of the Union's budget. The other functions are mostly those of making the initiatives of the union have a greater promotion through the action of the members of the PAP, that are also members of the national parliaments. A new Protocol for fostering this change and empowering the PAP has been done in 2014, but up to now it has not obtained the required number of ratifications for approval and its status may be considered as in stand-by.

The Court of Justice was to be created in 2003 by the Protocol on the Establishment of the Court of Justice, but it had been clear since its inception that this body had overlapping nature with another body of the OAU that was maintained in the AU structure, the African Court on Human and Peoples' Rights ('AfCHPR')[76]. For this reason, a protocol for the merger of the two was made in 2008, but it has not entered into force yet, since the threshold of 15 ratifications has not been reached yet[77]. This makes the structure of the Courts of the African Union quite confusing, due to the presence of these two bodies. In reality, only the latter is acting nowadays, so we will mention this body since it is the one actually constituting the main judicial body of the Union. This Court has temporarily taken the functions of the future Court of Justice; they consist in the interpretation of the AU Constitutive Act and any other AU treaty or document, to solve any dispute of international law between parties of the protocol and the nature and extent of reparations in case of a breach of any obligation by one of the parties[78].

To make access to the court easier all the States that, without having ratified the protocol, want to be subject to the judgement of the AfCHPR may do so by issuing a declaration accepting the competence of the Court in the case[79].

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[74] *Ivi*, p. 115.
[75] Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament, Organization of African Unity, Sirte, 2 March 2001.
[76] UDOMBANA (2002: 105-111).
[77] OUGUERGOUZ (2012: 120).
[78] Protocol of the Court of Justice of the African Union, Maputo, 11 July 2003, Assembly of the AU.
[79] Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Ouagadougou, Organisation of the African Unity, 10 June 1998, Assembly of the OAU.

From 2016, also individuals may accede to the Court for any matter relative to the implementation of the AU policies[80]. The Court is composed of eleven judges, nominated by the Assembly, and its work is complemented by a commission on human rights, the African Commission on Human and Peoples' Rights ('ACHPR'), that has its legal origin in the African Charter on Human and Peoples' Right of 1998. The ACHPR gives advisory opinions on the protection of human rights in the continent, while the AfCHPR has the power of issuing both binding decisions and advisory opinions upon request. The parties that may accede to the Court's jurisdiction are (i) States parties to the Protocol, (ii) the ACHPR, (iii) the African Committee of Experts on the Rights and Welfare of the Child ('ACERWC'), (iv) African Intergovernmental Organizations, (v) African human rights institutions, (vi) individuals and NGOs, (vii) the Assembly, the PPA and other organs authorised by the Assembly and (viii) a staff member of the AU disputing any internal decision of the Union[81]. From this list we can see that the African Union has many advisory boards related to different legal matters. We should also mention the African Commission on International Law ('AUCIL') and the AU Advisory Board on Corruption ('AUABC'). This extensive list of legal bodies and the relatively broad jurisdiction *ratione personae* of the Court, along with the inability of the AU to merge all these bodies into a single and powerful court, reflect the ambiguity of the Union concerning legal issues. Probably the MSs do not wish to empower a Court in a way that could hinder their independence, and then they try to limit it through ignoring the proposed reforms[82]. Therefore it may be said that even if the projects are remarkable, the plan of an AU Court of Justice is a sign of an international organisation that is still not powerful enough to sustain and strengthen the supranational role of its organs. By the way, the actual configuration of the court still permits to act in relevant occasions, like the protection of human rights and the condemnation of unconstitutional changes of government; in this sense, the recent possibility of individuals and NGOs to resort to the court may be an important reform to foster the Court's role in this direction, even though in order to move further a collaboration and an acceptance of the role of the Court from States involved in such violation is fundamental, but not foreseeable so far[83].

The last two organs left for discussion are the Economic, Social and Cultural Council and the financial institutions. The Economic, Social and Cultural Council ('ECOSOCC') has its legal basis in Articles 7 and 22 of the Constitutive Act. This organ has mainly an advisory function since it is composed of members of the civil society organisations ('CSOs') of the continent. The organ is composed of different sub-organs, where the most relevant are the General Assembly and the Standing Committee; the first is the plenary one with 150 members, each representing a CSO from the MSs or from the African Diaspora, while the second is a general committee that prepares the General Assembly meetings and delivers the requests of advisory opinions to the different committees of the ECOSOCC, each dealing with a different social, economic or cultural issue[84]. The role of this institution is mostly summarised by three functions: monitoring, advising and representing[85]. As a matter of fact, this organ, being formed by civil society groups and NGOs with a national, continental or international

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[80] Decision of the Assembly of the AU, 31 January 2016, Assembly/AU/Dec.597(XXVI), *On streamlining of the African Union summits and the working methods of the African Union.*
[81] Protocol of the Court of Justice of the African Union, Articles 29 and 30.
[82] OUGUERGOUZ (2012: 140-142).
[83] DE WET (2021: 218-221).
[84] Statutes of the Economic, Social and Cultural Council, African Union, July 2004, Assembly of the AU.
[85] AMR (2012: 180).

dimension, is charged with the functions of submitting reports on matters of human rights, good practices on economic and political issues, protection of democracy and rule of law or protection of minorities, endangered cultures and other social matters. Moreover, advisory opinions from this organ may be requested by other organs of the AU, since this is the sole organ that represents the issues of the people through the representatives of the CSOs, each dealing with a different issue. Last but not least, the ECOSOCC has a role of representing the Union, and is empowered to attract funds for the broad set of matters it deals with, while cooperating with the CSOs and NGOs of different continents and areas of the world[86].

The last set of institutions, the financial ones, are the least developed among the organs of the AU. They find their basis in Article 19 of the Constitutive Act, where three of them are named: the African Central Bank, the African Monetary Fund and the African Investment Bank. The last two organs have been structured by two different protocols issued by the Assembly of the AU. The first protocol, adopted by the Assembly in July 2009 and establishing the African Investment Bank [87], was ratified only by Chad, while the second, issued in July 2014 and relative to the African Monetary Fund[88], was ratified only by five countries up to the present day, thus delaying the birth of the mentioned institutions. This shows that probably the African States acknowledge the fact that the African continent is not ready to sustain and give reliability to these institutions. For what concerns the African Central Bank, its establishment should come from the concert of the African national central banks and the African Union, and it is to be established, according to the AU, between 2028 and 2034. This project seems the most ambitious of the three, and probably it will be the most difficult to reach.

The analysis of the organs of the African Union is important in order to understand the direction that the IO wants to take. It comes without doubt that since its inception in the early 00s and through the Constitutive Act, the AU has paved the way to the establishment of a strong and increasingly supranational organisation. The difference marked with the OAU, that had only four organs, is evident; the AU kept three out of four organs of its predecessor, being the most relevant organs for every IO, but chose to increase its scope with the creation of a multitude of new organs, being referring to the economic dimension of the AU, or to the direct representation of the people or to the protection of human rights and of the rule of law[89]. However, only some of these organs may be considered as successful, like in the case of the Commission that has an increased role compared to the old OAU Secretariat, or the advisory bodies of the ECOSOCC and the Permanent Representatives Committee or the Specialised Technical Committees, that provide for a representation of experts, members of civil society and diplomats in order to increase the level of representation and expertise in the work of the AU organs. In the other cases, the reality tells that the organs either function but with some problems related to the acceptance of their role by the MSs, like in the case of the Pan-African Parliament and the Court(s) of Justice, or they have even remained dead letter like in the case of the financial institutions. This gives a scenario of an organisation that is remarkable on the theoretical point of view in trying to reform the multilateralism of the continent, but has to face

[86] AMR (2012: 177-183).
[87] Protocol on the African Investment Bank, African Union, 30 June 2009, Assembly/AU/ Dec.251(XIII), Assembly of the AU.
[88] Protocol on the Establishment of the African Monetary Fund, African Union, 27 June 2014, Assembly/AU/Dec.517(XXIII), Assembly of the AU.
[89] JENG (2012: 178-179).

widespread reluctance to their reforms by the MSs and inability to match the reality of the socio-economic conditions of the continent with the proposed institutional reforms[90].

In this dissertation, the Peace and Security Council was not mentioned, since it has an important role for what concerns the peace interventions and will be the subject of a separate analysis. However it can be said that this is an efficient organ that has been successful in claiming some sort of independence and in being reliable *vis-à-vis* the MSs. The extent of how much this has occurred will come from the discussions in the next sections and chapters. The immediately following section will briefly discuss the international legal personality of the AU, the regime concerning responsibility for wrongful acts and the extent to which the African Union possesses supranational powers to bind its MSs.

1.3.3 ILP, Responsibility and Supranational powers

In this section we will discuss three important legal matters that are relevant for the sake of the attainment of the capacity possessed by the AU to make its decisions followed by its MSs and be a relevant actor in the international arena. These three elements are international legal personality, responsibility for wrongful acts and supranational powers. These concepts will be analysed one by one, leaving an expanded revision of the responsibility for wrong doing for other sections of the dissertation, while still briefly explaining it in this part.

First, the concept of international legal personality ('ILP') is a fundamental one, from which important consequences derive for subjects of international law. ILP is described as the capacity of an actor of international law to possess international rights and duties, and being recognised to have such power by the other subjects of international law[91]. This capacity is a presuppose for acting in a legally relevant manner in the international sphere, but this does not mean that the power of possessing ILP is conceded to every subject of international law indiscriminately in the same way, and many different interpretations exist in this sense[92]. Considering that for what concerns States the capacity of having international rights and duties is implied by the same condition of statehood[93], the question is different for what concerns ILP of international organisations like the AU. The main judgement in this sense, that constitutes the UN doctrine in terms of ILP, comes from the 1948 Advisory Opinion Reparation for Injuries Suffered in the Service of the United Nations, issued by the International Court of Justice ('ICJ') on a case where the Secretary General of the UN was questioning the capacity of the UN to claim reparations for injuries suffered by a member of its staff undertaking functions on behalf of the United Nations; for this to be possible, the UN should have been conferred ILP. Famously, the ICJ responded that the capacity to be involved in rights and duties under international law, and the fact of being recognised as such in the international arena, was to be acknowledged in favour of the UN not because of an explicit provision present on the UN Charter, that was tacit in this sense, but by the fact that the broad set of functions of the UN would have been jeopardised if the organisation had not possessed ILP, because the

[90] SESAY (2008: 21).
[91] WALTER (2007).
[92] *Ibid.*
[93] *Ibid.*

United Nation would not have been legally able to fulfil its scope without this element[94]. From this decision, a functionalist approach was adopted and the need to analyse the functions of an international organisations to understand the extent of ILP that an actor of IL possessed became a consolidated practice of international law[95]. The possess of ILP is also ascertained by practice and by constitutional arrangements of the involved IO[96].

For what concerns the African Union, two main elements denote the fact that the AU has been given ILP: succession from the OAU and conferred powers. The first element consists in the fact that in the succession from the OAU to the AU the legal status of the former has been transferred to the latter; the OAU was given ILP not expressly by the Charter of the OAU, but by subsequent documents, namely the General Convention on the Privileges and Immunities of the Organization of African Unity (General Convention), adopted in 1965, which provides explicitly for the organisation's legal personality in Article 1, stating that:

> "the Organization of the African Unity shall possess juridical personality and shall have the capacity: (a) To enter into contracts including rights to acquire and dispose of movable and immovable property; (b) To institute legal proceedings"[97].

The fact that the AU in its Constitutive Act provided for a transitional period in which the OAU Charter was to remain in charge for transferring assets to the new-born AU, and also the fact that after the dissolution of the OAU, some of its member States deposited instruments of ratification of the General Convention with the AU Secretariat, denotes the will of manifesting the succession of the legal personality of the OAU to the AU[98].

The second element, the one of conferred powers, consists in looking at the functions and objectives that have been given to the organisation by its founders in the constitutional documents, statutes and founding treaties, to clarify if it possesses ILP. When analysing the functions and powers of the African Union that have been mentioned before, it is possible to see that the AU is given a wide set of functions that cannot be successful without possessing a considerable amount of legal autonomy, but also by objectives in the protection of human rights, social issues and prevention of conflict, that the member States recognise as common goals[99]; this last point, referring to the creation of new subjects of international law out of States, has been recognised by the ICJ in a subsequent advisory opinion[100].

A specific case referring to the AU has been issued, also creating the basis for the recognition of ILP to the AU through judicial settlement. In the case *Femi Felana v. African Union*, a Nigerian HR lawyer sued the AU before the African Court on Human and Peoples' Rights on behalf of one of its MSs, Nigeria, because the African State failed to deposit a declaration for accessing to the ACtHPR preventing him to accede to the Court. The plaintiff claimed that the AU, since it is the organisation issuing the Protocol

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[94] Advisory Opinion of the International Court of Justice, 11 April 1949, (1949) I.C.J. Rep. 174, *Reparation for injuries suffered in the service of the United Nations*.
[95] D'ARGENT (2006).
[96] SHAW (2008: 260).
[97] General Convention on the Privileges and Immunities of the Organization of African Unity, Accra, 25 October 1965, 1000 UNTS 393.
[98] ABASS (2017: 614-617).
[99] JENG (2012: 164-167).
[100] Advisory Opinion of the International Court of Justice, 8 July 1996, (1996) I.C.J. Rep. 66, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict,* para 19.

for the establishment of the ACtHPR, could be sued as a corporate community on behalf of its MSs[101]. The Court rejected the argument, claiming that ratification and declarations for accession to the Protocol are still prerogative of the States and, even though the African Union is the entity producing the document through its Assembly, it is not part of it and therefore cannot be sued for an alleged violation of the Protocol[102]. From the mentioned case, the ACtHPR also gives an important clarification, mentioning the Reparation of Injuries advisory opinion, stating that the legal personality of the AU is different and distinct from the one of its MSs, and since the Protocol is just open to signature for States, the AU cannot be sued for a violation of a Protocol it is not a member of, also dismissing the idea that it may be sued as a representant of all the MSs of the Union[103]. The Court dismissed the application for lack of jurisdiction, since it has only jurisdiction on States that are signatories of the Protocol, and the AU is not[104]. The case is very important because it gives confirmation of the ILP of the AU, being separate from the one of its MSs.

The second issue that this section will investigate is the one of responsibility for wrongful acts committed by the AU. As we will see, the question concerning responsibility of International organisations is unsettled and unclear, and this gives ambiguity to every discussion concerning responsibility. This section will briefly discuss the matter in the light of the UN Charter and the AU obligations, leaving broader analysis to the following chapter.

The domain of responsibility for wrongful acts is very contested. For what concerns States, these actors may be parties of treaties involving protection of human rights, protection of peace and security and any other matter that, if a breach of obligations created by those rules occurs, it may result in a procedure to ascertain the responsibility in order to impose a sanction or at least ascertain the responsible of a wrongdoing, depending on the requirements and the provisions of the treaties[105]. Moreover, States may be subject to the jurisdiction of such a tribunal able to deal with the matter of responsibility for a breach of international law, like in the case of the ICJ that deals with disputes only among States and whose membership is almost universal. This does not mean that there is a clear doctrine, and the fact that the attempts to settle this legal gap were not accepted by the States of the international arena is a sign of the difficulties in dealing with the matter; an example are the Draft Articles on Responsibilities of States for Internationally Wrongful Acts ('DARSIWA'), laid down by the International Law Commission ('ILC) of the UN in 2001, that give an overview on the matters of responsibility in which a State may be involved and tries to settle some blank points. The DARSIWA, even if it was an influential instrument, was not ratified through a treaty by the UN member States but only received an endorsement by the UN General Assembly[106]. Interestingly, the DARSIWA make the distinction between primary and secondary norms of international law, the first being all the substantive obligations of all States, like prohibition of genocide or aggression, and the second referring to all obligations contracted by the signatures of the treaties, like those falling

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[101] ABASS (2017: 616).
[102] Judgement of the African Court on Human and Peoples' Rights, 26 June 2012, Application No. 001/2011, *Femi Falana v. African Union*, para 67.
[103] *Femi Falana v. African Union*, para 68-74.
[104] *Ibid.*
[105] TSEGA (2021: 302).
[106] KLABBERS (2017: 138).

under the law of the treaties[107]. These draft articles are important mostly for primary norms, since responsibility for breaches of secondary norms is often settled through internal rules depending on the organisation and its practice.

The ILC tried to pass from State responsibility to IO responsibility in 2011 with the Draft Articles on the Responsibility of International Organisations ('DARIO'). It must be said that the work of the ILC was to be more difficult since the practice of responsibility for IOs is not well structured and consolidated[108]. Therefore the ILC would have had less references from which to build a shared document. Moreover, the DARIO fail to provide guidance on the mostly relevant matters, that are for example when an IO undertakes quasi-legislation, like for example UNHCR when administering refugee camps[109]. Nevertheless, this work from the ILC proves useful in distinguishing circumstances when an IO commits wrongful acts against another IO or against a State, being alone or in conjunction with other actors, being States, other IOs or individuals. The DARIO has been at least influential to many judgments, like European Court of Human Rights judgement *Mothers of Srebrenica v. Netherlands*[110].

From the DARIO, it is possible to see when an IO may be considered responsible for a wrongful act. The circumstances where an IO may be involved in wrongdoings may be mostly peace interventions and deployment of armed forces in general. However, it must be recalled that in most cases the troops of a peace intervention contingent are sent by States, since IOs usually do not dispose of their own troops[111]. For this reason ascertaining where responsibility must be addressed may result difficult. A general test used at the United Nations level to ascertain responsibility of an agent doing a wrongful act is the one of "effective control", theorised both by the DARSIWA and in the DARIO and previously in different terms endorsed by the UN Secretary General Boutros-Ghali[112]; this criterion investigates which actor involved had the effective control of the agent in the moment of its undertaking of wrongful acts. This, in many cases, dispenses the IO from responsibility, since States often hold effective control of their troops even under the general guidance of the IO, in cases of peace intervention under the aegis of an international organisation empowered to take peace and security actions.

DARIO investigates different conditions through which an actor may be retained responsible for a wrongful act, like, among the others, wrongful action of an agent under the control of an IO, coercion or circumvention of another actor in order to do an act that would be wrongful if committed by the organisation, acknowledgement of an act committed by another actor that would be wrongful if committed by the IO, or aiding an actor involved in the same kind of action[113]. All these circumstances would give the responsibility to the IO.

These issues of responsibility are important mostly in the circumstances of a peace intervention, like in a case of a violation of human rights or acts against the civil population or against international obligations in general. The kind of IOs that may incur in matters of responsibility are the ones

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[107] *Ivi*, p. 139.
[108] KLABBERS (2018: 316).
[109] *Ibid.*
[110] *Ivi*, p. 317.
[111] KLABBERS (2017: 148).
[112] TSEGA (2021: 308).
[113] Report of the Sixty-third Session, International Law Commission, 3 June 2011, UN Doc. A/66/10 (2011), *Draft articles on the responsibility of international organizations with commentaries*.

mostly involved in the deployment of armed contingents, like the UN but also regional organisations like the AU, NATO, the EU and others. For what concerns the AU, we will go in depth in the matter of responsibility in a different section; here it is relevant just to state that the African Union is bound by the same regime of responsibility to which all IOs are subject. This regime, as said, is not fully consolidated and a unique document to guide the international community is not present. However, a general practice has sprang up, also thanks to the work of the ILC, and at least can be useful in judgments before international courts.

It must be recalled also that international organisations almost always enjoy immunities for actions of their agents when acting in official capacity. This prevents most of issues of responsibility from being solved before national courts, who have to dismiss cases against agents of IOs when this direct bond is found, and immunity is applicable[114]. The issue of immunities leaves to international courts the power to address responsibility for wrongful acts, also important to award reparations. The AU peacekeepers also enjoy immunity when undertaking actions on behalf of the AU and so only international courts can settle such issues. Moreover, the AU often acts in conjunction or in partnership with other IOs, like the UN and the EU, and so understanding where responsibility lies is difficult. The different cases that may arise will be analysed more in depth in the second chapter mentioning the practical cases that made issues of responsibility arise.

The last point that we will analyse in this part is the assessment of the supranational powers of the AU. As a point of departure, it is important to emphasise that the supranational character of an IO should not be enquired through an "all or nothing" way of analysis[115]; supranationalism and the supranational architecture of an IO depend on different dimensions or elements, and if most of these elements are present in the structure of an IO it can be said that it is a supranational institution, in opposition to intergovernmental institutions that constitute the vast majority of the total of international organisations. The most relevant elements to ascertain this last dimension of an IO are usually the following ones: the rule of voting presenting majority as opposed to consensus, the binding effect of the laws of the international organisation, the institutional autonomy of an organisation from its member States, and the direct effect of laws produced from the international organisation on natural and legal persons in member States[116]. From this list, it is possible to say in advance that the only IO possessing all these elements is the European Union, thus the EU can be considered the only strictly supranational international organisation. However, other IOs can possess elements of supranationalism in their structure and law-making: the African Union level of supranationalism can be analysed in light of these elements.

The first thing that enables to validate the extent of supranational powers of the AU is an analysis of AU law, that encompasses many elements of the aforementioned list. The legal documents produced by an IO are fundamental in determining how much an IO is independent and has binding force *vis-à-vis* its MSs. EU law, for example, has evolved as a separate legal system and has the power, in addition to the binding force of its primary and secondary law, to be directly effective before the legal courts of its member States. Moreover, EU law has primacy over national legislation of the MSs

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[114] WILSON and HURVITZ (2014).
[115] FAGBAYIBO (2013: 33-34).
[116] *Ibid.*

in cases of contradictions or overlaps[117]. These two points denote that the European Union has a great power in relation to its MSs also because of the strength of its provisions, thanks to the transfer of sovereignty from the States to the EU. The same cannot be said for the law of the African Union. First, the only source of primary law, the Constitutive Act, is an international treaty and as such it is not directly effective, but becomes national law only through ratification by MSs[118]. Moreover, no primacy of this treaty over national law exists, unless this primacy is prescribed by national law itself. The same applies for secondary law and tertiary acts of the AU, respectively decisions of its organs and international treaties signed under the auspices of the AU[119]. For the former documents, no provision prescribes the direct effect of these norms nor the primacy over national legislation, even though they may at least have consequences like sanctions imposed by the AU. For the latter documents, their strength is even reduced since these are treaties open to signature, revision and withdrawal by the parties; moreover, most of these treaties and protocols have met few ratifications by the member States of the AU, denoting little interest in enhancing the supranational expansion of the African Union[120].

A reading of the Constitutive Act of the AU shows no reference to supranational powers held by the AU and its organs, nor a reference to the separateness of AU Law as a occurs for EU law. Only a general will of empowering the Union is present every now and then in the wording, thus resulting in a lack of a teleological reference to supranationalism also in the Constitutive Act[121]. Moreover, even if the organs of the AU in general have the power of producing binding decisions, mostly the Assembly, the same are not so easily enforceable, also due to the lack of a legislative body that could give more legitimacy to the *corpus* of AU law. In this sense, an empowerment of the Pan-African Parliament can be theoretically a possible condition of expansion of the legal capacity of the AU to influence the legal systems of their MSs; probably this is the reason why the States of the AU are reluctant to ratify the protocols strengthening the PAP, that may result in a reduction of sovereignty for them[122]. In addition to this, an analysis of the institutional framework of the AU shows that the organs that are mostly relevant for decision-making, the Assembly and the Executive Council, are expression of the representatives of the member States' governments and thus there is not much independence between these organs and the MSs: this is another prerequisite aforementioned that is missing in the AU architecture.

Nevertheless, Fagbayibo (2008) contends that even though the African Union shows a very low level of supranationalism for what concerns the normative domain, the level of decisional supranationalism, as he calls it, is encouraging[123]. Decisional supranationalism is defined as the power of an IO to make policies and decisions in an autonomous way, and the main indicator of this element is the voting system. The AU in this sense has at least a positive element, that is the voting system before the Assembly and the Executive Council. As opposed to most intergovernmental IOs that have consensus as the only voting system as a prerogative of the equality of the MSs, the AU has the possibility of resorting to a two-thirds majority when

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[117] FAGBAYIBO (2008: 496).
[118] OLIVIER (2021: 19-22).
[119] *Ibid.*
[120] *Ibid.*
[121] *Ivi*, p. 23.
[122] *Ivi*, p. 24-25.
[123] FAGBAYIBO (2008: 498-499).

consensus fails[124]. This is important, since this fact implies that a decision may pass even if some MSs are against it, but nonetheless they still have to follow a decision approved by the required majority and be sanctioned through the methods already mentioned if they fail to implement policies and obligations.

From this analysis of the supranational powers of the AU it is possible to see that this organisation is not endowed with enough legal and institutional power, falling under the umbrella term of supranationalism, to direct its MSs and make its obligations prevail over national legislation. However, it is possible to see that room for improvement is wide and some elements that are already present may be important in fostering a supranational AU, mostly an activation of the institutions that are still not fully completed but may be relevant in expanding the AU supranational character and a voting system that already provides a departure from consensus voting. To complete this process the support and collaboration of the Member States is fundamental, but as already said for many things before this collaboration often proves difficult to obtain, given the reluctance of the MSs to cede some of their sovereignty[125]. This element may evolve naturally with time, since also more developed organisations like the EU have seen evolutions and difficulties in the acquisition of their role of fully supranational IOs. The uncompleted Pan-African parliament and the Court of Justice may be fundamental in this sense, since through legislation and jurisprudence institutional reform is possible.

The analysis on supranationalism did not mention the overlap of the functions and policies of the AU with the regional economic communities ('RECs'), that further dilute the power of the African Union *vis-à-vis* its MSs[126]. This analysis will be done in the next section.

1.4 THE AFRICAN UNION AND PEACE OPERATIONS

The previous sections have served the role of generally describing the African Union from an historical, legal and institutional background. This overview has been necessary in order to understand how this institution works and, most importantly, which are the issues that many times put constraints to the freedom of action of the AU. The following section, using as a basis what has been referred previously, will investigate further the dimension of peace interventions, the main focus of the dissertation, before moving to practical examples of the AU action on the ground.

The section will start mentioning the normative background that allows peace interventions and the procedure that permits both the deployment and the functioning of an AU peace intervention. For this reason, an analysis of the Peace and Security Council ('PSC'), not mentioned before, will be provided since this organ is very important in the peace and security protection scheme of the African Union. Furthermore, a mention to the cooperation between the organs of the AU will be provided since many institutions have a role in this sense.

The discussion will proceed on the relationships that the AU maintains with sub-regional and international actors for the sake of peace and security protection. For the former category, the role of the Regional Economic

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[124] *Ibid.*
[125] FAGBAYIBO (2018: 779).
[126] *Ivi*, p. 780.

Communities will be explained, along with the relationship existing between these organisations and the continental AU in respect of peace interventions. Last but not least, the relationship between the AU and the United Nations, of which it has been briefly said, will be discussed in depth, since the African Union's action as regards peace interventions is often influenced by the UN in many ways.

1.4.1 Legal Framework of the AU Peace Interventions

As mentioned before, one of the main revolutions brought by the transition from the Organisation of the African Unity to the African Union has been the possibility of the new institutions to undertake interventions in the territory of one of its MSs in case of grave circumstances and threats to peace and security. The main point of reference for this new power of the Union is given by the Constitutive Act of the AU, at Article 4 (h), which refers to the possibility of the Union to intervene in cases of circumstances such as genocide, war crimes or any other threat to security[127]. This is the provision that mostly serves as a legal justification to the AU to undertake in an intervention against one of its MSs. The mere fact that this event is possible is an important departure from the purely intergovernmental doctrine of non-intervention existing in the OAU, that precluded intervention against the will of the host State; the possibility of intervening in a State upon a request by the State itself is still permitted by Article 4(j). However, the sole Article 4(h) is not enough, since it has to be complemented with provisions referring on how this intervention may be decided and organised. No other relevant references to interventions is present in the Constitutive Act, except for two brief provisions mentioning the power of the Assembly to give directives to the Executive Council for the management of conflicts and restoration of peace in Art. 9(g), in addition to the power of taking, in Art. 23(2), any political or economic action as a sanction for a violation of the decisions and policies, thus also including interventions. The amendments to the Constitutive Act have been important to expand and sustain normatively such provisions; through amendments, Article 4(h) was expanded including the fact that it was the Assembly to decide to intervene in a Member State in coordination with the PSC[128].

The main document out of the Constitutive Act useful to understand the mechanism of the AU for conflict prevention and resolution is the Protocol to the Establishment of the Peace and Security Council, concluded on the 9th of July 2002 in Durban during the first official meeting of the AU. The Protocol not only gives an extensive explanation of the functioning of this organ, but also mentions how it must support and be supported by the other organs of the AU, thus giving the basis for a summary of the AU peace and security mechanism. The composition and functions of the PSC are going to be discussed briefly.

As mentioned, the PSC was presented through its own protocol in 2002, but its inspiration came from another framework of the defunct OAU, the Mechanism for Conflict Prevention, Management and Resolution, created in 1993 but never really effective[129]. This political project was included in the new structure of the AU in the Protocol, that entered into force in December 2003.

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[127] Constitutive Act of the African Union, Article 4(h).
[128] GUEUYOU (2012: 309).
[129] ADJOVI (2012: 143-144).

The PSC is composed by 15 member States with duly regional representation, of whom 10 elected for two years and the rest for three, to ensure continuity. Every member has one vote and decisions are taken by two-thirds majority vote if consensus fails. The functions of the PSC, exposed in Article 6 of the Protocol, include promotion of peace and security, early warning and preventive diplomacy, peace-making, interventions in support to peace, peace-building and post-conflict reconstruction, humanitarian actions and action for the implementation of the other AU treaties and protocols concerning the subject matter of peace and security[130]. It is interesting to note that the Protocol applies the same definitions of peace interventions that we have mentioned in the first part, denoting its modernity in matching the evolutions of this phenomenon. To fulfil its commitments, the PSC uses the powers listed in Article 7. These powers include the authorisation of deployment of a peace support mission, recommending interventions to the Assembly, imposing sanctions for unconstitutional changes of government, undertaking humanitarian protection, producing codes of conduct and guidance for the contingents of peace operations and making the operational decisions in this sense, along with an activity of monitoring of the situation in MSs and a power to make reports and partnerships for peace, among the others[131].

As it is possible to see, there are some similarities with the UN Security Council, both for the composition and partially for the powers. However, it is important to note that no permanent members nor veto powers exist within the PSC framework, increasing the effectiveness of this organ; nevertheless, nothing precludes a MS to be re-elected for a long period of time, since re-elections are possible without limits[132].

The PSC cooperates with other institutional actors of the AU other than the Assembly. The main organs involved in the peace and security mechanism are the Commission, the Pan-African Parliament and the Permanent Representatives Committee. The Commission has an important role, that is fulfilled by its Chairperson, the *de facto* Secretary General of the AU. The role of this agent is very important, since the Chairperson is empowered to put in the agenda of the PSC any questions that he or she deems important for the sake of peace and security[133]. The Protocol also gives the power to make recommendations to the PSC, create periodic reports on the respect of peace and security in the continent, bring to the attention of the PSC any threat to peace that may result in a conflict, participating in peace-making efforts and preventive diplomacy and recommend or report on the active missions and on the establishment of new ones[134]. In its tasks the Chairperson of the Commission is supported by the Commissioner responsible for peace and security[135]. It may be said that the Commission retains the most relevant role in supporting the PSC, and its action on a daily basis is of the utmost importance for the direction of AU sponsored missions; the AU has empowered more the role of the Chairperson of the Commission compared to the OAU Secretariat: this figure now resembles the role of the UN Secretary-General in peace and security matters[136]. This expansion of competences is relevant, and if this organ were more

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[130] Protocol referring to the Establishment of the Peace and Security Council of the African Union, AU Doc. Assembly/AU/Dec. 2 (I), Assembly of the AU, Durban, 9 July 2002, Article 6.
[131] Protocol Establishing the Peace and Security Council, Article 7.
[132] ADJOVI (2012: 150).
[133] GUEUYOU (2012: 313).
[134] Protocol Establishing the Peace and Security Council, Article 10.
[135] *Ivi*, Art. 11(3).
[136] GUEUYOU (2012: 313-314).

empowered for what concerns other sectors like socio-economic ones this would bring to an increase of the supranational character of the AU[137].

Another organ that is involved, or at least should be involved, is the Pan-African Parliament. This organ may request reports from the PSC through the Commission, that is also required to present a report on a yearly base to the PAP in order to give updates on the work of the AU concerning peace interventions and peace and security in general. The Permanent Representatives' Committee is the other organ having a role in supporting the PSC, since it is the one that is often responsible of drafting the reports, bridging the PSC and the Commission. Moreover, sometimes the PSC representatives are taken from the permanent representatives, while other times from the Ministers or Heads of State, in this case with just annual frequency as opposed to the minimum requirement of meeting twice a year for meetings of the PSC in the permanent representatives configuration[138].

The Peace and Security Council is internally supported by four subsidiary organs, called mechanisms: the Panel of the Wise, the Continental Early Warning System, the African Standby Force and the Peace Fund. These mechanisms are different but are all important in the dimension of peace interventions, going from responsibilities in conflict prevention or recommendation, to funding, deploying and supporting troops, post-conflict reconstruction or the supervision of effectiveness and lawfulness of the active missions of the AU. We will proceed explaining them briefly, since these mechanisms together determine the action of the PSC.

The first, the Panel of the Wise, has mostly a consultive role. This mechanism is composed by 5 members, that should be selected among respected African personalities like experts and contributors in the field of peace and security, usually having experience in similar organisations or State agencies[139], proposed by the Commission's Chairperson for appointment by the Assembly. This body has the role of supporting both the PSC and the Chairperson, either under request of the two or through the Panel's own initiative. Moreover the Panel may issue reports and intervene whenever deems appropriate in raising awareness on some issues relating to peace and security[140]. This body has proven useful for the complementation of the work of the other bodies due to its wide power of initiative, also given the fact that in the composition of the Panel former heads of State and prominent figures of the OAU/AU have served[141].

The Continental Early Warning System and the Peace Fund are simple bodies, but both have proven useful for the deployment and maintenance of peace missions. The former consists of a central "Situation room" that receives information by decentralised units inside and outside the continent, mostly cooperating with the RECs, and then adds it to its own intelligence and indicators related to the eruption of conflicts or potential threats for the countries of the Union; in doing so, this body has continuous exchanges of intelligence with other organisations and bodies, like the UN, NATO and specialised agencies from governments and private actors[142]. This body then is an intelligence actor aimed at improving the rapidness of action of the PSC. On the other hand, the Peace Fund has a role in the economic

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[137] WILLIAMS (2009a: 617).
[138] GUEUYOU (2012: 312).
[139] Protocol Establishing the Peace and Security Council, Article 11.
[140] *Ibid.*
[141] GUEUYOU (2012: 314-315).
[142] Protocol Establishing the Peace and Security Council, Article 12.

dimension of all the peace interventions. The fund takes a part of the AU budget and from this body all the assessments of costs for peace operation are made with the contribution of the Chairperson of the Commission that may increase the allocation for the Fund from external sources, along with pushing for contribution to the Fund from inter-African and international donors of any kind[143].

The last body, the African Standby Force ('ASF'), is probably the most relevant and interesting. Since the Brahimi Report, advisory report issued in the year 2000 by the former chairman of the United Nations Panel on United Nations Peace Operations Lackdar Brahimi, the UN recognised the importance of having a rapidly deployable force in order to respond quickly to immediate threats and to take advantage of such contingent to initiate a peace intervention quickly[144]. The report referred specifically to the UN but also noted the importance of establishing similar arrangements in such regional organisation having powers in peace and security protection. The African Standby Force was established in order to meet such requirements coming from the report and also subsequent documents and advice from the UN. It consists of military and civilian contingents taken in the countries of origin that are ready for rapid action under the direction of the PSC and the Chairperson. The ASF, according to the Protocol, shall be employed in operation to prevent conflicts, peace-building and post-war reconstruction, humanitarian aid and intervention under Article 4(h) of the Constitutive Act[145]. In order to ensure a distribution of the forces around the continent the ASF can take a regional basis and be organised in cooperation with the RECs, that usually have their own forces that can put at disposal of the Union; collaboration with sub-regional agents is often fundamental, and maintaining good relationships is in the mandate of the PSC and the Chairperson[146].

In order to ensure efficient and clear instruction to the ASF, a chain of command is established in the Protocol. For every operation undertaken by the ASF, the Commission's Chairperson nominates a Special Representative and a Force Commander. The former figure is tasked with reporting on the mission to the Chairperson and collect the reports of the civilian contingents. The latter is required to report to the Special Representative and coordinate the military contingent through the Contingent Commanders. The Protocol is not totally clear, but the final recipient is not the Commission but the Assembly, that has to adopt the decisions that have been formulated by the PSC and the Commission[147]. The two figures then work dividing competences between the civilian and military contingents, with the Special Representative still maintaining the pre-eminence and the responsibility of directly referring to the Commission. In addition, also a Military Staff Committee has been established under the aegis of the PSC to report to the same organ about matters concerning the military and the operational aspect of the missions. The role of the Commission is further increased by the responsibility to draft common guidelines and organise the training of the contingents of the ASF in matters not only related to tactical and operational dimensions, but also to legal and ethical ones like protection of human rights and women and child rights in particular. All these provisions are inserted in Article 13 of the Protocol establishing the PSC.

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[143] *Ivi*, Article 21.

[144] Report of the Panel on United Nations Peace Operations of the United Nations, UN document A/ 55/305-S/2000/809, 21 August 2000, *Brahimi Report*.

[145] Protocol Establishing the Peace and Security Council, Article 13.

[146] *Ivi,* Article 16.

[147] GUEUYOU (2012: 323).

It has been reported that the ASF has given a strong impulse in the increase of expertise and practices concerning peace operation within the African peace and security framework[148]. Moreover, the expansion of the capabilities of such a body has given relief to the UN, which often had to carry the burden of an African regional architecture that was unable to act efficiently. However, the ASF still needs some improvements, like the relatively few efforts in empowering the civilian contingents that still have a fundamental role in peacebuilding and the developmental part of a mission. For this reason the cooperation with the UN is still relevant and must be discussed separately.

All the institutions involved in the peace and security protection, namely PSC and AU Commission, along with the four aforementioned mechanisms and the Military Staff Committee constitute the African Peace and Security Architecture ('APSA'), that is the continental framework of the AU for the protection of peace and security[149]. However said structure has experienced many delays in its implementation, like in the case of the ASF that so far is still not at its complete level of operativity, and it has not been brought to completion, even if the AU aims to create this body comprising all the agents involved in peace and security[150]. Such architecture should also encompass other treaties and frameworks that have been done over the years by the African Union in specific dimensions of peace, security and social protection in general. Among the others, in this category we can mention the New Partnership for Africa's Development ('NEPAD'), the Conference on Security. Stability, Development and Cooperation in Africa ('CSSDCA') or the Code of Conduct for Inter-African Relations[151]. These frameworks, created by the MSs and included under the AU umbrella in the case of NEPAD or autonomously created by the AU in the other cases, are frameworks that consist in fostering common efforts for the development of the African continent. To reach such an objective, a conflict-free environment and the reduction of threats to security is a pivotal need. Thus, the practices and guidelines created by these bodies are also to be considered by the previously mentioned actors, since they have to be added to the APSA[152].

The framework for peace and security, as mentioned, is rich of organs and bodies having an exchange and contributing for the same result through different responsibilities. However, what is unclear from the treaties is which body has the final say in any decision. For what concerns the ASF, the AU is still dependant on the RECs for the effective deployment of the contingents. Moreover, even if the PSC may be considered the main body for peace and security, the final word for deploying the ASF still lies with the Assembly[153]. Furthermore, the PSC has wide room for action but only whenever an intervention has already been authorised by the Assembly[154]. However, the fact that before the PSC a strong collegiality among the members creates a feeling of socialisation among them, creating a better environment for discussion compared to the Assembly, makes discussion before the PSC smoother; moreover, the fact that many of the members of the PSC are also

[148] DE CONING (2019a: 226-228).
[149] OKEKE (2014).
[150] Ibid.
[151] ADJOVI (2012: 148-149).
[152] Ibid.
[153] OKEKE (2016: 93).
[154] Ivi, p. 103.

influential regional powers makes possible that the Assembly often accepts recommendations by the PSC on interventions[155].

So far we have discussed which are the institutions involved in the organisation of a peace intervention. Here we are considering interventions under Article 4(h) of the Constitutive Act, *i.e.* those without host State consent. What we can see is that the ultimate authority is vested in the Assembly, but the greater preparatory work is made in conjunction between the PSC and the Commission, supported by secondary bodies. Once the intervention is mandated, these two are responsible for its success, the first mostly for setting the agenda and contributing to the funding, while the second mostly in the monitoring and operational relationship with the forces on the ground.

If an observer looked only at the just exposed AU legal framework for interventions, he would think that the Union has a wide range of organs and a good chain of command to operate in supporting peace and security. However, often these provisions seem straightforward in theory but encounter great issues in practice. The main reason is the coexistence of the AU with the sub-regional domain, governed by the RECs, and the international domain governed by the UN. The relationship with these two actors has to be discussed, since from this a clear bridge between the normative domain and the reality on the ground can be laid. This analysis will be provided in the next two sections.

1.4.2 Relations with subregional organisations

The fact that the AU and the OAU before it were examples of a feeling of creating a multinational framework that would have comprised all the countries of the African continent did not impede the creation of sub-regional organisations focused on specific regions within the African continent. These IOs have sprang from the 70's to the late 90's and almost all the States of the continent are both members of the Pan-African organisation (the AU) and members of smaller organisation that comprises the neighbouring countries. These organisations have been referred to as Regional Economic Communities since their main founding purpose was a deeper economic integration and common development among their member States.

This section will be divided in two parts, one relative to the assessment of the nature of the RECs and their contribution to peace interventions, while the second will discuss the relationship between these organisations and the AU, and how their coexistence often creates contradictions and overlaps.

a) The RECs and their role in peacekeeping

Eight RECs can be mentioned, (i) the Economic Community of West African States ('ECOWAS'), (ii) the Common Market for Eastern and Southern Africa ('COMESA'), (iii) the Southern African Development Community ('SADC'), (iv) the Economic Community for Central African States ('ECCAS'), (v) the Arab Maghreb Union ('UMA'), (vi) the East African Community ('EAC'), (vii) the Intergovernmental Authority on Development ('IGAD') and (viii) the Community of Sahel-Saharan States ('CEN-SAD'). These organisations have been included as partners and supporters of the African Union action since the inception of the African

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[155] WILLIAMS (2009a: 616-619).

Economic Community ('AEC'), whose treaty was signed in 1991 and entered into force in 1994 designing an active role of this organs into the AU framework[156]. However, also other sub-regional frameworks exist, although they are not fully recognised as partners by the AU.

Briefly, the African Economic Community was incepted as an effort for economic and developmental integration within Africa by the OAU. It aims at creating through progressive steps a common African market moving from the first recognition of sub-regional entities to fostering abolition of trade barriers, customs unions and harmonisation of external tariffs. The ultimate goal of the AEC, as provided by its funding treaty, is the creation of the African Monetary Union, which would be supported by the three financial institutions mentioned in the section about AU organs. The treaty founding the AEC, known as the 1991 Abuja Treaty, also pushes the members of the community to increase investments in a multitude of economic sectors, going from energy to technology and also aiming to the establishment of free movement of services, peoples and capitals[157]. The Abuja Treaty also gives time horizons within which the economic reforms should be completed, spanning in a period of over 40 years from the entry into force of the treaty[158].

The eight aforementioned RECs have been recognised as pillars of the AEC, and according to the Abuja Treaty they would have served as the basis for the inception of the AEC, converting from RECs to Free Trade Areas and then to customs unions[159]. These objectives have not proven satisfactory in most of cases, with some exceptions among them as good examples of integration[160]. However, by recognising at least one sub-regional organisation from each area of the continent, the AEC was useful in legitimising and empowering these actors as bridges between the AU and States. From 1991, other RECs or Regional Mechanisms ('RMs') have been established, further increasing the presence of actors to be kept in consideration in the African arena[161]. The AEC has done a lot to empower the RECs in order to make them credible enhancers of the economic objectives settled in its founding treaty, but not much has been done to tie them to the AEC and more broadly to the AU architecture, since it cannot be said that these actors are proper AU/AEC institutions[162]. On the other hand, the 1998 Protocol on the AEC-RECs Relations has provided a blurred hierarchy between the two, only providing for coordination instead of control of the AEC over the RECs[163]. This has imposed a reframing of the AU-RECs relationship, of which we will talk about in the next section.

The RECs have been given a multitude of functions by their MSs, sometimes going beyond the sole purpose of economic integration, since their establishment has been independent in most cases and only through subsequent OAU/AU treaties have they been included as partners of the Pan-African institution. Among these functions, many RECs have accepted a role in the protection of peace and security among their functions, and some of them have been also involved in peace interventions. The most prolific actors in this sense have been ECOWAS and SADC, and to a lesser extent

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[156] KARANGIZI (2012: 231-232).

[157] Treaty Establishing the African Economic Community, Organisation of the African Unity, Abuja, 3 June 1991.

[158] MBENGE and ILLY (2012: 194).

[159] *Ivi*, p. 195.

[160] SESAY (2008: 27-28).

[161] MBENGE and ILLY (2012: 196).

[162] *Ivi*, pp. 199-202.

[163] *Ibid.*

IGAD, CEMAC and ECCAS[164]. We will briefly investigate the power in peace intervention of the first two along with mentioning the missions sponsored by RECs in the African continent.

The Economic Community of West African States ('ECOWAS') is by far the most important and more influential REC. It was founded in 1975 and comprises 15 west African States, including Nigeria, which is the main hegemon and influential actor of the Community. As the name suggests, it was born to foster economic integration but sooner the MSs of ECOWAS empowered the organisation with powers in conflict resolution and intervention. In 1981 a Protocol on Mutual Assistance in Defence was signed, providing not only for mutual defence in case of external attacks but also summarily referring to the power of the Community to intervene in case of internal threats within a MS that may result in turmoil in all of the community, with any means deemed necessary[165]. The high instability of the region resulted in a quick application of the new projects: in July 1990 the ECOMOG ('ECOWAS Ceasefire Monitoring Group') mission was initiated to stop the Liberian civil war. No authorisation was requested neither to the UN nor to the OAU[166], which eventually backed the operation without showing great interest.

The fact that the operation was considered successful even though in an unorthodox manner[167] paved the way for further activism of ECOWAS in peace and security. In the following years it intervened in Sierra Leone (1997) Guinea-Bissau (1998), Ivory Coast (2003) and again in Liberia (2003). More recently it was involved in peace interventions in Guinea-Bissau (2012), Mali (2013) and The Gambia (2017). ECOWAS framework of interventions was institutionalised through the establishment of the Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and Security in 1999[168]. It is possible to see that the acquisition of powers concerning interventions came mostly by circumstances and was later on organised normatively.

The same protocol demands for cooperation between ECOWAS and both the AU and the UN. However, it is never mentioned whether ECOWAS would wait for an authorisation from both organisations before starting an intervention, and ECOWAS has often acted as this requirement did not apply[169]. Some scholars have considered that an informal relationship arose between ECOWAS and the UN, where the former is not required prior authorisation by the UNSC as provided by Chapter VIII of the UN Charter, but it acts as body of first response in tackling newly erupted conflicts[170]. Similar considerations may be done for all the interventions in the African continent, where local actors are at first left free to solve the situation through the doctrine of "African solutions to African problems"[171]. The UNSC has often cooperated with ECOWAS, leaving room to this organ for interpreting the Charter in such ways to react quickly to problems. However, the UN still maintains its role of primacy, and this is confirmed by the transition of many ECOWAS missions to the UN, like the transition of the ECOWAS mission in Ivory Coast to the UN backed mission UNOCI or,

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[164] GELOT (2014: 138-142).
[165] MAJINGE (2010: 477-478).
[166] NDIAYE (2019: 54).
[167] MAJINGE (2010: 479).
[168] NDIAYE (2016: 54).
[169] PALIWAL (2010: 218).
[170] *Ivi*, p. 219.
[171] *Ivi*, pp. 215-216.

after the 2012 Mali turmoil, of the transition from an ECOWAS peace plan (MICEMA) to an AU mission (AFISMA) to eventually an UN backed mission (MINUSMA)[172]. This element of re-hatting will be present in many interventions that will be discussed next.

The Southern African Development Community ('SADC') was founded in 1992 probably under the inspiration brought by ECOWAS. It counts 16 members, and the main actor is South Africa. This organisation includes a wide geographical area going from South Africa to the Democratic Republic of Congo and comprising also the insular countries of the Indian Ocean. In 1996, the SADC Heads of States established the Organ on Politics, Defence and Security Cooperation[173]. Also, a subcommittee called the Interstate Defence and Security Committee ('ISDSC') was established, which often saw regular meetings between the Ministers of Defence of the SADC countries for the protection of peace and security. Legal basis to these organs was given by the 2001 Protocol to the Organ on Politics, Defence and Security Cooperation. This gave the opportunity to institutionalise the framework for interventions.

Even though SADC has empowered itself with powers of enforcement action, such power is given only as last resort and a prior authorisation by the UNSC is required[174]. SADC has never resorted to these provisions since the adoption of the Protocol[175], and the only interventions that can be related to SADC were the 1998 interventions in the DRC and in Lesotho in the same year. The first was not approved by SADC beforehand, but it was approved only by the ISDSC that was dominated by Zimbabwe; the intervention mirrored the political interests of three SADC members (Zimbabwe, Angola and Namibia) to protect the regime of Laurent Kabila against the attack of Rwanda and Uganda[176]. The intervention was only successively authorised by the SADC Summit[177] and eventually was replaced by the UN mission MONUC. In the case of Lesotho, a similar thing happened, with South Africa intervening in the country with Botswana in order to prevent a *coup*, saying that it was legitimised by the SADC Treaty and using the forces that they put at disposal of the SADC Brigade[178]. No real authorisation came from SADC, and this intervention can be considered as well as a justification for national interests. Both cases show mostly the exploitation of the organisation to promote personal interests and as platform for confrontation with regional rivals[179]. After the Protocol was signed no further action was authorised by this Organ, excluding a peacekeeping mission started in 2017 in Lesotho[180].

To a lesser extent, also IGAD, CEMAC and ECCAS were involved in peace interventions. The first was involved in the earlier attempt of peace intervention in Somalia after the failure of UNOSOM I and II, the IGASOM mission. This mission was deployed in 2005 to support the Somali transitional government but was quickly replaced by AU mandated mission AMISOM due to fears of interference in the mission by the MSs of IGAD

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[172] NDIAYE (2016: 60).
[173] MAJINGE (2010: 481:482).
[174] Protocol on Politics, Defence and Security Co-operation, Southern African Development Community, Blantyre, 14 August 2001, Article 11 para 3(d).
[175] PALIWAL (2010: 215).
[176] MAJINGE (2010: 482).
[177] *Ibid.*
[178] TAVARES (2011: 158-160).
[179] *Ibid.*
[180] DE CONING (2019a: 215).

that were perceived as rivals[181]. On the other hand, CEMAC and ECCAS were involved in the pacification of the Central African Republic with two missions, FOMUC (2002-2008) under the aegis of CEMAC, that eventually transferred the competence to ECCAS with MICOPAX (2008-2013), that again was succeeded first by an AU mission (MISCA) and later by an UN one (MINUSCA). These attempts by RECs to solve conflicts were badly received both by host States and by the international community for their inability to put an effective end to the conflicts. Their involvement will be part of the analysis of the interventions of the AU in the second chapter.

From this section it is possible to see that the RECs have acquired capabilities in undertaken missions that in many cases are separate from the AU, leaving the African Union unable to face all the issues in the continent and being often obliged to accept the resolution of problems by local actors and their most prominent neighbours. The next section will analyse how the AU has tried to overcome this problem and what the normative domain of both RECs and the AU tell us about their relationship.

b) AU and RECs: overlap of functions and lack of primacy (Art 16 of PSC Protocol)

The relationship between the Regional Economic Communities and the AU is governed by three sources of law: the Abuja Treaty founding the AEC, the Constitutive Act of the AU and the Protocol on relations between the RECs and the AEC (1998)[182].

The Abuja Treaty requires the AEC to promote harmonisation of policies with the RECs in order to reach a final integration of them in the AEC and to the AU framework in general[183]. Moreover, the AEC was to designate the RECs that had to constitute the pillars for the economic integration of Africa, but no support to the creation and the rationalisation of such entities was provided[184]; as a matter of fact, many countries ended up being parties of more than one REC designed as pillars of the AEC, creating already overlaps for the matter of economic integration. In the end, it was decided that the eight aforementioned RECs will be the only ones serving the purpose, and it was left to the single States through which to pursue the objective of economic integration.

The Protocol on the relationship between the AEC and the RECs tries to solve the issue by instituting some sub-committees for coordination between the AEC organs and the regional communities, but no clear protocol for integration is set nor steps for strengthening the dependence of the latter to the former[185]. Moreover, the Protocol had to be adapted to the new Constitutive Act of the AU, signed few years before, but this never happened, and this makes it possible that no link ties the AEC and the AU from the normative point of view[186]. The two entities are only tied substantially by the fact that the organs governing one also govern the other[187].

The provisions given by these two legal texts are those where the relationship between the AU (through the AEC) and the RECs is mostly

[181] NDIAYE (2016: 57-59).
[182] KARANGIZI (2012: 235).
[183] Treaty Establishing the African Economic Community, Article 88.
[184] KARANZIGI (2012: 236).
[185] *Ivi*, pp. 240-242.
[186] *Ivi*, pp. 244-245.
[187] *Ibid.*

expanded. However, these documents only refer to the domain of economic integration, and no mention is left to the protection of peace and security, as it is not the subject of the treaties. The AEC related documents neither refer to the relationship existing between sources of law of the RECs and those of the AU, leaving unsolved the question of which entity has primacy over the other.

The AU Constitutive Act tries to solve the issue concerning the relation with the AEC through Art. 33, recalling that the provisions of the Constitutive Act will supersede conflicting with provisions of the AEC Treaty. However, no referral to the RECs is made, if we exclude Article 3 (l) where the AU aims to coordinate and harmonise the policies of the AU with the RECs.

For what concerns the protection of peace and security, we need to examine two other documents, the PSC Protocol and the 2008 MoU between the AU, the RECs and the Regional Mechanisms' Standby Forces for Peace and Security. In the PSC Protocol a full provision, Article 16, deals with the relationship between the PSC and the RECs. Article 16 gives to the PSC the responsibility to coordinate with the RECs in order to solve any issue of peace and security, and in doing so it must inform the RECs on the status of missions and decision on the subject, inasmuch the RECs must keep the PSC updated on theirs. Article 16 also states that the RECs are part of the architecture for peace and security of the Union, which still claims primary responsibility on the protection of peace and security in the continent. A role for the Chairperson of the Commission is also envisaged, and it is a very important one. The Chairperson shall attend meeting of the RECs when invited and be the one to transmit the communications from the PSC, or the one to receive the information from the RECs for the PSC[188]. Again, this figure has a very important role of bridging.

The Protocol gives a full list of ways in which the PSC, the Commission and the RECs may cooperate, also through the establishment of liaison offices. However, no normative element is given to settle the issue of primacy in the matter of peace and security. For this reason, a Memorandum of Understanding proved necessary.

The 2008 MoU between the AU and the RECs/RMs is relevant in filling some of the gaps from the previously mentioned legal texts. The most important provision for the sake of this dissertation on primacy of the AU in peace and security is Article IV, where in two principles (ii and iv) the primary responsibility of the AU in peace and security in the continent is displayed as a guiding point of departure, coming from the founding treaties of AU and PSC. Interestingly, the fourth principle affirms that:

> "[…] adherence to the principles of subsidiarity, complementarity and comparative advantages, in order to optimise the partnership between the Union, the RECs and the Coordinating Mechanisms in the promotion and maintenance of peace, security and stability."[189]

The application of these three principles allows for an informal framework for intervention, but instead leaves resolution of conflicts to a case-by-case approach. Complementarity and comparative advantages refer to the opportunity of the two actors, AU and RECs/RMs, to act in a joint manner or to considering the institution that would have less effort in solving a problem. The principle of subsidiarity, on the contrary, is less clear and it

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[188] Protocol Establishing the Peace and Security Council, Article 16.
[189] Memorandum of Understanding on Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa, 2008, Article IV(iv).

must be analysed more in depth. The principle of subsidiarity holds that in a hierarchical system the responsibility to handle tasks is given to the lowest level that is able to address them, and if they fail in managing the situation the higher level would take the charge[190]. In this case, the RECs would be considered the lower level and the AU the highest. According to this principle, the RECs intervention would be preferred for their knowledge of the local environment and its alleged higher diplomatic power in dealing with neighbours. If this intervention proves insufficient, it can be handled first by the AU, like operations such as AMISOM that transitioned to the AU. If also the AU would not be fully able to solve the issue, re-hatting to the UN has often occurred already, like in the case of MINUSCA. In this way, a hypothetical hierarchy with the UN on the top, the AU in the middle and the RECs on the bottom level would be created in the context of African peace and security, with the principle of subsidiarity governing it[191].

What has just been said seems pretty clear in ideal terms, but it is not backed by provisions institutionalising this relationship from the normative point of view. The MoU only gives norms dealing with how the communication between the two levels should work, and this is done in quite a structured way, but no reference is done to rules of engagement, allocation of competences and providing clear plans of actions that may apply for any conflict[192]. In some parts, the MoU even complicates things, like in Article XX where it is said that the AU encourages the RECs to prevent escalations of conflicts in any manner, thus increasing the room for these organs to act independently[193]; this normative freedom that results in the end is augmented by the few specific requirements imposed to RECs in the management of conflicts and the fact that most RECs, like ECOWAS and SADC, do not even refer to subordination to the AU in their treaties[194]: this creates a non-binding force of these provisions upon them.

It can be said that the result of the provisions coordinating the AU with the RECs/RMs actually gives a scenario where every intervention is organised and managed on a case-by-case basis[195]. To further complicate things, the RECs-AU relationship should also be seen in the light of the African Standby Force. The PSC has designed five standby forces to be rapidly deployable and be uniformly present in the five regions of Africa. For this reason, five standby forces have been included as components of the ASF. Three of these belong to RECs, namely SADC, ECOWAS and ECCAS. The other two belong to two Regional Mechanisms that have been followingly created for this sole purpose, the East African Standby Force ('EASF') and the North African Regional Capacity ('NARC'). These forces do not belong directly to the AU, but they are under the operational control of the RECs/RMs[196]. The Protocol and the MoU provide for putting at disposal of the AU these forces whenever necessary, but the lack of direct control makes it possible that the two actors always have to be in coordination in order to use these forces. For these reasons, many peace interventions have been rather sustained by *ad-hoc* coalitions[197]. The reason for this is also the fact that the ASF is not fully operational yet, since many delays have occurred, and no framework of coordination has been created in order to foster the

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[190] NDIAYE (2016: 53).
[191] STRIEBINGER (2016: 17).
[192] FAGBAYIBO (2018: 776).
[193] NDIAYE (2016: 53-54).
[194] *Ivi*, p. 57.
[195] DE CONING (2019a: 221).
[196] *Ivi*, p. 215.
[197] DE CONING (2016b: 132).

development of the ASF[198]. Up to now, just the EASF can be said to be fully operative, with also ECCAS and ECOWAS brigades claiming complete operativity[199]. For this reason, the AU has tried to temporarily address the issue creating the African Capacity for Immediate Response to Crises ('ACIRC'), an institutionalised coalition to be deployed for each conflict with a lead nation in control of it, being composed only of military contingents[200]; this effort however may cause more delays than solutions to the ASF, and it has been criticised by the RECs that have considered this move a way to by-pass them[201].

To come up with a conclusion, the regime for coordination between the African Unions and the RECs/RMs is vague, even if it is founded on a good basis from the ideological point of view. No primacy exists from the practical point of view, even if the AU claims to have this right in the issue of peace and security, without being reciprocated by the RECs in most cases. The picture even becomes one of dependency, if we consider that the standby forces are organised regionally and have to be deployed by RECs. This gives back a regime that in the reality of things does not allow for a structured and systematic way of addressing conflicts and, as it will be possible to see from Chapter 2, this is confirmed by the analysis of all the interventions that were sponsored by the AU last year. Further concerns can be encountered with the relationship between AU and partially RECs and the UN: they will be investigated in the next section.

1.4.3 Relationship with the UN

The African Union, like every international organisation that has among its functions the protection of peace and security, has to be authorised by the United Nations in order to start an intervention for reasons of peace and security protection according to Article 53 of the UN Charter. The main legal reference to the relationship between the UN and regional arrangements, as the Charter calls them, is Chapter VIII. In this section the main legal obstacles posed by the UN legal order to the AU peace and security framework will be analysed. There are not many references other than Chapter VIII, but some unresolved questions still arise from these provisions.

The role of practice that has consolidated between the UN and the AU will be followingly analysed, and it will be important to launch the discussion to the analysis of the individual interventions of the AU. The UN has a fundamental role in the interventions that are conducted by the AU, both for reasons of funding and for the role it has often had of taking charge of missions that have been started by the AU. For this reason, a relationship made of exchange of information and common policies for solving conflicts is of the utmost importance.

The first thing to see is how the African Union considers its relationship with the UN on its treaties. From the point of view of peace and security, the important PSC Protocol clearly states, in Article 17, that the Union intends to work in close coordination with the UN Security Council, that is given the primary responsibility for the protection of world peace and security. This legal text however may be in contradiction with itself, since Article 16

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[198] FAGBAYIBO (2018 : 776).
[199] OKEKE (2016: 96).
[200] DE CONING (2016a: 4).
[201] *Ivi*, pp. 6-11.

affirms that the AU has the primacy for protection of peace and security in the continent. The mentioned primacy may relate to the primacy of the AU only *vis-à-vis* hierarchically lower actors, like the RECs, or instead surprisingly claiming a primacy of the Union over the UN for what concerns protection of peace and security limited to Africa[202].

Most of this debate revolves around the need for authorisation that is contained in Article 53 of the UN Charter, as said. This requisite, since no provision nor practice confirmed the existence of a custom for ex-post authorisation, may heavily affect the AU action. It has been noted by many scholars and AU staff that waiting for an authorisation from the UN may jeopardise the effectiveness of rapid deployment of an intervention force and the possibility of blocking a conflict during its initial phase[203]. For this reason, the Union, like in the way of the RECs, have also tried to settle an informal regime where the intervention within its territory may be conducted; this however should come with the complicity of the UN.

Since the aforementioned provisions may seem in contradiction, it is important to analyse if such a practice of *laissez-faire* for early deployment of an AU mission exists. First, it is important to note that most interventions conducted by the AU have been decided under the basis of Article 4(j) of the Constitutive Act, meaning that the intervention was demanded by the same Member State where the conflict was present. In these cases, the provision of Article 4(j) has been seen as falling under the premises of Article 52 of the UN Charter, namely interventions that do not need enforcement action and thus do not need authorisation from the UNSC[204]; the category of peacekeeping, implying host State consent, is the main kind of type of intervention in this category. The issue of authorisation is however more complicated for what concerns interventions under Article 4(h), undertaken without the consent of the host State and that falls under Art. 53 of the UN Charter. The African Union has proven reluctant to act against the consent of one of its MSs, and thus Article 4(h) has never been the ground for an intervention, if we exclude the AMISOM intervention where no Somali effective government that could even give consent for the whole country was present[205]. Moreover, intervention against consent of the host-State is often a hard thing to initiate politically, and in these cases the AU often seeks coordination with the UN before taking independent decisions, as in the case of AMISOM or UNAMID as it will be said.

The non-consensual intervention could also trigger a violation of Article 2(4) of the UN Charter that provides the principle of non-aggression and use of force against a member of the UN. However, according to some scholars like Abass, this does not constitute a ground for unlawful action by the AU since it is not a party to the Charter and thus it is not bound by such provision[206]. However, the concept of use of force, in some cases, has been defined as a breach of *jus cogens*, and also regional organisations are bound to such peremptory norms[207]. Nevertheless, it is well grounded in juridical practice that an authorisation by the UNSC for a regional organisation acting in protection of peace and security would be a justification for such a breach[208].

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[202] PALIWAL (2010: 197).
[203] *Ivi*, p. 198.
[204] ABASS (2017: 621).
[205] *Ibid.*
[206] *Ivi*, p. 622.
[207] Judgement of the International Court of Justice, 27 June 1986, (1986) I.C.J. Rep. 14., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.
[208] PALIWAL (2010: 193).

Moreover, the UN has in many cases shown sensitiveness in turning a blind eye to some AU operations and not asking for authorisation, recognising in some instances the will of the organisation first to face the problems concerning its area of competence, until the UN chooses to act otherwise and change something in the way single interventions are being conducted[209].

Authorising a mission of the AU in many cases is an advantage for both the AU and the UN. For what concerns the AU, most of the advantage does not stands in the importance of not having legal consequences but instead is related to the funding of the operation, while for the UN most of the reasons lie in the need to avoid harsh political debate for mandating operation and make the work done by the AU, contributing financially[210]. A sort of principle of subsidiarity, as in the case of the RECs, has been found, but the role of the UN in AU sponsored interventions is still more than mere authorisation.

The UN contributes heavily to the financing of African peace support missions, and this makes it an interlocutor that needs to be kept close. Moreover, the AU even if not willing to seek for UNSC authorisation may decide to demand it because having funding from the UN without authorisation is impossible[211]. Moreover, the UN in the last 15 years has evolved a practice of non-authorisation for RECs interventions unless the PSC has also given its consent[212]; in addition, most of the interventions proposed by the AUPSC to the UNSC have been received with positive reviews and often reached consensus over their deployment, but always in some sort of involvement of the UN for the non-military dimension[213]. This gives a scenario where the UN is unwilling or unable to directly control every issue of peace and security, and then relies on the African Union with whom an increased cooperation also in the dimension of good practices and rules of conduct is rising. On the other hand, the AU acquires further legitimation *vis-à-vis* the RECs, and is given funding for its operations. This *ad hoc* African regime creates tensions with the UN Charter, that according to some scholars has been construed in a generous way to leave aside the legal issues concerning the AU way of deploying interventions[214]. This has been done for a political reason, both to avoid undertaking long discussions that may paralyse the UN and causing inaction, and also to empower more the regional organisation to do, whenever possible, the work instead of the UN.

This practice is also confirmed by the long list of cases in which a transition from an AU mission to a UN one has occurred. It can be said that this custom is now consolidated, with the UN allowing early deployment of an AU mission and then taking the lead when the situation is better settled, and less effort is needed to convince extra-African actors to deploy a UN mission[215]. The AU, on the other hand, keeps its role of pre-eminence in the issue of peace and security protection and the power of controlling the initial agenda of peacemaking.

In this section the main focus has been the UN-AU issues from the legal point of view. It must be said that this relationship is far more complicated in the practical domain, when the operations have to be mandated, sustained

[209] *Ivi*, pp. 219-220.
[210] MAJINGE (2010: 496-497).
[211] YAMASHITA (2012: 170).
[212] NDIAYE (2016: 57).
[213] DE CONING (2019a: 224-226).
[214] PALIWAL (2010: 219).
[215] COLEMAN (2011: 524).

and completed. For this reason, the second chapter will analyse deeply this aspect, still keeping on the spotlight the legal issues that evolve in material problems.

Chapter II

Assessment of peace interventions in the AU and legal issues

The last chapter was functional to provide an overview of the institutional framework that the AU is equipped with and in particular of the legal framework concerning interventions. Most of the aspects of the Union have been mentioned, but in order to give a complete idea of the level of efficiency that peace and security support operations have reached, an analysis of the interventions conducted by the AU is necessary. The main issues that have been mentioned will find many practical examples here. The chapter will investigate five out of six AU peace missions, each time finding the legal problems that have arisen along with the problems related to the environment on the ground.

The discussion will first proceed by mentioning the main facts and events related to these five missions. After doing this, an assessment of the results will be provided, coming to the conclusion that it is not possible to come to the same solution starting from different premises. Then, the discussion will separately be moving in analysing all the recurring problems that in some way affect all the missions of the African Union.

The last part of the chapter will discuss in two separate sections the main legal issues that, according to this dissertation, affect the action of the AU. The first one is responsibility for wrongful acts, whose uncertainty and vagueness creates many problems with host-States and population, along with problems with the social understanding of AU peace efforts. The second issue is probably the main obstacle to an efficient African regime for peace and security: funding. Both elements are going to be discussed first from their normative point of view, mentioning the main legal documents and agreements dealing with these aspects, and then making practical examples from the reality of AU peace operations.

2.1 THE INTERVENTIONS OVER THE YEARS

This section serves the purpose of describing from an historical perspective the interventions undertaken by the AU over the years, concentrating on the causes of their inception and on the main successes reached by them. Discussing every intervention a clear idea of the main problems arising will come, and this must be confirmed by the recurrence of some problems in different areas of the continent. This will provide elements for discussion of both results and problems of the mentioned interventions, each on its respective section.

In order to try to put together similar events and circumstances, this section will be divided in two subsections. The first will refer to all those interventions that have been considered successful fully or in part by analysts and people in charge of their development and maintenance. The second, on the other hand, will deal with the missions that have been labelled as great failures for many reasons that will be discussed. The intervention in Somalia, namely AMISOM, being probably the most relevant undertaken under the premises of the AU, will be the object of a separate analysis in Chapter 3.

<u>2.1.1 Successful or quasi-successful operations: Burundi, Comoros and Mali</u>

The activity of the African Union has shown mixed results for what concerns the protection of peace and security through interventions. In this sub-section the interventions that have mostly been praised as successful or that have at least been functional in improving the situation will be mentioned. In this category three intervention falls, one in Burundi, one in the Comoros Islands and one in Mali. We will discuss them in chronological order noting mostly what has brought a positive result to said intervention and which obstacles have still made the missions more difficult than expected. These elements will be analysed more in depth subsequently. The first intervention that will be the object of this analysis is the first African Union intervention, the African Union mission in Burundi ('AMIB').

a) Burundi

Ever since its independence in 1962, Burundi was tormented by ethnic turmoil between the two major ethic groups, Hutus and Tutsis, whose tensions have also become tragically famous by the 1994 genocide in neighbouring Rwanda. Burundi has experienced a similar fate to its neighbour, and in 1972 an indiscriminate purge of Hutu protest by the Tutsi government led to mass atrocities, repeated at a lesser degree in 1988[216]. In 1993 the first free political elections in the country made possible the acquisition of power of a Hutu government, representing the majority of the population and led by Melchior Ndadaye. The assassination through a *coups d'état* of Ndadaye few months later led the country to an open civil war between the Hutu militias on a side and the National Defence Forces of Burundi that were supported by Tutsi militias, causing hundreds of thousands of deaths[217]. In 2000, a peace agreement, the Arusha Accords, was signed between the government and the rebels, in order to end violence and create a new constitutional order. However, not all the rebels agreed in signing the Accords, since a Hutu rebel group, the Party for the Liberation of the Hutu People-National Forces of Liberation ('PALIPEHUTU-FNL'), decided not to sign the agreement and continued the fight[218].

This unresolved situation coincided with the creation of the African Union and led to the establishment of the first AU peace support mission, AMIB. AU peacekeepers substituted a national peacekeeping force from South Africa that was already monitoring the cease-fire provided by the Arusha Accords[219]. The mission was necessary both to address those insurgents that were still fighting and to implement the condition of the Accords to reach complete pacification between the signatories of the party, who already were transitioning from being rebels to be parts of the Burundian government. The AU acted in this case as a first responder since the UN seemed unwilling to act[220] and just later gave its backing to the mission; since the mandate was not one of peace enforcement, the mission did not need prior authorisation by the UNSC[221].

AMIB was launched in February 2003 and started operating in April, after that a new ceasefire of December 2002 was immediately violated and violence seemed to be increasing. The intervention of an AU peacekeeping force was already expressly demanded by the 2002 ceasefire agreement for

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[216] JENG (2012: 210-211).
[217] *Ibid.*
[218] COCODIA (2018: 59).
[219] *Ibid.*
[220] BARA and ULTMAN (2020: 356).
[221] PALIWAL (2010: 202).

its monitoring part,[222] and the violence continuing in the country just increased the urgency of deploying the AU mission. It must be said that, since before 2004 the PSC was not fully operating yet, its role of giving mandates and monitoring the situation was taken by the Mechanism for Conflict Prevention, Management and Resolution ('MCPMR')[223], one of the previously mentioned organs of the OAU for peace and security. Its mandate consisted in (i) liaison between the parties of the Accords, (ii) monitoring of the ceasefire, (iii) providing VIP protection for political leaders, (iv) ensuring humanitarian assistance, (v) ensuring free movement of political leaders and (vi) providing for disarmament, demobilisation and reintegration ('DDR') of rebel forces into the Burundian National Defence and Police Forces[224]. The mission follows the characteristics of classical UN peacekeeping, with a focus on maintaining a peace existing between two or more parties. For what concerns the rules of engagement, AMIB had few possibilities of using force; except for cases where the security of VIPs and civilian population was in danger, AMIB forces could only respond to fire when attacked, and not be initiators of enforcement actions against the rebels[225].

The military personnel of AMIB was deployed mostly by three troops contributing countries ('TCCs'): South Africa, Ethiopia and to a lesser extent Mozambique. South Africa was the main contributor of forces, since it already had a peacekeeping force of 700 soldiers on the ground, that reached over 1000 troops by the end of the mission in 2004[226]. Ethiopia and Mozambique deployed with more delay, starting from autumn 2003 but by the end of the mission they contributed with 980 and 280 troops respectively[227]. Since South Africa was the main contributor, it was given the role of lead-nation, also due to its prior role of mediator, and the power to appoint the Force Commander that had the task of communicating directly with the MCPMR. Moreover, still through the Communique establishing AMIB, the mission duration was decided for being not more than one year, after which the responsibility of operating in the country was to be transferred to an UN mission that had to be mandated in the future.

AMIB was also given a non-combatant contingent, made mostly of diplomatic and technical staff necessary to provide administrative assistance to the military personnel and provide mediation and support to the peace process, with a deep consultation with the Burundian leaders of both fronts and the civil society, also from the side of tribal leaders and elderly that are very influential in ensuring dialogue between communities in many African societies[228]. However, the civilian component was only a minor part of the total of AMIB personnel. Last but not least, the funding was provided by several external actors, but it only consisted in food supplies or money for this purpose for the AMIB cantonments' maintenance, provided by institutions like the WHO, the EU, UNICEF and the German Technical Cooperation[229]. AMIB was not even capable of providing for its own sustainment, and underfunding was a major constraint for giving an efficient

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[222] MAJINGE (2010: 486-487).
[223] SVENSSON (2008: 10).
[224] Communiqué of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the African Union, 2 April 2003, Central Organ/MEC/AMB/Conn. (XCI), *Communique of the Ninety-First Ordinary Session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Ambassadorial Level*.
[225] SVENSSON (2008: 12).
[226] COCODIA (2018: 60).
[227] *Ibid.*
[228] JENG (2012: 222).
[229] SVENSSON (2008: 14).

role to the mission. No foreign country contributed to the specific fund that was created for the funding of the mission, and only the US and the UK contributed through direct money transfers to the Ethiopian and Mozambican contingents respectively. Moreover, the AU informed that the TCCs had to self-sustain their troops for the early stage of the mission, before the activation of international funds, creating a model for future missions (AMIB-model) that jeopardised the contribution of countries out of the richest ones to AU missions[230].

Despite these constraints, AMIB succeeded in handing back to the UN the mission in May 2004. The mission was successful in pacificating the country, with almost 95% of the territory that was stabilised[231]. The AU mission was not much effective in the attainment of DDR, consisting in the disarmament of rebel forces and their reintegration to national ones, but its role was appraised also by former rebel forces that felt more included in the pacification of the country and contributed to overcome differences with the national government[232]. AMIB was substituted by UNSC mandated mission ONUB, that continued the pacification of the country after the good job of the AU, that could move its target on peace reconstruction and issues concerning internally displaced people and refugees, that AMIB could not address due to its lack of funds[233]. The mandate of the mission was too wide and was unmatched by funding, obliging the AMIB forces to privilege some objectives over others, like DRR and humanitarian protection[234]. The troops were also constrained by self-defence rules of engagement, that only later were extended with the power of protecting civilians under immediate threat. It must be said that the role of the AU was good even though the PSC was not already operating and much of the mission was conducted by the military contingents with less room for political action by the AU; this last element was caused both by the small non-military contingent and by the fact that the pacification and diplomatic action was already at a good point without the need of AU involvement. The AU was more active in seeking external funding for the operation, but with not much success.

The positive and negative aspects of the intervention will be discussed more extensively in a separate section. However, we can briefly say that the major problems of the AU mission in Burundi were funding and the participation of the African countries, because of the need to self-sustain their troops. The lack of funding also made possible an incomplete mandate, that perhaps was not foreseeing the few economic possibilities that AMIB was to be facing. On the other hand, the mission proved very effective in building trust with the local communities and political leaders, and also proved effective in facing the rebels that, excluded some attacks in the early phase of the mission to the AMIB cantonments, never constituted an overwhelming threat to both AMIB personnel and civilians: the progressive increase of troops and extension of use of force capabilities were fundamental in this sense. AMIB can be considered a good example of a small but successful operation.

In the end, also considered the still incomplete peace and security architecture and the hurry to activate the new provisions for peace interventions, the AU proved effective in settling the situation in Burundi and leaving a better situation for the subsequent ONUB mission, that on its

[230] *Ivi*, p. 13.
[231] COCODIA (2018: 61).
[232] JENG (2012: 224).
[233] MAJINGE (2010: 486-487).
[234] SVENSSON (2008: 16).

early times relied on the troops, methods and practices used by AMIB but with increased financial and military capabilities[235].

b) Comoros

The second peace operation conducted by the AU was in the Comoros islands, a small archipelago in the southern African portion of the Indian Ocean. The intervention was the final part of a process of pacification of the country that started in the early 2000's. The archipelago since its independence from France in 1975 experienced many secessionist impulses and instability. From 1975 to 1997 the islands saw 21 different attempts of *coups*. Moreover, since 1997 two of the three main islands of the archipelago, Anjouan and Moheli, tried to secede declaring their independence from the country, that according to them had less economic and political opportunities compared to the biggest island, Grand Comore, that was the centre of politics and where the leadership of the country came from[236]. These movements were amplified by the fact that the island of Mayotte, part of the archipelago and of the French colony of Madagascar, decided not to join the new country and remained part of France. Its economic success compared to the other three Comorian islands gave further instability. Of the three islands of the Comoros, Anjouan is the poorest but also the more economically viable for the presence of the only deep-sea port; in addition, most of the military of the country comes from this island, and then controlling Anjouan may give a strong levy on the control of the army[237].

The OAU and the AU later were involved in the country since 1997 with diplomatic talks. Two observer missions were created in 2003 and 2006, one substituting the other: the Observer Mission in the Comoros ('OMIC') and Mission for Support to the Elections in Comoros ('AMISEC')[238]. In 2003 a new constitution made Comoros a federation of the major islands. OMIC was needed to monitor the first presidential elections of the federation that had to be made in 2004, and consisted of less than 40 military observers. AMISEC instead had a bigger number of military observers, 462, but had the same task as OMIC. Both elections were successful and were internationally recognised as free, leading to the first pacific changes of government in the country. However, more problems occurred with the 2007 elections for the presidents of the islands composing the federation; the Constitutional Court of the Comoros recognised the expiration of the mandate of the incumbent president of Anjouan, Mohamed Bacar, and demanded him to step aside[239]. Bacar was already responsible of creating tensions with the central government, demanding for autonomy and also coming to power through a *coup*[240].

Bacar refused to give up power and proclaimed the secession of Anjouan with himself as the president. This created a huge issue for the Comorian government, both for the vital economic importance of the island and for the fact that the army was already split in two parts, with one being composed of troops in Anjouan loyal to Bacar. The need to intervene in order to stop the paralysis of the Comorian government and avoid violations of human rights

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[235] KUMAR (2008: 124).
[236] COCODIA (2018: 80-81).
[237] *Ibid.*
[238] *Ibid.*
[239] PALIWAL (2010: 204-205).
[240] *Ibid.*

by the Bacar's tyranny against opposers urged a more resolute intervention of the AU. The PSC responded by establishing the AU Electoral and Security Assistance Mission to the Comoros ('MAES'). The mission, like all the previous observer missions in the country, had no authorisation from the UNSC and was totally established by the AU in autonomy, with coordination with the federal government. The mandate of the mission was quite short and failed to be significant in explaining the powers that MAES could have in stopping the secession of Anjouan. The only tasks assigned to MAES by the AUPSC, that was now already operative, consisted in (i) assisting the Comorian government in undertaking free elections for the islands' presidencies, (ii) assist the armed forces of the Comoros in creating a trouble-free environment, (iii) monitoring the electoral process, (iv) foster dialogue between the parties and (v) strengthening the capacities of the Comorian forces and facilitate the effective restoration of the authority of the central government in Anjouan[241]. The mandate was given by the PSC, which had the full authority in supervising the mission, that was based on an Article 4(j) request of intervention by a State of the Union.

As it is possible to see, the mandate leaves room for interpretation and a wide range of manoeuvres to force the Bacar regime to resign and dissolve. The mandate, however, did not expressly provide for enforcement action. As a matter of fact, in the early months after the establishment of the mission, few results were made to break the impasse. However, in March 2008 after that the sanctions against Anjouan had failed, a change of tactics occurred and the MAES was the main component of an invasion of the island, supported by the Comorian government. The so-called "Operation Democracy" was composed of around 1500 MAES troops: 750 from Tanzania, 600 from Sudan and 150 from Senegal[242]. In just one day, on March 25, the contingent freed the area and obliged Bacar to flee in Mayotte. The operation was successful despite causing only three casualties[243]. MAES continued operating with a more limited contingent until October, being employed mostly in the election monitoring tasks since the country was pacificated[244]. MAES is the only AU mission that was not succeeded by an UN mandated mission, and it was probably the best success[245]. The reasons for this will be now mentioned.

One of the first reasons why the mission constituted a success is the mandate. Also considering the missions preceding MAES, the role of the PSC in mandates drafting was quite different from the Burundian case; here, the mandates were usually far shorter and permitted the forces to act freely in order to comply with their tasks, like the possibility of invading Anjouan. The mandates were adapted every now and then, for instance when sanctions were imposed in October 2007 when Bacar decided not to comply with the commands of the AU. The mandate was also changed after the successful invasion, calling for the realisation of DDR actions in order to strengthen the Comorian national forces in comparison to the Anjouan militias, more widely increasing the capabilities of local forces to do the role that AU peacekeepers were conducting;[246] these operations are called Security Sector Reform ('SSR').

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[241] Communique of the African Union Peace and Security Council, 9 May 2007, PSC/MIN/Comm. 1 (LXXVII), *Communique of the 77th Meeting of the Peace and Security Council on the Situation in the Comoros*.
[242] COCODIA (2018: 86).
[243] *Ivi*, p. 84.
[244] *Ibid.*
[245] PALIWAL (2010: 206).
[246] COCODIA (2018: 85).

Another factor worth noting is the size of the coefficient. It has been noted by some scholars like Michael O'Hanlon that for a peace support operation to be effective, the size of the contingent should respect a ratio of one soldier for every 200 people living in the country[247]. The mission in Comoros was one of the few to respect such a requirement, making it capable of addressing the mandate, also due to both a small population in the Comoros (less than 300000 people) and the relatively small size of the country. Another important factor is the funding. The mission was provided with enough funding for its sustainment; other than the three TCCs, Morocco and Libya provided for the equipment necessary for the operations of Tanzania, Sudan and Senegal, while the EU and the UN contributed respectively to the post-conflict reconstruction, mostly elections, and for the DRR part of the mission[248]. This equal distribution of contributors for different dimensions of the mission was efficient and provided for having enough resources for every aspect of the operation. No other country contributed among the most developed ones, if we exclude the transfer of Senegalese troops offered by France[249]; this denotes a widespread indifference about the conflict in the extra-African area.

No lead-nation model was used in the Comoros, and no attritions existed between the troops contributing countries and the local government, giving the response that a heterogeneous force without a country having the clear majority of troops can operate in small-areas missions. This fact is the one that probably influenced the AU mission in the Comoros: size. As a matter of fact, the country where the AU troops had to operate was very small, and out of an enforcement operation where no strong resistance was found, there was no need for great effort from the troops, also because it was easy for them to control the populated areas and avoid tensions to escalate. This is manifested also from the small size of the funding, that by the way was enough for all the tasks required by the mandate. The local participation was good, and this was also epitomised by the support given to MAES by the people in Anjouan once Bacar was ousted[250].

The mission in the Comoros is a good example of how the AU can work efficiently when having local support and working independently and through their own decisions. However, this example is difficult to apply to other scenarios, mostly due to the different size of the opponent forces to be found, the increased area that peace operations have to cover and the bigger size of the finding necessary for the successful activity of an operation.

c) Mali

The crisis in Mali, started in early 2012, was the sum of many factors, also including the frail institutional and socio-economic environment that affects all the Saharan and Sahelian areas. The tensions existing in the north of the country since the independence from France erupted, with the complicity of external factors triggering turmoil in the country like the 2011 Libyan Civil War, that produced spillovers of weapons and refugees affecting not only Mali but also all the countries in proximity of Libya, like the turmoil in Burkina Faso and other countries confirms.

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[247] O'HANLON (2003: 32).
[248] COCODIA (2018: 86).
[249] *Ibid.*
[250] *Ivi*, p. 90.

In November 2011, a front of Tuareg nationalist, that constitute the majority and more influent ethnic group of Northern Mali, announced the secession of the North of the country and the creation of the National Movement for the Liberation of Azawad ('MNLA'), aiming at the creation of a Tuareg nation-State named Azawad. Such movement was very dangerous, since it could count on many mercenaries that have flown into Libya from its southern borders, bringing back home experience but also weapons, machinery and arms[251]. Moreover, the area is affected by drug cartels that exploit the drug trafficking that from sub-Saharan Africa flows to Libya and eventually to Europe; such illicit trafficking gave many economic capabilities to the drug lords of the region, that eventually converted in political influence and military power[252]. This resulted in such a movement, actually a cartel of warlords of the area, to start attacking and conquering many strategic areas in the north.

This situation triggered a *coup d'état* from the military against the incumbent government on March 22. The army was lamenting terrible conditions for those having to fight the insurgency, non-meritocratic practices and widespread nepotism inside the army's leadership and reliance on tribal militias reintegrated from the rebels instead of the regular army[253]. The *coup* overthrew the government of Amadou Toumami Toure one month before elections were held, where he would have ceded power[254]. This brought widespread condemnation in the African and international arena and produced consequences. ECOWAS sanctioned Mali by suspending it from the Organisation and commanded the deployment of the ECOWAS Standby Force, whose operation was to be called MICEMA, having the role of maintaining order and defending Malian institutions; as a matter of fact, ECOWAS also did diplomatic efforts to create a transitional government that later became a national unity government in August 2013. MICEMA was to defend this institutional framework[255].

However, the operation was never effective for a sum of factors. The most relevant was the lack of support to MICEMA from non-ECOWAS States that were still affected by the crisis in Mali, namely Algeria and Mauritania. These actors were affected by the parallel presence of the Islamic Group AQIM (Al-Qaeda in the Islamic Maghreb), an extremist group that was very influential in the area and that put pressure to all the Saharan and Sahelian countries, Mali included[256]. Moreover, MICEMA was highly underfunded and international support for its deployment never reached acceptable levels; this caused the ECOWAS Standby Force to deploy with delay and actually never becoming involved in operations[257]. An active role from the AU was necessary, in order to overcome all these tensions that went beyond the sub-regional area where ECOWAS operates.

The AUPSC, that had already suspended Mali from the Union since June 2012 started developing a new operation to be deployed under its aegis. The AU started mediating with the ECOWAS and the other involved countries, but many tensions arose and a relative reluctance of the West-African organisation to cede leadership was evident[258]. The AU needed support from

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[251] *Ivi*, p.126.
[252] *Ibid.*
[253] THÉROUX-BÉNONI (2014: 151).
[254] COCODIA (2018: 127).
[255] THÉROUX-BÉNONI (2014: 152-153).
[256] *Ibid.*
[257] *Ibid.*
[258] *Ivi*, pp. 154-155.

the UNSC, that on some occasions mediated in order to make all the stakeholders of the conflict come to the same table and hat under the same multinational force. Eventually, in December 2012 the UNSC with Resolution 2085 authorised the joint mission. The AU was highly affected by tensions, and was also incapable of drawing more contributions to the mission compared to MICEMA.

However, the new mission, called African Union-led International Support Mission to Mali ('AFISMA'), was to obtain more cooperation with the Malian national government that came into power in August, linking the local level with the sub-regional and the continental ones. AFISMA's mandate was one under Chapter VII of the UN Charter, and Article 4(j) of the AU Constitutive Act. The mandate consisted in (i) contributing to rebuilding the capabilities of the Malian army, (ii) aiding the Malian army to reconquer the territory lost in the north, (iii) ensuring stability for the Malian institutions, (iv) supporting the responsibility of the Malian State to protect its own population, (v) aiding the Malian government in giving humanitarian assistance IDP and refugees and (vi) protecting the mission's facilities and ensuring protection of its personnel[259]. The deployment was further accelerated by the several losses of territory that the Malian government was facing. This obliged Mali to ask the support of France, that responded affirmatively creating the so-called Operation Serval, whose role was to destroy the military capabilities of the northern insurgents and regain the territory lost[260].

Therefore, AFISMA was to support the French forces, in coordination with the Army of Chad, and had mostly the role of keeping the reconquered areas while the French troops were attacking new objectives and stabilising them. To do so, AFISMA counted on a contingent mostly drawn from the ECOWAS Standby Force, and this created the main point of discord between the two, with both claiming full control of the troops and often being mediated by the UN. The UN made possible the creation, in February 2013, of a Joint Concept of Operations ('CONOPs'), that produced the guidelines for the mutual coexistence of Malian forces, ECOWAS and the AU[261]. The situation seemed still confused, and AFISMA did not seem a strong counterpart to the French forces, even though the UN contributed heavily to reducing the influence of ECOWAS into decision making. The contribution of troops came mostly from ECOWAS TCCs and Chad; the initial number was of around 3000 troops, but with the February 2013 CONOPs this number was increased to 9620 troops, from 21 countries[262].

With Resolution 2100, it was decided to re-hat into a UN mandated mission, that was to be called MINUSMA. MINUSMA initially counted heavily to the AFISMA contingent, but that still was increased with extra forces also from outside Africa. The operation was successful in continuing the work of AFISMA in stabilisation, which was quite good, and concluded the relinquishment of the northern territory and to the institutional stabilisation of the country, with the August 2013 election that were considered free and smooth. Still, the African Union was upset with this taking of responsibility from the UN, since it had the opinion of not being consulted in the roadmap to MINUSMA and not having been recognised as main actor in the settlement of strictly African issues, going against the principles of Chapter

[259] Resolution of the United Nations Security Council, 20 December 2012, S/RES/2085 (2012), para 9.
[260] COCODIA (2018: 129).
[261] NKRUMAH and VILJOEN (2013).
[262] COCODIA (2018: 129).

VIII; however, the AU still contributed with loyalty to the success of MINUSMA[263].

Despite the final disenchantment with the UN, the AFISMA case was important since the UN in many cases acted in order to settle the subsidiary principle that was theorised previously by the AU but never came to reality[264]. The UN is convinced of the importance of the creation of a hierarchical structure for the management of African peace and security, with the Mali situation being a clear example. MICEMA was important to create diplomatic bonds and deploy an early force on the ground that would guide the following ones, AFISMA was important in stabilising the regained territory and mediate with local and international actors, and finally MINUSMA was effective in drawing increased funding, international support and completing the stabilisation and institutional roadmap. The UN set the precedent, from MICEMA, that it would not authorise anymore a REC's intervention without having the prior approval of the AU; this came after the initial paralysis of MICEMA that had reflection also to AFISMA[265].

The mandate of the mission was again an effective one, leaving to the AFISMA forces the full power of addressing the many threats that the terrorist and insurgents forces were posing. Moreover, the mandate had to involve enforcement actions also for the need to support the French troops that were employed in similar actions. In a certain sense, France can be considered as the lead-nation of the operation, being in charge of the more intense fighting operations and leaving to AFISMA the role of supporter. This, however, leaves doubt on the capabilities that the African-led operation would have had without the presence of French forces. However, if we consider the contingent size, the AFISMA forces would respect the O'Hanlon 1:200 requirement for peace operations, considering the low population density of Northern Mali.

Among the negative points, it must be noted the chronic deficiency of African-led operations in drawing fundings, that again were insufficient, and if compared with the many fundings that the UN funded mission MINUSMA had, reflects the inability of the AU to fund its own operations when the UN is unwilling or slow in creating funding frameworks and peace funds[266]; however, an improvement from previous mission still occurred, with ECOWAS and the AU contributing with 10 and 50 million dollars respectively and raising around 500 million dollars in the Addis Ababa conference[267]. This was only half of the necessary budget, but still denotes an improvement on the ability to attract funds. Nevertheless, it is difficult to say how much of the effort was directly relative to the AFISMA efforts[268]. Second, the Malian experience reflects the problems that the African Standby Force has in deploying rapidly, and this is exacerbated by the tensions existing between AU and RECs in the management of this force. It comes without surprise that it was the Malian case to convince the AU to adopt the ACIRC as an intermediate framework before the establishment of a fully operational ASF[269].

To come up with a conclusion, AFISMA can be considered a quasi-successful operation. The situation in Mali was improved after its

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[263] THÉROUX-BÉNONI (2014: 157-160).
[264] NDIAYE (2016: 59).
[265] DE CONING *et al.* (2016: 139-140)
[266] LÖTZE (2016: 82).
[267] COCODIA (2018: 131-132).
[268] *Ibid.*
[269] THÉROUX-BÉNONI (2014: 162-164).

conclusion, the objective set by the mandate were obtained and no big issues were created by its deployment. However, the operation was too dependent on other actors, and it is difficult to say how much Mali was stabilised by AFISMA alone, given the intervention of French troops that was decisive on the military side and the presence of MINUSMA to take the majority of the effort in post-war reconstruction and institution building. MINUSMA was very effective in this sense, but stability in the country did not last so much: this may be an indicator for the need to increase the role of the AU in post-conflict operations.

2.1.2 Failed interventions: Darfur and C.A.R

In the previous section it was possible to analyse the main peace interventions of the AU that constituted an improvement of the situation as it was found at the time of their deployment. In this vein, it is also necessary to see the interventions that have been made but that have produced insufficient result or no results, due to a sum of factors that will be mentioned. All the positive and negative factors that have occurred on a recurrent basis are going to be analysed in a separate section; as it will be evident, the factors that influence the result of an intervention are often the same. In this section the intervention of the AU in Darfur and the Central African Republic will be part of the discussion. This section will not analyse the intervention of the AU in Somalia (AMISOM), since it will be part of the third chapter and may be a case study useful to confirm the conclusion found in the first two chapters.

As in the case of successful interventions, the two missions will be divided into separate paragraphs.

a) Darfur

Darfur is a region of the size of Spain in the west of Sudan. It has long been characterised by very low socio-economic conditions and standard of living. It is one of the frailest areas of the world, because in Darfur the lack of resources brought also by environmental crises is accompanied by ethnic and tribal tensions between the Darfuris ethnic groups and with the Arab groups that control power in the capital Khartoum. To an ethnic discrimination of the African ethnic groups we must add the destabilisation of the neighbouring countries, that sees the presence of high tensions in Chad and Libya, that still have been guilty of fomenting the unrest in the country for internal gains. After years of dissatisfaction with the Arab leadership, in 2003 two fronts arose, the Sudan Liberation Army ('SLA') and the Justice and Equality Movement ('JEM'). These factions represent the Africans Darfuri, both Christian and Muslim. The two groups were responsible for trying to draw attention on the Darfur socio-economic conditions through armed attacks all over Darfur, that brought to an armed reaction by the central government, that before has only been blind to these groups' necessities and to the discrimination against them[270].

The government led by the dictator Omar al-Bashir responded harshly, with air strikes and most importantly funding Arab militias that became known as Janjaweed (armed men with horses). These militias became sadly responsible for hundreds of indiscriminate killings of civilians among the

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[270] COCODIA (2018: 152-153).

local population, along with violations of human rights that caused hundreds of thousands of refugees, mostly in neighbouring Chad[271].

The violations of human rights occurring in Darfur had high resonance in the public opinion, and urged a response from the UN and African institutions. However, it was difficult in the post Iraq and Afghanistan wars to imagine a probably western-led intervention in an Arab country without the consent of the host State[272]. This caused the need to deploy a mission with the consent of a host-State that had no will to come to compromise with the opposition. A ceasefire was agreed in April 2004 between the Sudanese government and the two African fronts, but it was violated on many occasions. It is in this scenario that the African Union Mission in Sudan ('AMIS') was deployed.

AMIS was established first as a military-observers group in June 2004 and later was authorised by the 17th session of the AUPSC as a peacekeeping mission having the role of monitoring the ceasefire signed in April[273]. This mandate, that precluded AMIS from entering into enforcement operations and the limited size of the military contingent, just 2300 troops[274], were since day one a source of weakness. The contingent was increased to 7000 in late 2006, but its only role was to be the last shield between the civilian population and perpetrators of genocide and HR violations[275]. As a matter of fact, the Janjaweed attacked AMIS several times, strong of a tenfold army size, and caused 32 killings and many abductions, kidnappings and attacks to AMIS camps with widespread stealing of arms[276]. The weakness of the mandate was due to the reluctance of the Sudanese government to accept a UN mission and the relative reluctance of African leaders to go beyond peacekeeping with an enforcement action that could find the negative reaction of many international actors supporting Sudan, like China. This forced AMIS to operate in an environment where it could do nothing useful, where the lack of troops was accompanied by a widespread lack of arms and sustainment, and where even troops were highly unmotivated and overwhelmed by the situation. Many cases of troops selling AMIS weapons to rebels were recorded, denoting the lack of integrity of the contingent[277].

After three years where no substantial change was reached, and where the ceasefire was only a dead letter, pressures on the Sudanese regime to accept a multilateral force that could better address the situation increased more and more. In the end, due to the Chinese request to the Khartoum government to accept the deployment of an UN mission, talks to find a compromise between the operational needs and the impossibility to go beyond host-State consent led to the creation of the AU/UN Hybrid operation in Darfur ('UNAMID'), authorised by UNSC Resolution 1769[278]. The UN had already created a mission in Sudan that was parallel to the deployment of AMIS, called UNAMIS, having the same peacekeeping mandate, and then converted into the UNMIS mission, with a Chapter VII mandate but that could only serve as a recipient for the future joint mission; the establishment of UNAMID constituted the merger of such UN efforts with AMIS[279]. The reason for the inability of UNMIS to solve the situation was that its actions

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[271] *Ibid.*
[272] Lanz (2014: 192-193).
[273] Paliwal (2010: 199).
[274] *Ibid.*
[275] Lanz (2014: 194).
[276] Cocodia (2018: 154).
[277] *Ivi*, p. 155.
[278] Lanz (2014: 195-198).
[279] Paliwal (2010: 199).

needed the approval of the Sudanese government, that left this mission paralysed.

UNAMID constitutes the first hybrid mission conducted through the joint effort of the AU and the UN. It was authorised by two different but simultaneous documents, the said Resolution 1769 and the Communique of the 79th Meeting of the African Union Peace and Security Council of 22 June 2007[280]. UNAMID mandate was theorised through the joint report of the Secretary-General and the Chairperson of the African Union Commission of the 5th of June 2007, where a gargantuan list of objectives and goals was proposed, that were summarised in eight broad areas: (i) to contribute to the restoration of security conditions for the safe humanitarian assistance throughout Darfur, (ii) to contribute to the protection of civilian populations under imminent threat of physical violence and prevent attacks against civilians, (iii) to monitor, observe compliance with and verify the implementation of various ceasefire agreements signed since 2004, (iv) to assist the political process in order to ensure that it is inclusive and to support the African Union-United Nations joint mediation to broaden and deepen commitment to the peace process; (v) to contribute to a secure environment for economic reconstruction and development, as well as the sustainable return of internally displaced persons and refugees to their homes; (vi) to contribute to the promotion of respect for and protection of human rights in Darfur; (vii) to assist in the promotion of the rule of law in Darfur, (viii) To monitor and report on the security situation at the Sudan's borders with Chad and the Central African Republic[281]. These objectives were confirmed by the Resolution 1769 of 31 July 2007.

It appears evident that to fulfil this mandate, UNAMID was to be given increased capabilities and troops. For this reason, the proposed size of the contingent was increased to 19555 military personnel, 360 military observers and up to 6000 police forces[282]. However, such numbers were never reached, and the mission faced difficulties in deployment since the day one, with UNAMID having to count only on the former AMIS troops for the first years of operations[283]. The maximum troops number that was reached was 15000. At the time of writing, UNAMID mandate has been concluded in 2020 but already since 2015 its contingent size was reduced progressively, noting a widespread impossibility to cope with the wide mandate without the support of the Sudanese government[284]. The causes of this will be followingly explained.

UNAMID was given a unity of command and control, without a hierarchy between the UN and the AU[285]. Thus, the two would cooperate in order to decide the main direction that the UNAMID troops would take. The contingent was formed by troops of mostly African TCCs, mostly the same contributing to AMIS, and some other Asian countries like Pakistan, Nepal or Jordan among the others[286]. The unwillingness of developed countries to contribute with their personnel is evident, also considering the civilian contingent that was mostly reflecting the same contributors of the military one.

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[280] GRENFELL (2016 : 66).

[281] Letter from the Secretary General of the United Nations, 5 June 2007, S/2007/307/Rev.1, *Report of the Secretary-General and the Chairperson of the African Union Commission on the hybrid operation in Darfur*.

[282] Resolution of the United Nations Security Council, 31 July 2007, S/RES/1769 (2007), para 2.

[283] COCODIA (2018: 156).

[284] *Ivi*, p. 157.

[285] Resolution 1769, para 7.

[286] COCODIA (2018: 160-161).

Although the Resolution 1769 gives the idea of a chain of command that would be drawn from mutual agreement of the UN and AU, the reality on the ground was different and many tensions have occurred. The resolution already provides that "command and control structures and backstopping will be provided by the United Nations", giving the idea that the ultimate authority remains in the hands of the UN. Moreover, to look at all the nuances of an operation, it is important to analyse the Status of Forces Agreement ('SOFA'); every peace operation sees the production of such a document, that defines the division of competences and what is possible to do and what is not. The signatories of such documents are the host State and the IO undertaking the operation. UNAMID's SOFA is very interesting, since it gives an idea of the normative shortcomings of the mission. First of all, in the agreement it is specified that UNAMID is an UN subsidiary organ, that all of its members are to be intended as UN officials and that claims by third parties are to be taken by the UN, trying to also direct the issues on responsibility for wrongdoings[287]; such indications curtail the equality with the AU. The SOFA further expresses that UNAMID forces in many cases were depending on the Khartoum government, to which authorisation was to be demanded in many situations[288]. This is a paradoxical thing, since most of the violence in Darfur was created by militias directly financed by the Khartoum government that has been reluctant to cooperate against them.

The AU and the UN thus tried to mutually legitimise themselves through UNAMID, but none of them could do anything to overcome the opposition of the Sudanese government. The UNSC could not go beyond vetoes from some permanent members like China and the unwillingness to employ in a widespread enforcement mission by western States, and neither had the support of the government for independent deployment, so by tailoring the operation to the AU but still keeping its control it could legitimise its active role in the Darfur crisis. The AU, from its side, through UNAMID made possible the first mission where the UN was almost on a partnering relationship with a regional organisation, keeping the role of mediator between the UN and the Al-Bashir government and being recognised as a fundamental actor in the solution of African problems[289]. However, the AU was disenchanted by many situations, like not being informed of many decisions on the political agenda and over the fact of drawing troops from outside Africa, despite its requirement to have a mostly African contingent that would be better legitimised by the local population[290].

For what concerns the funding of the mission, different ways of providing funding applied to AMIS and UNAMID. AMIS was funded by NATO, EU and UN contributions, but contributions always remained at an insufficient level, since the mission was characterised by weak strategic and operational management planning, bad intelligence and logistical support and total dependence on direct external contributions[291]. However, even more funding on equipment may not have served as a solution considering the little room for autonomous intervention of AMIS and the relatively small size of the contingent. On the other hand, UNAMID received four times the funding of AMIS[292]; even though this seems a huge increase, it must be recalled that UNAMID had a much wider troop contingent and a bigger civilian

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[287] Agreement between the United Nations and the African Union and the Government of Sudan concerning the Status of the African Union/United Nations Hybrid Operation in Darfur, Khartoum, 9 February 2008.
[288] *Ivi*, Art. 47-49
[289] SPANDLER (2020: 195-197).
[290] *Ibid.*
[291] COLEMAN (2011: 523-524).
[292] LÖTZE (2016: 83).

component. For this reason, even for UNAMID the funding was not enough, and widespread lack of aircrafts and vehicles impeded the patrolling of areas to prevent attacks on the civilian population; the police forces were the most underfunded, even though in normal cases they constitute a fundamental action in the control of the population and the management of stabilisation activities[293].

For these reasons, the stabilisation size of the mission was very poor, and this adds to a lack of developmental contribution to the region for the unsettled security issues and to a difficulty to undertake humanitarian assistance due to the impossibility to target attacks on civilians. This created distrust over UNAMID on the civilian population, which even increased in the areas where non-African contingents were stationed. The budget for the first years of mission was decided to be 2.5 billion USD, but it never reached more than 1.6 billion[294]; the mission had to provide a new model of funding, that will be discussed in the funding section, with three different packages, but in reality it counted on the UN budget for the mission that was raised in similar ways to the Amis mission: a model that is called direct donor support model[295]. The main western contributors understood the shortcomings of the mandate and the impossibility of UNAMID to respond effectively to its tasks, and then reduced their contributions.

It has already been said that the mandate was too large for the capabilities of the UNAMID forces; also, the rules of engagement did not permit a stronger dynamism of the contingents. This denotes the impossibility of having a successful mission when the host-State does not want it to work effectively, and where international resoluteness to overcome such obstructionism is absent. As an evaluation of the mission, we have considered mandate and funding as the most relevant issues that can be addressed to the AU peace operations mechanism. Other considerations may be done about the unwillingness of locals to participate actively in supporting a real peace agreement, or the relatively lack of integrity of the contingent due to the many TCCs present. However, the two issues of mandates and funding are the most relevant and are also those that recur more in other AU missions.

In the end, AMIS and UNAMID stayed in Sudan for a total time span of 16 years. The conditions of their troops and the environment where they had to operate were critical from the beginning. Few positive considerations of UNAMID may be found, and they are the fact that the missions still contributed to saving human lives and that it served as an experiment for a joint participation of the UN and a regional organisation in a peace mission; such effort may be seen as a failed one, and no other hybrid mission was done after UNAMID. Peace interventions in Darfur denote the difficulty of acting in a country where the host government does not want an intervention, where the local population does not trust foreign intrusion and where the global powers are not interested in solving the situation: in brief, a perfect mix for failure.

b) Central African Republic

The Central African Republic ('CAR') is one of the poorest and most turbulent countries in the world. In the last 20-25 years it has seen a multitude of security crises, *coups* and security interventions by foreign

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[293] Cocodia (2018: 160).
[294] Aning and Abdallah (2012: 38-39).
[295] Gelot *et al.* (2012b: 94-95).

forces. Since the 2000's, the clash for power between the two former presidents Ange-Félix Patasse and François Bozizé split the country in two. The two forces came to an agreement in 2008 with Patasse loyalists signing a peace agreement with Bozizé incumbent government. However, the widespread division that continued in the country, the lack of opportunities and the incapability of Bozizé to respect the terms of the agreement giving more power and jobs to the former opponents ultimately led to the creation, in 2012, of a rebel group in the Muslim north-east of the country, named Séléka and led by Michel Djotodia. The group was composed mostly by Muslims, but also mercenaries from abroad and disaffected Christians seeking a job opportunity joining the rebels[296]. Djotodia finally overthrew the Bozizé government and came to power in March 2013.

The change of power was immediately sanctioned by the AU that also put sanctions on the members of Séléka. This led to the formal dissolution of this coalition, which was composed of many different armed groups. However this did not stop their militants, who were responsible for abuses against the civilian population, loyalists of the former regime and mounting violence in the country. This group was not a purely Islamist group, but being composed of a majority of Muslims in a country where Christians make the vast majority of the population, made the conflict be seen as a clash of religions. This idea was increased by the fact that some observers noted that the Muslims were often spared by violence, even though this does not constitute a total truth[297].

Impunity of this faction led to a quick reaction of the Central African social groups. A new faction of Bozizé loyalists emerged, named Anti-Balaka. This group started a confrontation with the Séléka former component, conducting the country to another violent conflict. Violence between the two groups erupted in a perception of a conflict between Muslims and Christians, even though this is a simplification due to the composition of the groups and their leadership. Nevertheless, this view started to be accepted by the CAR population that started polarising along these two factions and even joining armed violence[298].

The need for an international response to solve this situation of conflict, affecting the civilian population, led to an initial response by some RECs of the Central African region. These peacekeeping efforts began before this clash, and were created after the Patasse-Bozizé struggle for power in the early 2000's. The first one, FOMUC, deployed in 2002 by the Central African Economic and Monetary Community ('CEMAC') with a peacekeeping mandate, was replaced in 2008 by MICOPAX, a mission under the aegis of ECCAS, another REC that CAR had joined and that has more responsibilities into peace and security protection. MICOPAX however was highly underfunded, since it only relied on the contributions by the European Union's Africa Peace Facility[299], a fund for African peace operations that will be discussed later on. This mission, even though it counted on one of the five Standby Forces of the APSA, was unable to stop the rise of Séléka through violent means and the eruption of violence in the continent, also due to a mandate that curtailed any possibility of enforcement

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[296] COCODIA (2018: 178-179).
[297] *Ivi*, p. 179.
[298] *Ibid.*
[299] MEYER (2015: 10-11).

and a contingent that could count only on 700 troops[300], that were increased in late 2012 before the transition of the mission.

The African Union had to step in in order to solve the many deficiencies of the ECCAS mission. On 18 July 2013, the AUPSC authorised the deployment of the African-led International Support Mission in the Central African Republic ('MISCA'), on the basis of Article 4(j) of the AU Constitutive Act. The mission was authorised by the UNSC through Resolution 2127 under Chapter VII, where it would have supported a further contingent of 2000 French troops under Operation Sangaris. MISCA could early deploy 3600, also thanks to the integration of the MICOPAX contingent into the mission. The mission was given a mandate of one year, after which the UN would have taken over.

MISCA was mandated to undertake five main tasks: (i) the protection of civilians and the restoration of security; (ii) the stabilisation the country and the restoration of State authority over the territory of the country; (iii) the creation of favourable conditions for humanitarian assistance to populations in need; (iv) disarmament, demobilisation and reintegration ('DDR') or disarmament, demobilisation, repatriation, reintegration and resettlement ('DDRRR') process led by the national government; (v) efforts to reform and restructure the defence and security sectors of the country[301].

By January 2014 MISCA had a force of 4600 troops, with ECCAS countries as main contributors, like Cameroon, Chad, Republic of Congo and Gabon, plus additional troops from Burundi and Rwanda. The deployment of the mission led to the resignation of Djotodia and the creation of a transitional government led by a woman, Catherine Samba-Panza. From this moment onwards, MISCA concentrated in addressing the menace of former Séléka troops in the north-east, but this led to a retaliation of the Anti-Balaka to the Muslim population, mostly in the capital city Bangui[302]. This widespread violation of human rights could not be stopped by the transitional government; moreover, suspicion and division arose between the TCCs. The French troops were accused by the Rwandan contingent of being complicit of crimes against the Muslim minority by the Anti-Balaka. The Chadian contingent was accused of supporting the Séléka group, and also accused of indiscriminate killing of Christian civilians; this led to their withdrawal[303].

MISCA was operating in difficult conditions. The mandate was intended to protect civilians, but the main issue with the mission was that most of the violence was conducted by civilians themselves, and they were totally unwilling to cease armed confrontation[304]. This led to the transition of MISCA to the UN mission MINUSCA in September 2014, which was already planned. Despite the peace enforcement character of the mandate and the relatively big room for manoeuvre given to the contingent, the situation on the ground was an unconventional one; therefore, it was difficult to address such new conflicts where most of the violence is perpetrated by civilians that turn into violent groups. This denotes mostly an obsolescence of the UN in addressing new threats, and situations where the most dangerous faction is not following the usual characteristics of armed groups.

For what concerns the funding, MISCA was financed both by bilateral contributions and through the creation of a trust fund. Among the main

[300] *Ibid.*
[301] Resolution of the United Nations Security Council, 5 December 2013, S/RES/2127 (2013), para 28.
[302] COCODIA (2018: 181-182).
[303] *Ibid.*
[304] *Ivi*, p. 183.

contributors, we can see the US and the EU contributing with almost 125 million USD[305]. However the mission was still underfunded, mostly for what concerns contingents in rural regions that lacked equipment and machinery to operate in wide areas. To this, we should add the lack of integrity in the MISCA contingent, which still saw a great number of rivalries and suspicions among different countries that had opposite interests in CAR. The size of the contingent was also small, compared to the almost 5 million people living in CAR and the fact that a lot of the population was undertaking violent action, adding to the regular militias existing since 2013 and also before. The most complicated task was to address these armed civilians, since the MISCA forces were quite effective in tackling the former Séléka group.

In the end, MISCA denotes the impossibility of the interveners to bring peace to a country that does not want to be in peace, where the ethnic groups are conflicting, and a stabilisation is lacking for many years. Such premises give many challenges to an international organisation that has been always underfunded for its operations and where political divisions among the stakeholders of the interventions add problems to an already complicated scenario.

2.2 OVERVIEW OF THE MAIN RESULTS OF THE AU INVOLVEMENTS

In the last section an overview of the main peace operations conducted under the responsibility of the African Union has been given. The shortcomings of the operations are evident already when talking about them in historical terms, but these negative aspects need to be better addressed separately. Before starting to deal with these issues, it is important to give an assessment on the results that these operations have reached. The previous section already provided a division of the interventions based on their success or failure, but such evaluation has been provided only on a short-term basis. However, it is important also to see how the countries have changed after the operations and which obstacles were found in subsequent operations. For this reason, this section will enquiry three different dimensions related to results assessment.

First, the initial section will discuss the impact of the interventions on the security of the countries. To do such work, the use of empirical data is possible, in order to show differences in casualties and violent events. This analysis will continue also for the years after the intervention ends, and will be mostly relevant for those places where the AU mission could not stop violence.

Secondly, the attention will switch to the political and stabilisation results that the operations have accomplished. This will pass through an analysis of the stability of the countries that were affected by interventions. The stability and pacific alternance of governments will be considered, along with the occurrence of new conflicts and insurgencies.

Third, the last section is going to discuss mostly how the interventions have respected the exit strategies that have been given at the time of inception of their mandates and how they have coped with the tasks they were given from the operational point of view. This will be a brief part since most has been said before, but it will still be important in order to understand the ability of

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[305] LÖTZE (2016: 82).

the AU and its partners to respect the planned objectives of their interventions.

2.2.1 Security assessment before and after interventions

The following section will describe from a mostly empirical point of view how much the security conditions of the countries affected by an AU peace support mission have been changed, being for the good or for the bad. In order to come up with conclusions about the security assessment of a specific country before and after interventions, it may be useful to use a database that collects all the casualties and events related to the armed conflicts that are present in a given country. For this purpose, in this section we are going to use the Uppsala Conflict Data Program ('UCDP'), an online database produced by the Department of Peace and Conflict Research of the Uppsala University. It is important to say that the said database has the positive element of differentiating between different kinds of armed conflict, being them conducted between States' and non-State's actors or as a result of one-sided violence against the civilian population.

Each of the five countries that have been mentioned before will be analysed in light of the UCDP data, to find a trend in the conflicts occurring in their territories. To this work, it will be important to add historical elements in order to give a causal explanation to changes in the volume of casualties and conflicts.

The first case to be analysed is Burundi. This central African country has experienced ethnic conflicts for all the second part of the XX century, and this is evident by a look at data of conflict related deaths for the 1990-2000 period. In such a period, more than 14000 people died because of ethnic conflicts, and most of these were civilians (more than 8000). The Arusha Accords did not curtail the number of deaths, but only changed their composition: the majority of people dying was now State-related victims or rebels, and not anymore civilians. The period between 2000 and 2003 saw more than 6000 casualties, and this may be seen as a confirmation of the need of the AU to respond to the security crisis and defend the fragile peace agreement between most of the parties.

Recalling that the AMIB mission lasted only one year and that it was succeeded by the UN mission ONUB, that eventually led to the 2005 elections, it appears evident by data that the mission was successful for fostering the pacific transition of the country. The 2003-2005 period sees a slight reduction of casualties, from 1200 in 2003 to 600 in 2004 and eventually to 200 in 2005. The election of Pierre Nkurunziza in 2005 and inclusive ethnic power sharing ensured a slight reduction of conflicts and deadly events that had almost unnoticeable levels in the years before 2015. In 2015 the decision of Nkurunziza to run for a third and unconstitutional mandate led to a re-emergence of protests, instability and deaths that are however incomparable with the pre-2005 data[306]. The year of highest lethality was 2015 with 264 deaths, mostly because of retaliation of the Nkurunziza regime on civilians and opposers. Nkurunziza in the end left power voluntarily, and this denotes a different political situation in the country, yet not totally stabilised but with a far better environment that with certainly can be attributed to the initial effort of AMIB and the role of mediation and diplomacy of the UN missions that succeeded the AU effort

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[306] *Ibid.*

and also a positive relationship of the Burundian government with the AU, as it will be noticed in the chapter related to AMISOM.

The second case to consider is the Comoros. It is important to recall that the Comoros, since the 2008 invasion of Anjouan have not experienced any conflict related deaths, and this gives a positive consideration of the AU effort. The secessionist impulses existing in the country have been relegated to an unharmful level and this is reflected by the lack of deaths and violent events in the years after 2008. This gives further confirmation to the positive diplomatic and stabilisation work done after the Comoros intervention.

A totally different case is represented by Mali. Since the crises occurring in 2012 Mali has seen a rapid growth of conflict related deaths in the years 2012 and 2013. In these periods we can see the coexistence of clashes between the AFISMA and then MINUSMA troops, supported by the French troops, with a surge in conflicts and deaths between non-State actors like rebel groups mostly in the north of the country. The presence of Islamic terrorist groups fighting with the local population also created cases of one-sided violence against civilians, that however was limited compared to the first category. After 2013, a short period of low violence occurred, but it quickly ended from 2016. However, this increase in violence, still on the less controlled areas of the north, is more related to an increasing action of terrorist groups related to al-Qaeda and the Islamic State; even though these actors had a role in the 2012-2013 crisis, they were not the principal opponent to the Mali government and the international peace support contingents. This new wave of violence brought an even more dangerous toss of deaths. If we compare the peak of 800 conflict related deaths in 2013 with the period 2017-2021, where each year more than 1200 casualties occurred, we can see that the security of the country recently is at a far lower level. To this it must be added the composition of the conflict related deaths, that shows an increase in the said period of the deaths that are not related to the State activity and also of violence on civilians. This shows that Mali, that before 2012 had a quite safe environment despite the fragile institutional framework, has not managed to solve the security problems after 2013 and has been unable to control the increase in violence, notwithstanding the continuation of the mandate of MINUSMA up to the present day.

To evaluate the security assessment of AFISMA one must also consider the activity of MINUSMA. Both were successful in ensuring the end of the secessionist claims in the country, but following 2013 to a temporary perception of stabilisation did not follow a true pacification, and the country was hit hard by the emergence of terrorist groups that where even more dangerous than before. To this the reflections of insecurity on the institutional framework should also be added, as it will be done in the following section. What is possible to do only relying on data is stating that the interventions in Mali where good in the pure peace enforcement character, and it is noted by the ability in overcoming the direct challenges that were present at that time; however, the stabilisation and the post-conflict reconstruction were insufficient, and this is reflected by the restart of violence at an increased degree and with more complex actors as source of violence, denoting the inability of the country of facing such challenges.

The analysis of data for Sudan and the Central African Republic give further confirmation to the claim that both international efforts were failures. For what concerns Sudan and Darfur in particular the analysis of empirical data shows a country where the security has never reached acceptable levels. Darfur has been in the last 30 years the region of Sudan where the vast

majority of violent deaths have occurred. Data show that in Sudan the coexistence of the conflict in Darfur and the civil war in the south of the country eventually led to a level of deaths between 3000 and 5000 in the early years of the 2000's. The peak of 9700 deaths in 2004, of which more than half were civilian deaths, coincides with the establishment of the AMIS mission. From this moment, the number of deaths has remained constant until 2017 with an average of 2000 violent deaths per year. What is important to say is that the number of deaths in the civilian population has decreased in the share of total deaths, making it a positive indicator in the assessment of AMIS and mostly UNAMID action. However Sudan has been left in instability, and violence continued over Darfur up to the present day with the emergence and merger of different armed groups that continued fighting between them and with the government, due to the unsolved ethnic, economic and resource-control issues. This gives back a scenario where the international presence provided basic defence to the civilian population but could not do much in ensuring a peaceful coexistence of all the armed groups in the country, mostly considering the uncooperativeness of the Sudanese government.

The period from 2017 up to the present day, that saw a normalisation of relations of Sudan with other countries like the US and the eventual *coup* against Al Bashir, coincided with a smaller level of casualties, but still a high level of instability that will be dealt with in the next section.

The last subject of analysis of this section is the Central African Republic. CAR had already been tormented with instability and violence since the beginning of the XXI century, but the violence that started from the 2012 civil war and ousting of Bozizé is unprecedented. Only in 2012 more than 3000 violent deaths occurred, and most of them were among the civilian population. The share of deaths as a product of one-sided violence against civilians is more than 60%, since 7500 over 12000 deaths in the 2012-2021 period were civilians. This gives an indicator of the difficulties of the conflict in the CAR since most of the casualties were civilians that in many cases were victims of violence by other militarised civilians. It must also be noted that the peaks in violence coincide with the periods of institutional turmoil and clash for power, while the periods with lower deaths were those coinciding with new governments or institutional changes. The period 2015-2016, coinciding with the pre-election phase and the subsequent elections bringing to power Faustin-Archange Touadéra is the one with less violent events, and this also led to the end of the French Operation Sangaris; on the other end, in 2021 an increase of the number of deaths can be seen in relation with the Bozizé claim to return into power against the will of the CAR Constitutional Court, leading to the increasing activity of the armed factions loyal to him. It is also possible to see that the MISCA and MINUSCA involvement did not constitute a variant to the security assessment of the country, that in the end fell in spirals of violence just because of internal factors; the restart of violence in 2017 may be an example, that probably is related to the end of Operation Sangaris.

As last evaluation, the conflict in the CAR shows the total impossibility of the international efforts to respond to the security crises. This is also confirmed by data, and the high number of civilian fatalities is an indicator of the complexity of the conflict in the country.

Through the analysis of data, it is evident that the missions, when successful, had a direct impact on the level of violent deaths and events. On the other hand, a mission that is deemed unsuccessful by analysts and scholars also

shows its failure in creating peace and security if we look at empirical evidence. This section provides a direct relationship between the success of a peace intervention and the number of violent deaths in a country; in successful missions like Burundi or the Comoros, the success of the missions is also evident in the trends of violent deaths. The same can be said in the case of Mali, here considered as a quasi-successful mission. On the other hand, unsuccessful missions result in uneven trends that depend mostly on internal dynamics, like in the case of Darfur and even more of the CAR. Here, even if usually the missions stop the peaks of violence, they are still unable neither to decrease the number of deaths to a quasi-normal level nor to show a direct relationship between its activity and the changes in fluctuations.

The analysis of the stabilisation of the countries will be briefly provided in the next section.

2.2.2 Stabilisation effectiveness and political results

After having discussed the issue of security in the countries that have experienced in their territory an intervention by the AU, now the focus will shift on how the stabilisation has proven effective in these countries; such analysis will insist mostly in the political and institutional dimension. The objective is to see how much the States have changed in the stability of their institutions, mostly looking at the validity of elections, constitutional changes of government and an inclusive institutional framework.

The Burundi case will be the first to be analysed. As said before, after 2005 the country had a new government that proclaimed its inclusiveness, appointing both Hutu and Tutsi representatives, and this brought an apparent political stability for at least ten years. In 2015, the country fell again in chaos because of president Nkurunziza reluctance to cede power and his choice of running for a third and unconstitutional mandate. This led to the restart of violence and the creation of new groups of rebels that opposed the incumbent government, creating hundreds of deaths and almost 190000 refugees only in 2016[307]. After five years of turmoil that still did not match with the previous crisis, the country was left in isolation and the level of rule of law and civil rights had declined. This led to the Nkurunziza decision to not stand for a fourth mandate and endorsing Evariste Ndayishimiye as his successor, that eventually led to his election as Burundian president in 2020. Under the new president, an improvement of the situation occurred; the Ndayishimiye administration tried to normalise the relationship with neighbouring countries, mostly Rwanda and the Democratic Republic of Congo. On the internal side, the new government pardoned many opposers that had been put in jail amid 2015 events and subsequent crisis. Many international reporters and NGOs claimed that the situation in the country improved and was going to be back to stability, like it was soon after the international peace support missions[308].

In Burundi, the situation was stabilised and most of ethnic tensions were overcome by a government that was considered inclusive and willing to become a reliable partner for the international community. However, as it often occurs in African politics, the elite of power is often reluctant to cede power, and this also occurred in Burundi. However, the resulting chaos

[307] NANTULYA (2016).
[308] MANISHATSE (2021).

brought international condemnation and a decline in all economic and social indicators that made it impossible to sustain such an unconstitutional government, leading in the end to a return to the normal constitutional order. This capacity of the Burundian society to fix almost independently such internal problems is remarkable and denotes a real change brought by the international support to the peace process in 2005.

For what concerns the Comoros, it can be said without any doubt that the intervention was successful both in ensuring a rapid resolution of the internal strife in the archipelago and the following stabilisation of the political institutions. Since 2008 Operation Democracy, the country can be said to be a stable one; two different presidents have legally taken office since the end of MAES operations, and the country has never again experienced threats to its security since the first decade of the XXI century. Even though the themes that brought to the early 2000's instability are still present, like rivalries among the Comorian islands, the country appears stronger and more capable of addressing internal problems in a peaceful and democratic way.

The third country of analysis, Mali, has had a far different level of institutional stability. Ever since the 2012-2013 turmoil that led the country into chaos, the situation has never returned to the previous level. The Sahelian State is still facing challenges concerned with insurgents in the north and most importantly Jihadist groups, that had led the attention of the international forces of the MINUSMA UN mission to concentrate in a different area for their operations, the Centre of the country. This turn of events was possible mostly because of the fragility of the Malian institutions. The country has never experienced a stable government, even though since the 2013 elections president Ibrahim Keita managed to be re-elected in 2018. However, this did not result in a stabilisation of the country, and along with the threat of Islamists also inter-communal strife has begun. Allegations of escalating ethnic tensions have been reported, and the government has been also accused of being guilty of large-scale corruption and pressure against opposition leaders[309]. Eventually, distrust over the government led to a *coup* in 2020, which was again followed by another *coup* in 2021; the country is now governed by a military junta, but the State lacks control over a considerable part of its territory. The political process did not match the initial positive results reached by AFISMA and then MINUSMA, and therefore the country is again back into anarchy. From the point of view of stabilisation, to come to a conclusion, AFISMA has not reached good results, but even poorer results have been obtained by MINUSMA that since 2016 up to today could not do much to reverse the declining trend of institutional stability. This ultimately led to a situation where the government is not anymore a reliable partner, and the society has become fragmented and disenchanted[310].

For what concerns Sudan and the CAR, the situation is pretty simple and tragic at the same time. The two countries have not been affected by the interventions from the point of view of their political and institutional dimensions. First, the Omar al-Bashir regime in Sudan has remained entrenched to power until 2019. In these years, the UNAMID sponsors and supporters decreased their contribution due to the lack of chances for improving the situation in the countries. Moreover, the instability in Darfur continued and new groups formed, creating a scenario that was almost unchangeable. The normalisation of relations of Al-Bashir with the western

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[309] VAN DER LIJN *et al.* (2019: 105-118).
[310] *Ibid.*

powers was a contributing factor to the lack of development in the quality of democratic institutions in the country; this made possible a decline in the attention for the respect of human rights and opposition in the country, and a consequent continuation of instability and unrest[311].

The country in the end was able to get rid of the Al-Bashir government in 2019 with a *coup*, but this did not end instability even though plans for a transition to democracy have been made. The new transitional government was perceived as an opportunity for a new future for the Sudanese people, and the government's total support and cooperation with the international community. However the country and the government continued to be institutionally weak and divided by ethnic tensions[312]. In late 2021 another *coup* made a military junta get to power and ended the hopes for a quick democratic transition of the country. Sudan still remains a State with many stability problems, and Darfur is the most chaotic of its regions: peace interventions could do nothing to change the course of things.

The Central African Republic is probably the least affected country from the institutional point of view. The country has never stopped fighting for almost twenty years. The situation now seems as complicated as in the past. The country is still lacking unity among its people, and political leaders' claim for power still adds pressure to a society that is tormented by ethnic tensions. The restart of fighting because of Bozizé loyalists in 2020 denotes a lack of political stability and the weakness of CAR institutions to be solid. The government elected in 2016 has not done much to stabilise itself and now is pressured from many sides and is strongly perceived as weak and incapable of stopping tensions and violence[313]. MISCA and MINUSCA may have reduced the indicators related to armed violence, but they could not do much to stabilise the country politically, since the same actors that have created the instability are still alimenting the turmoil in the country, exploiting economic and social problems within the population[314].

In the end, we can see that the distinction of the interventions on successful, quasi-successful and unsuccessful is confirmed also in the assessment of political results. In particular, it is possible to see that the Mali intervention was more unsuccessful from this point of view compared to the previous focus on security.

2.2.3 Exit strategies and operational results

This last section will briefly discuss whether the interventions have respected their exit strategies, proposed at the time of their deployment, and then if the operation results coincided with those foreseen by the mandate.

The first peace intervention under the auspices of the AU, AMIB, was a success also because it respected the exit strategy and the duration that was foreseen at the time of mandating it. In the Communique issued by the MCPMR, the mission was expected to transition into a UN mission after one year. AMIB was authorised and deployed in April 2003, while the UN mission ONUB, that succeeded it, was authorised by UNSC Resolution 1545 in May 2004, respecting the envisaged time duration. The mission, which had mostly a peacekeeping role, also having the task to sustain the peace

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[311] DAY (2020: 51-52).
[312] *Ivi*, pp. 55-57.
[313] GLAWION *et al.* (2019: 7-11).
[314] *Ibid.*

process that was already progressing, accomplished many of the tasks provided by its mandate. Moreover, ONUB used mostly former AMIB contingents in their early months, facilitating the continuity in the activities of peacekeepers also after the end of the mission. For this reason it could be easier to respect the deadline for the end of the mission since the presence of an international force was still assumed.

For what concerns the Comoros, the exit strategies of MAES were always quite blurred. The first communique to authorise MAES deployment in May 2007 had only a two-month mandate. Such duration was extended by different communiques over time, due to delays of the mission in solving the occupation of Anjouan. Still, the October 2007 communique of the PSC gave the authorization for enforcement action that were conducted the year after through Operation Democracy. In April 2008 the situation seemed to be fixed, and the mission size was reduced, with a final exit date for October 2008. The country was stabilised, and the mandate was respected: the exit strategy can be said to have been fulfilled. In the Comoros we can see a different strategy compared with the AMIB case, since the mandate and the related duration depended on the evolution on the ground, and for this reason they were regularly updated and changed, also due to a strong cooperation with the Comorian government. The duration of the mission was dependent on the results, and when such results were reached the mission could be concluded, in an operationally positive way.

The African led International Support Mission in Mali was deployed in the end of December 2012 through UNSC Resolution 2085 after the failure of MICEMA to solve the situation. The UNSC gave a mandate of one year to the mission, but AFISMA could operate for just four months, since the UNSC authorised the deployment of MINUSMA in the end of April 2013. Even though UNSC Resolution 2100 mentions some letters from both ECOWAS and the AUPSC supporting the future deployment of an UN mission, the small time given to the AFISMA for operating was perceived as a lack of trust for the AU and a redrafting of its role in the matter. The transition occurred in a period of relative gains, with AFISMA supporting the successful interventions of the French forces and the preparation of elections to be held in August. Nevertheless, MINUSMA increased capacities could bring more resoluteness in protecting peace and security in the country, and also post-conflict reconstruction could be done in a better way, considering the regular deficiencies of the AU in similar tasks. AFISMA at least could accomplish many points of its mandate, also thanks to the French support, even though the exit strategies were not followed and created some tensions between the pan-African organisation and the UN; in this case the lack of respect for exit strategies did not bring problems on the operational side but only to the informal relationship of two of its stakeholders.

The problem of exit strategies is a relevant one in the analysis of the Darfur crisis. AMIS mandate often changed, its contingent composition varied many times and so did the tasks that were assigned to them. AMIS had to monitor the respect of a ceasefire that was only dead letter, and had no capabilities to fulfil its mandate; the exit strategy was almost non-existent, since few changes were imaginable[315]. The evolutions in diplomacy and the eventual decision of the Sudanese government to accept a joint UN-AU effort were the only possibility for AMIS to terminate, being absorbed by UNAMID. This could be seen as respecting the initial strategy, since the AU

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[315] COCODIA (2018: 153-155).

had many times pushed for a re-hatting of the mission under the UN to not having to hold the burden alone. UNAMID, similarly, always found itself in the impossibility of planning a strategy for ending the mission, because the peace process was always tormented by problems and the different agreements made by the Government of Sudan with the rebels always ended without results on the ground[316]. This eventually led to the choice of reducing the contingent size, which informally meant being ready for the unsuccessful termination of the mission. Since 2014, what had been done could not be reproduced on the same way, and the focus was mostly the protection of civilians[317]. The 2019 *coup* was the moment that gave the impulse to bring to termination the mission, since the transitional government was expected to be more resolute in trying to resolve the conflict. This led to the planning of an end for the mission, whose talks had commenced also before but without a clear vision[318]. Eventually, the date first was decided to be the end of 2020, and the definitive withdrawal of the contingents occurred in 2021.

In Darfur, the exit strategies were never clear; in fact, there could be no exit strategies that could be done without clearly affirming that there was no way to end the mission with a positive result. The accomplishment of the mandate could not be achieved, and the regular delays and renewals of it gave the impression of waiting for an internal stimulus that would lead to an exit for the international contingents. In all of this, the political planning was insufficient and could not produce roadmaps that would have facilitated the rapid end of the mission. To come to a conclusion, the peace intervention in Darfur could not count on exit strategies because of many problems blocking its activity; this eventually led to a sense of distrust of the population with UNAMID, that further triggered the unrest in the country, creating a loop where exiting was complicated.

In the Central African Republic, the role of MISCA had to follow a clear exit strategy, namely supporting the protection of civilians being assisted by the French troops and fostering the creation of a transitional government. Established in July 2013, MISCA mandate was to last for one year. In this time, the incumbent president Djotodia was forced to resign, and a transitional government took office. However the mandate was not respected in full, mostly for what concerns the protection of civilians that were highly militarised. The mission transitioned to MINUSCA in September 2014, respecting the exit deadline. MINUSCA was to take the lead in a period of rising tension and has experienced the same problems of UNAMID with exit strategies because of the instability and lack of security in the country. However, since the AU missions are the focus of this dissertation, it is said that the exit strategies had been respected by MISCA, even though this did not come through the fulfilment of the operational requirements of the mission.

To come up with a conclusion, the analysis of exit strategies does not always match with the one of operational results. Often, the end of a mission is planned well and respected, but at the cost of not fulfilling the mandate. This has occurred in many instances, while it is rarer that exit strategies and operational results are brought to accomplishment together. In some cases, the ambiguity of exit strategies contributes to create suspicion over the mission, mostly on local populations, but also by financial contributors. For this reason, a good peace intervention should respect exit strategies or at

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[316] DAY (2020: 48-50).
[317] *Ivi*, pp. 54-56.
[318] *Ibid*.

least have a results-tailored approach, with mandates that are constantly updated based on evolutions of the situation.

2.3 RECURRING PROBLEMS AND PATTERNS

The previous sections have given an historical overview of the interventions undertaken by the AU during its first twenty years of activity and a general evaluation of their results, mostly considering the security, institutional and planning dimensions. The present part, on the other hand, will enquiry the main and recurrent problems during the different missions, looking for some trends that can be repetitive among them.

In the next sections the recurring problems that are more interesting and relevant from the legal point of view are going to be analysed. The section is split into three main parts. The first one will analyse the problems related to funding and equipment from the operational point of view, without going into the normative dimension. The second one will enquire three main themes: the robustness of mandates, the credibility and impartiality of the contingents *vis-à-vis* the civilian population and the occurrence of disciplinary issues concerned with the presence of AU troops. The third part will analyse the relations of the contingents with the host States, seeing how much this affected the conduction of the mission.

Much of the points of discussion that are going to be discussed here have already been mentioned before in the previous sections. Therefore, these sections serve the purpose of gathering together all the elements that make AU peace intervention acting under their potential, and to see what can be done to overcome such problems. Moreover, not all the problems have the same magnitude on the interventions, so it would be important to prioritise them.

2.3.1 Funding and equipment from a practical point of view

This first part will analyse the issues related to funding AU peace operations. It will be divided in three parts, depending on the actor contributing for the funding. The section will enquire on the side of funding in a general way, but will insist also on the equipment side. Equipment here is intended as the set of military and non-military machines, weapons and devices that helps the contingents to operate better in the territory of the missions. First, the section will analyse how the AU is capable of financing its own missions, or at least how it can attract contributors from outside. Secondly, the section will see the role that the UN has had in the contribution to AU interventions; lastly, the role of third contributors, like the European Union or other countries, is going to be mentioned.

a) Self-financing problems within the African Union

In the analysis of the five peace operations conducted by the African Union (Somalia excluded so far) a common theme that is evident is the inability of the African Union to attract funding. The case of Comoros is probably the only one that can be seen as an exception, since due to the small territory that the mission's contingent had to monitor and the small scale of the enemy forces not much funding was needed. In the Comoros case, the equipment was given by two influential countries of the continent, Libya and

Morocco. Such equipment was functional to the kind of maritime and amphibious warfare that MAES had to do in cooperation with the host-State. Here, a division of competences may be seen, with richer or at least farther countries contributing with equipment while neighbours or poorer countries contributed with military personnel. Still, the vast majority of funding came from actors out of the African continent. The EU and the UN contributed with the funding necessary for the post-conflict activities, while initiatives of third countries, like France, made possible the transport and deployment of each TCC's contingent that was employed in the mission.

The Comorian case, even though constitutes the only exception where the funding of the missions has been sufficient, already gives back the idea of the main problems of AU peace interventions. The African Union has always been reliant on external sources of contribution since the mechanisms for internal fundraising have often been insufficient. To look to the normative side of the funding of AU peace operations, a separate section is going to be made, since this constitutes probably the main problem for the positive result of them.

In order to see how the self-financing of the AU impacted the missions, it is important to consider how this part of the financing of peace operations evolved over the years. In the first peace operation of the AU, AMIB, the funding was probably the worst problem for the action of the military contingent. The AU, to sustain the mission, created a specific trust fund, that however was deficient in contributions and could only draw 10 million USD out of a total budget of 134 million USD for the whole mission[319]. Other contributions were external, and came from international organisations like the UN, the EU and the World Health Organisation. Interestingly, the World Bank disbursed a sum of almost 30 million USD that was conditional to some requirements of good governance of the Government of Burundi; such requirements were only met when the mission was already over, so AMIB never had such resources at their disposal. Of all this quantity of money, that still was insufficient for the conduction of the mission, nothing was put by the AU. The Union even asked the TCCs to provide the equipment, the transport and the food by themselves, leaving the list of military personnel contributors only to relatively wealthy countries or countries that had a strategic and political interest in Burundi. If we consider that a big part of the funding of external contributors was spent only on food for the contingent, a scenario of deficiency of machinery and equipment was inevitable. The Burundi case, also for the non-operating PSC, gives the idea of AU missions at their primitive stage: no contribution and only relying on external resources.

The situation evolved a bit in future missions. The Comoros case, still, does not give an example of funding problems, even though the contribution of the AU was a minor part of the total. On the other hand, we can see the evident problems of AMIS in this sense. AMIS relied on a direct donor support system, with the single contributors of the mission disbursing funding in an *ad-hoc* basis[320]. The lack of a structured support package that could give regular funds is one of the main shortcomings of the mission; the contingent was also lacking basic equipment, and to act against a highly dangerous force like the Janjaweed also needed heavy equipment like helicopters, that were never received with the exception of some contributions by Canada for vehicles and UK, US and EU for logistical

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[319] Cocodia (2018: 64).
[320] Gelot *et al*. (2012b: 88-92).

equipment[321]. The funding for UNAMID was a purely UN system and for this reason it will be explained partially in the second part of this section and then in the part related to funding.

Of the total AMIS' budget, that had a considerably higher value compared to previous efforts, almost nothing was raised by both the AU and its member States. This element is the most important in the analysis of the financing capabilities of the AU missions, since it directly impacts on the relationship with external donors, who often feel to be the only ones that have to carry the burden of funding. It has been analysed that the 99% of the peace and security expenditure of the Union comes from external resources[322]. This is really important since the situation of direct donations creates a sort of dependence of the AU to external contributors, decreasing the agency in the conduction of the mission. This led to a small but relevant evolution in the AFISMA deployment.

For what concerns AFISMA, the contribution of the AU and African MSs in Mali has been more relevant. The AFISMA funding was initially complicated because, even though the AU expected the UN to contribute with a support package, such contribution was never established so the Union had to rely on different means[323]. The funding was raised through a conference of donors for what concerns the external contributors, end in the end the total amount of money raised for the mission totalled 455 million USD. Of this amount, 50 million was raised by the AU and the African MSs, that for the first time contributed directly to the mission through the Peace Fund[324]. However, the mission did not reach even half of the necessary budget, and from the total of contributions it is difficult to ascertain how much was directly allocated to AFISMA, since some money was given for humanitarian use only, and to be used by different agents. Some money was allocated to the trust fund created by the UN for AFISMA, that was directed to the AU mission but was still controlled by the United Nations[325]. In the end, the AFISMA case shows that the AU is capable of attracting funds when it has more responsibilities in this sense, like in the case of a UN decision of not contributing directly to the mission. As previously said, the amount of money was not totally covering the costs of the mission but still was sufficient, considering the level of funding that was raised in a few months and the low expectations on the duration of the mission, which as a matter of fact only lasted for 4 months.

In the CAR intervention, similar mechanisms have been used. MISCA relied on bilateral contributions, mostly from the US, the EU and France, and by a trust fund created by the UN in a way similar to AFISMA[326]. The difference with MISCA is the low contribution of African countries, even though the mission occurred almost at the same time with AFISMA. It is probable that the African country and the AU were reluctant to spend a considerable amount of their budget for a mission that since its first day was destined to be re-hatted to the UN. However the similarities with AFISMA are many, like the non-creation of a special package from the UN. The decision of investing into the Mali conflict and not into the CAR one is difficult to understand, but probably relies on merely strategic issues, or on the higher impact of the Malian crisis in the continent. MISCA, conversely to

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[321] *Ibid.*
[322] DE CONING (2019a: 222).
[323] LÖTZE (2016: 82).
[324] COCODIA (2018: 131).
[325] *Ibid.*
[326] *Ivi*, p. 184.

AFISMA, experienced more shortages of weapons and equipment, mostly in the rural areas where the soldiers were not given vehicles that were adequate for those vast territories. Still, most of the equipment came from direct donations.

The African Union, since the end of the AFISMA-MISCA missions, has tried to strengthen its role in the self-contribution of peace interventions, and many plans and alternative ways of financing have been formulated. They will be explained partly in the next part for what regards initiatives with the UN, and in a separate section for independent solutions.

b) The UN contribution and the related problems on the field

The contribution of the UN to AU missions has varied in many forms, and what can be seen is a lack of consistency with the different kinds of support used. This section will see how much the UN contributed on the AU missions, making a difference between UNAMID, that was a hybrid mission where the AU and the UN were formally partners, and the other cases.

In Burundi, it is possible to see that the UN acted as one of the other bilateral contributors, while concentrating in the political dialogue matters and in the post-war reconstruction. In the Comoros the role of the UN was even less relevant, and the AU can be said to have acted independently from the United Nations both financially and politically, still having its authorisation.

Different decisions have been made with AFISMA, MISCA and AMIS. As said, MISCA and AFISMA have been reluctantly financed by the UN, which waited mostly for their re-hatting. On the other hand, AMIS was financed with direct contributions, without a trust fund, but it worked in parallel with the UN observer missions in the country (UNMIS) and the UN office in Sudan, which took most of the non-military tasks. Still, AMIS suffered shortcomings, but it could not increase its contribution without a direct involvement of the UN in the mission. The UN was compelled to support the AMIS mission but also worked diplomatically to deploy a UN mission, so a more supportive UN chose to act more through support on the field than with financial contributions, which were left to other partners, before re-hatting under UNAMID.

As it is possible to see, the UN has never funded the missions that were totally conducted by the AU under Chapter VIII through its own assessed contributions. This comes mostly from an ideological idea because most of the influential members of the UNSC, with the permanent members among the less disposable, have been reluctant to be the sole contributors of the AU missions; in such a way the UN, even delegating the management of the mission to the AU, would be still liable politically in the case of disciplinary issues, violations of human rights or other scandals, since the money for the mission would be allocated from its framework for peace operations[327]. For this reason, the UN prefers hybrid ways, like conceding some support measures but with frequent reporting on how the money is spent.

Part of the increasing reluctance of the UN to directly finance AU missions concerns the attitude of AU members. As Malte Brosig notes, the African countries on average have all increased their military expenditures in the last decade, but are still reluctant to contribute with technical equipment to the mission, and just prefer to rely on external funding and equipment. The same

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[327] COLEMAN (2017: 113-114).

is valid for directly financing the AU peace interventions budget (the Peace Fund) or single missions. From the point of view of the countries, it is far more convenient to send their troops to places where they will get better compensation, equipment and most importantly will gain experience; all of these elements will bring a direct advantage to the MS's armies without affecting their expenditures. Another reason is also to be financed by the UN to act in the territory of neighbouring countries and affect the situation for internal gains[328]. From these two situations also comes the explanation on why the African countries contribute more with their troops to UN missions compared to the AU ones. Brosig defines this behaviour as rentier peacekeeping and states that such way of acting is more present in countries with corrupted and kleptocratic regimes[329].

The expectations of the AU to have a support package from the UN for MISCA and AFISMA, that was not conceded, denotes an acknowledgement of this situation by both actors. The AU accordingly tried to convince its MSs to contribute more directly to the peace interventions, initially with the first contribution through their own resources of the Peace Fund to support AFISMA. Secondly, the AU tried to address the problem of finding alternative sources of funding for the peace interventions. A report that was drafted in 2012 and accepted by the AU Assembly in 2015, mentions alternatives to the UN funding to finance peace interventions. Examples are levies on different sectors to be directed to the Peace Fund and most importantly the decision of the AU to contribute for at least 25% with its budget to the cost of peace interventions[330]. According to the AU, the ideal way to finance its own operations would be this percentage paid by the AU itself, and the rest paid by UN support packages. This still creates tensions and was not confirmed neither by a concrete measure of self-financing nor a peace intervention deployed under these auspices, since no interventions have been deployed after 2015, excluding some monitoring missions. Moreover, such contributions to the budget by MSs have not been met yet[331].

UNAMID is a totally different case compared to the mentioned ones. The mission was financed through a support package financed with the assessed contribution budget of the UN for peace operations, that consists of all the donations of UN MSs for the purpose of peace operations. The UN assessed contribution and the differences with other funding schemes will be explained more in depth separately. The support package was very articulated, and it was established before the actual deployment of the mission. The so-called "Annan package", named after UN Secretary General Kofi Annan, consisted in three steps to finance AMIS and make it transition to the UN-AU hybrid mission[332]. The first two steps, established in January 2006, were the so-called light and heavy support packages. They consisted in two different sets of equipment to be decided and paid by the UN but whose delivery was assigned to third actors, like States or private institutions. The differences between the packages consisted in the different kind of equipment; the light package consisted mostly in logistical items for the cantonments and the civilian components, while the heavy one contained all the heavy equipment that was necessary for advanced military actions on the field[333]. After the completion of the first two step, the mission would have

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[328] BROSIG (2017: 115-116).
[329] *Ivi*, pp. 113-114
[330] Decision of the Assembly of the AU, 31 January 2015, AU Doc. Assembly/AU/6(XXIV), *Decision on the Report of Alternate Sources of Financing the African Union.*
[331] COLEMAN (2017: 115).
[332] GELOT *et al*. (2012b: 94).
[333] *Ibid.*

transitioned to the hybrid mission, with the hybrid contribution scheme that consisted of both a trust fund and the assessed contribution of the UN[334].

The two steps were never brought to a successful level and the delivery of equipment has been far from a sufficient level. The light package was somewhat delivered, even with a minor part of the planned contribution, while the heavy one was never implemented[335]. Much of the reasons relied on the difficulties of transferring the equipment to Darfur, due to the lack of infrastructure and the distance from the sea. Therefore, at the time of the transition to UNAMID, no transfer of acceptable equipment was done from AMIS. The hybrid mission suffered from these delays for all the first two years of deployment. For the first year, the approved budget was 1.4 billion USD, and this amount increased steadily until the reshaping of the mission in 2014. In the 2011-2012, with a budget of 1.68 billion USD, UNAMID was the most expensive UN peace operation[336], along with the UN mission MONUSCO. Nevertheless, the mission was still underfunded, also considering that the expected cost for a successful mission averaged more than 2 billion USD. The contribution of UNAMID, in the end, was resembling the same method that the UN applies to all its missions, so no differences were brought by the presence of the AU, other than having a double source of spokespersons for raising contributions[337]. Even though the funding method that was proposed was a hybrid one, the funding of UNAMID was not different, practically, to a direct donor system.

The overview of UN contributions to African peace missions gives a scenario where the UN is unwilling to directly fund the AU, thus creating tensions with an organisation that claims to be given the task to solve the security issues on the African continent, but with an external contribution that is somehow owed by international partners. This tension is evident in all the missions so far.

c) *The contribution of the EU and third States*

The financial contributions for AU peace operations, in the majority of cases, have followed a direct donor funding scheme, as it was possible to see in the previous sections. Such a method has some advantages, but has also many grey areas that in the end create problems to the mission if the direct donor system is the only one applied. In this section the focus will be on the main bilateral contributors, like the EU and other States or institutions, and the problems that may arise from their financial support.

The European Union is the actor that has institutionalised the most of its contribution to AU peace operations. As it will be pointed out in the third chapter, the EU is the main contributor to the African Union mission in Somalia ('AMISOM')[338]. The EU has been one of the main contributors in all of the missions conducted by the AU. To institutionalise such contribution and create a transparent mechanism *vis-à-vis* European institutions, the African Peace Facility ('APF') was created in 2004. Such mechanisms, from 2004 to 2019, has contributed with more than 2.7 billion

[334] *Ivi*, p. 89.
[335] ANYIDOHO (2012: 49).
[336] ANING and ABDALLAH (2012: 39).
[337] GELOT *et al*. (2012b: 94).
[338] COLEMAN (2011: 524).

euros to the APSA[339]. However, the APF does not work with unconditional disbursements, but is dependent on some conditionality, like many EU contributions in different areas; most of the contribution does not have to be spent on military equipment, but mostly in logistical ones, along with the support to transportation and transfers of troops to the territories of the missions[340]. The APF has also contributed to the improvement of African capabilities for what concerns the African Standby Force and the Early Warning System.

The conditionality of the APF is explained by the fact that the support mechanism is part of the European Development Fund ('EDF') contained inside the Cotonou Agreement, that is the main development agreement signed between the EU and the countries of the Organisation of African, Caribbean and Pacific States ('OACPS'). Such an agreement restricts the possibility of making military expenditures. Nevertheless, the EU has contributed with 575 million € to AMISOM, with 50 million € to MISCA, with a total of 443.7 million € to AMIS, AFISMA, MAES and MICOPAX[341]. Moreover, the EU finances multilateral efforts in Africa in which the AU is involved directly, like the Lord's Resistance Army–Regional Task Force ('LRA–RTF') in Uganda and neighbouring countries and the Multinational Joint Task Force ('MNJTF') against Boko Haram. The APF however cannot be seen as a direct financing to military expenses, that are usually disbursed in a bilateral way by EU MSs, and so the AU still relies on unregular contributions.

The problem with the other sources of funding that come from third actors, mostly acting through bilateral agreements, is the need to fulfil pledges and conditionality before activating some funds. This is mostly valid for contributions by IOs and international institutions in general, being public or private[342]. It has already been written about the conditional funds of the World Bank, that could be used just after the expiration of AMIB's mandate, making those contributions useless. The AU operations many times have found themselves in a difficult position to honour their pledges to external contributors, leading to delays to their full availability on many occasions [343]; this occurs in most cases for the conditionality of the funds to the respect of some requirements of transparency, social and human rights protection or efficiency, that many times cannot be fulfilled neither by the AU nor by the host-States, given the fragility of the scenarios where they operate.

The direct contributions that have been mostly effective for the sake of financing AU peace operations are the bilateral contributions coming from States. Among the main contributors, we can recall the US, France or the UK, and many other western countries. For example, the US contributed with 50 million USD to AFISMA[344]. These countries finance peace operations mostly because empowering the African actors to address security issues may prevent them from entering directly into difficult environments that would be costly economically and politically. Many other countries contribute through giving equipment, like vehicles. This is mostly valid for African contributors, like the north African countries that have contributed mostly in this way, and other international actors like France or India.

[339] Press release of the European Commission, 22 July 2019, *African Peace Facility: African Union Peace & Security Operations boosted by an additional €800 million from the European Union.*
[340] LÖTZE (2016: 84-85).
[341] *Ibid.*
[342] *Ivi*, p.81,
[343] DARKWA (2016: 74).
[344] AMBROSETTI and ESMENJAUD (2014: 59).

Among the main contributors we can also find Japan, Italy, Germany, Spain, Canada and South Korea[345]. Most of the European countries, like France and the UK, show uneven contributions that depend mostly on their own strategic interest in the mission they have to contribute to. For this reason, it is difficult to forecast the share of contribution for every mission of the AU, since the concession of contributions depends on a wide range of factors. New actors out of the Western ones, like China, India, Turkey and Brazil, prefer to contribute on the non-military size of the AU, and contribute mostly through their support on the equipment level or in the diplomatic one[346].

Considering the inconstant and unpredictable flows of direct contributions, that often depend on complicated variables and, most importantly, are doomed to change whenever a change in the political opinion for a mission occurs, the AU ought to find alternative ways to finance its own missions, without relying on external donors. The ways to do this have been already mentioned: empowerment of self-contributions and a better relationship with the UN.

The African States, as said, are often unwilling to contribute directly, unless a threat to their security occurs; a trend that is often visible is that the financial commitment of the African countries is much higher for what concerns RECs involvements, where they undertake operations for strengthening their regional hegemony, while decline in consideration to continental efforts. Involving more the regional hegemons in the contribution and leaving the direct donor funding to a minor way to finance peace operations should be a way to follow for increasing agency, ownership and independence for the AU in this field.

A deeper analysis of the matter from the normative point of view may be necessary to see what can be changed or improved. This will be done in a separate section at the end of the chapter.

2.3.2 Mandates, impartiality and disciplinary issues

The last section has explored the dimension of funding. On the contrary, this one will enquire three different but important matters: mandates, impartiality and discipline. The three elements are relevant for different reasons, but all of them affect the participation and support of the local population to the missions. The local population support for the mission is an important factor, since it is both an indicator of the level of aid brought to the host country and an enhancer for developing a good relationship with the host State government, along with other stakeholders, eventually doing improvements in the peace process.

Most of the elements, mostly for the mandate part, will come from a work of synthesis and gathering of information contained in the previous sections.

a) The setting up of mandates and gap objectives and reality on the ground

The mandate of the missions is the first element to be analysed in this section. The setting up of mandates is fundamental in order to give a direction to follow by the mission staff and management, and in order to set

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[345] *Ivi*, pp. 63-65.
[346] GELOT *et al*. (2012a: 26).

the expectations and objectives that the mission intends to accomplish. The mandates are often made in relation with the support of the host State to the mission, and often have a planned date of ending, that however is many times extended. The renewal of mandates in order to adapt to a changing reality is a sign of awareness of the problems of the mission, and sometimes it also implies an increase of the powers of the contingent.

The analysis will start, as previously done, from the African Union Mission in Burundi. AMIB's mandate was focused mostly on monitoring the ceasefire, reintegrating the former rebels into the government military and giving humanitarian assistance. The possibility of enforcement action was very limited, and no referral to protection of the civil population was made in the mandate. This eventually led to an update of the rules of engagement of the mission, with the possibility of using force not only for self-defence but also in the case of immediate threat for the civilian population. The mission fulfilled almost all the tasks assigned by the mandate, even though it was affected by financial and operational problems. The only matter that was not addressed fully was the DRR and to a lesser extent humanitarian assistance, due to the difficulties in concentrating on many objectives with limited resources. In the end, the mandate could be said to be coherent, and its objectives were reasonable; even with a lot of effort, AMIB succeeded in accomplishing most of its tasks, while leaving those that could not be completed in the year of duration of the mission to the UN successor mission, ONUB.

MAES mission in the Comoros is a different case. The mandate was updated many times, reflecting an evolution in the posture of the AU *vis-à-vis* problems in the Comorian scenario. The main change of MAES mandate was the possibility of undertaking enforcement action in coordination with the local government. This proved to be functional to the invasion of Anjouan that removed the only obstacle to the success of the political process in the country. After the end of the mission, the country obtained a restoration of political order that was never a constant in Comorian history. Considering that the diplomatic and political process was conducted independently from other institutions, with the sole support of the AU, it can be seen as the best success of the Union. One of the main reasons stands in a not-so-much-structured mandate, which allowed them to move in grey areas and adapt to changing circumstances. Unfortunately for the AU, this way of setting up mandates cannot be used in more complicated scenarios, where a multitude of actors and interests are at stake and where every point of the mandate has to be precise. Mandates like the MAES one or the AMIB one are good for small territories or for promising situations, but are unsustainable for other scenarios.

In the other three cases, the main problem of the mandates stands in the impossibility of undertaking the tasks not for unwillingness, but for external constraints. In the case of the intervention in Mali, the problem stands in the inconsistency of the tasks that were assigned by the mandate, that were wide and came from enforcement actions to political support and humanitarian protection, with the duration of the mission that only lasted a few months. The AU was good enough in sustaining the mandate, mostly thanks to the presence of the French forces, but was not that effective in the control of the territories that were newly conquered. Overall, the situation in Mali was more or less restored and the conditions were sufficient for the elections of a new government and the transition to MINUSMA, which however had a worse record and had to face a situation that escalated quickly to the worse. The mandate for AFISMA was coherent and it could be respected in the few

months of its deployment; however the support of the French troops was fundamental, and it is difficult to say that the situation would have been the same without such deployment.

In Darfur and in the CAR the main mandate related deficiencies manifested. AMIS mandate was totally out of reality, considering that the AU interveners could do nothing to prevent attacks since it was a classical peacekeeping mission, its contingent did not match the wide territory to cover and the size of the hostile actors' combatants, plus the humanitarian protection and assistance against HR violation could not be acceptable due to the lack of resources of the contingent. On the other hand, UNAMID had both a wider mandate and some more power, which were unfortunately diluted by the SOFA agreement with the Sudanese government. The need to have authorisation from the central government made it impossible in many cases to stop violent events and atrocities. UNAMID still tried hard to be at least a shield against violations of human rights, but its credibility *vis-à-vis* the population of Darfur was very low, and all the developmental and political objectives remained dead letter. The mandate main weakness was its not reflection of the real conditions and obstacles of the contingent, that still could do something to improve the situation; the funding of the mission was not sufficient, but it could still be a success without the obstructionism of the government and the lack of resoluteness in updating the mandate.

Finally, the CAR case denotes the inconsistency of the mandate with a scenario where non-traditional actors were pivotal for the harshness of the situation. In the CAR, the protection of the local population was not possible due to the high militarisation of many civilian groups. The security support was very low because the contingent in many cases did not know how to respond to ethnic tensions. Nevertheless, the mission contributed both in reducing the casualties among the armed groups and to contribute to the political process that led to the resignation of Djotodia and the creation of a transitional government. When MISCA transitioned to MINUSCA, the situation was far from stable but at least some points of the mandate could be fulfilled. It is difficult to say how the mandate had to be updated to intercept such violent attitudes of the population, so the mandate cannot be considered a bad one, since any other mandate would have presented flaws because of an unusual situation for peace interventions.

In the end, it is possible to see that the mandates, that many times are similar in their requirements, do not necessarily take in consideration the practical constraints and often are left incomplete. In some cases, mostly in the Sudanese case, the mandates are totally unrealistic, and this creates problems to the mission also concerning credibility. The case of AMIS and UNAMID is probably the only one where the mandate has brought a direct problem to the missions' results.

b) Impartiality of the missions and credibility before local population

Another point that is worth noting is the impartiality of the AU missions to the different factions present in a country at the moment of an intervention. The impartiality is not always a fundamental requirement, mostly in cases like Mali where it comes without any doubt that the AFISMA forces had to be allies of the central government against infiltrations of criminal and terrorist groups. However, the element of impartiality becomes relevant in the cases of those missions where the pacification process is lagging and different political factions are involved; the peace support missions in this

case cannot choose to protect or endorse just one faction, since this would jeopardise the mission's credibility and create problems of divisions in the political sphere, that ultimately may bring to a resurgence or escalation of conflict.

Impartiality is one of the three main prerequisites of classic peacekeeping operations, with consent of the host-state and use of force only for self-defence[347]. However, the necessity of being impartial many times jeopardised the effectiveness of some missions, and the necessity of reframing this requirement is already being contested in many forms, as belonging to an old way of conducting peace interventions[348]. Moreover, the notion of impartiality has been recognised, at the UN level, for being an obstacle in many non-traditional conflicts, like internal ones and with the presence of many non-state actors. However, this requirement still has to be taken into account, at least when there is no faction that is unconditionally against peace, becoming more a threat than an interlocutor for the peace process.

After having considered the importance of the notion of impartiality, that involves not using pressure unevenly in the action of interveners toward the different political actors, always in relation with respecting the mandate, an analysis of the level of impartiality in the different missions will be done, and the impact of the level of impartiality on the overall mission result will be the result of this analysis.

In the case of AMIB, the international contingent was for sure following the norm of impartiality. The mission was following the classical notion of peacekeeping, and the AU mission was mostly supporting a peace process that was already in progress. Just a few factions were against coming to terms with the government, but they were not the target of enforcement actions; the task of resolving internal issues was left to the Burundian society and this was much praised also by the local population. The mission was not only impartial, but was neutral and this was a guarantee for the local factions to come to agreement without tensions; some problems arose with the majority presence of South African peacekeepers in the contingent and for the proposal of an equal power sharing between Hutu and Tutsi[349], but in the end the posture kept by the contingent was important for a productive peace process whose results are still evident almost 20 years after the end of AMIB's mandate.

In the case of the Comoros, MAES showed impartiality relative to the mandate that it was given. This means that the intervention in the Comoros treated evenly all the actors that were interested in the national unity and pacification of the country; instead, the mission was not neutral, because the international contingent did intervene against an actor in the Comorian scenario. This actor was however going against the mandate that was given to MAES, and moreover constituted both a threat to stability for the country and also a threat for the population that was living under his rule. This made the AU give up neutrality for impartiality[350]. The two terms, even if they seem to have the same meaning, in this case mean totally different things, since impartiality has to be seen in light to the respect of the mandate. In this sense, every actor that acts against the objectives of the mission have to be seen as an enemy, without taking in consideration the nature, the

[347] DE CONING (2019b: 301).
[348] SPANDLER (2020: 196).
[349] COCODIA (2018: 71-72).
[350] *Ivi*, pp 91-92.

capabilities or other subjective considerations about the actor. This is where impartiality has to be found in the context of peace interventions. The choice of giving up neutrality for impartiality was fundamental in the realisation of the mandate.

The case of Mali is pretty similar. The AFISMA forces could not use neutrality since the mission was deployed after the call for help from the Malian government. Moreover, the actors that the government of Mali was confronting had no interest in the stabilisation of the country and to contribute to peace, as was the requirement of the mandate. Also in this case, the action of the AU mission was totally coherent and did not make any tension arise inside the population and the government.

Following the same kind of reasoning, which comes mostly from the work of Jude Cocodia on AU peace interventions, it is possible to see that the AMIS and UNAMID missions in Darfur followed the opposite scheme. The mandate was already favouring a neutral approach, but the impairments that were made along the history of peace interventions in Darfur only decreased the chance of the contingent to act in an impartial way. The contingents of AMIS and UNAMID could not do much to protect the population and avoid the violations of human rights, because the actor that many times was propelling these actions was the State itself. Through acting in a neutral way, impartiality is put in danger, since the government is the most powerful actor and would take advantage of the international presence for following its scopes, that were not conciliatory at all. The neutrality of the AMIS and UNAMID contingents started to be seen as inactivity by the local population, or even more as an obstacle to the mission of the Darfuri rebels that in many cases were seeking better conditions and better representation. This was made possible by the mandate but mostly by the agreements made with the Al-Bashir regime. The mission could not of course act against the State, but it was impossible mostly for UNAMID to claim any credibility, despite the positive activity in support to the civilian population and the decline of casualties during its deployment.

The last case, the one of MISCA, is a multifaceted one and many issues contributed to the failure of the mission. The main of them was the partisanship of some of the contingent participating in the mission, most notably the Chadian one. The Chadian contingent in the CAR was following a total opposite direction compared to the rest of the mission; it was a supporter of the Muslim insurgents in the north east, loyal to the former Séléka faction, in opposition to the general trend where the Anti Balaka were taking more and more power after the appointment of the transitional government. The Chadian forces were also responsible for violent actions against the Christian population, leading to their withdrawal. However, the partisanship of the Chadians put pressure to the whole mission, for the lack of control of MISCA over its components, and also created suspicion over the other contingents, that in many cases had perfect attitude but were still mistrusted[351]. The same issue, to a minor extend, was perceived by the Muslim population in relation with the French troops, that were only a partner of MISCA; still, the alleged wrongdoings of this contingent against the population gave a bad image of all the interveners of the AU. The AU in the CAR was eventually seen as neither neutral nor impartial, since neutrality was sacrificed in order to push for the resignation of Djotodia, eventually leading to an unbalanced control of the country by the Christian

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[351] *Ivi*, pp. 193-194.

population, and impartiality was jeopardised by the wrong actions of some of the contingents, alimenting the unrest within the country.

As it is possible to see, the problems related to a lack of impartiality are present mostly in those missions that have been previously defined as failures. Also in this case, it is difficult to ascertain how much the failure of these missions depend on the lack of impartiality. Nevertheless, impartiality is a contributing factor that has to be kept in mind when analysing a peace support mission.

c) Disciplinary issues

The last point that has to be analysed in this section is the one of wrongdoings committed by the contingents of the AU peace interventions. Issues of responsibility and wrongdoings are going to be more widespread in the case of AMISOM, but other disciplinary problems related to the AU troops have been encountered and are worth being mentioned.

The missions conducted by the AU have been often followed by some wrongdoings from some parts of their contingents. Even though a wider list of wrongdoings is associate with the presence of African contingents into UN missions, like in the case of many violations occurring in the MONUC mission in the Democratic Republic of Congo[352], still some cases of disciplinary problems have occurred concerning AU peace operations.

It is important to make some distinctions between disciplinary issues. Also smuggling objects that are devoted to the missions is an example of wrongdoing in the exercise of one's function as peace support agent. However, the kind of wrongdoings that have a higher resonance in the public opinion are violations of human rights conducted by troops of a peace support mission. Such violations create big problems of trust with the local population and also damage to the reputation of the mission, which can have a reflection both on its financing and the relationship with the host State.

Minor wrongdoings are often difficult to intercept, and often the armies of the international contingent are coming from corrupted countries where such practices are unfortunately common. An example of wrongdoing comes from the African Mission in Sudan. It was confirmed by many sources that often soldiers with low wages used to sell ammunitions to the rebels[353]. Moreover, it was reported that some vehicles were intercepted before being loaded in planes to be sold in Nigeria[354]. Probably, this is a trend that often occurs in those scenarios where the contingent are highly underfunded and low payments occur. Similar problems are not causing deaths but denote a lack of integrity of the contingent and an advantage brought to the opponents and enemies of the mission.

Other disciplinary issues have been reported during the AFISMA action and most importantly in the CAR in relation to the MISCA troops. In Mali, most of the problems came from the lack of discipline of the Chadian forces, that even though were some of the most experienced in the matter of desert warfare, still were responsible for many wrongdoings. Chadian forces have been reported to be responsible of shootings among themselves and one soldier was accused of marrying a minor[355]. The reasons for such widespread

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[352] TSEGA (2021: 304).
[353] *Ivi*, p. 155.
[354] PATTERSON (2008: 17).
[355] ALBRECHT *et al.* (2017: 72).

misbehaviour from the Chadian forces relies on both their lack of training and in the fact that they were never changed since the deployment of AFISMA to most of the duration of MINUSMA.

Worse disciplinary issues have been reported in the CAR, both during MISCA and MINUSCA operation later on. During the AU deployment in the CAR, much of the disciplinary problems were relative to the Chadian forces and to the French troops of Operation Sangaris. It has already been said about the indiscriminate shootings and violence against the Christian population by Chadian forces; moreover, there have been witnesses of sexual abuses both by some Chadian soldiers and also other cases of abuses from some Equatorial Guinean soldiers[356]; in both cases, the victims of abuses were minors that were promised money or food as medium of exchange[357].

Other sources of misconduct came from other contingents in the MISCA effort, like the two cases where soldiers from the Republic of Congo (Brazzaville) were responsible of abductions, tortures, illegal detention and killings of people reported to be close to the Anti-Balaka[358]. In one of these circumstances tortures occurred against a family whose house was surrounded and whose occupants were tortured and illegally detained, while the second was a case of retaliation after the death of one Congolese soldier, that brought to the death of two anti-Balaka soldiers after several tortures[359].

In the case of violent actions against the Anti-Balaka, both Congolese and Chadian contingents claimed that the measures were necessary to stop dangerous Anti-Balaka agents, but it is believed by the witnesses of these violations that also innocent people were victims of the violence. Concerning sexual abuses in the CAR, the compliance mechanism against similar wrongdoings, the Human Rights and Justice Section of MINUSCA, that was also responsible of the wrongdoings made by the MISCA forces, failed to report the issues to the UN High Commissioner for Human Rights in Geneva, even though the allegations were solid[360]. The cases ultimately finished without any action against perpetrators. Similar allegations have been done also against troops of the Operation Sangaris, but they were outside the MISCA forces, and such cases were managed by France, even though the Report on sexual exploitation cases in the CAR also mentioned abuses made by the French troops.

The occurrence of misconduct by AU troops is a big problem for the whole mission. It is possible to see how the indiscipline of the Chadian forces has both contributed to delegitimise MISCA and later MINUSCA and eventually brought to their withdrawal, resulting in less troops for the mission. Moreover, the violations of human rights conducted by soldiers of a peace support operation have implications in the contributions by international organisations, in the public opinion and in the support from the local population. It comes without surprise that most of the violations have been conducted in the CAR, which had a very low level of support among the local population and big problems of integrity of the contingent, while in the other cases smaller and more disciplined contingent and better conditions constituted a barrier against wrongdoings.

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[356] Note of the Secretary General of the United Nations, 23 June 2016, UN Doc A/71/99, *Report of an independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic*, pp. 32-33.
[357] *Ibid.*
[358] REUTERS (2014).
[359] *Ibid.*
[360] *Report on sexual exploitation and abuses in the CAR*, pp. 43-46.

The theme of responsibility for wrongful acts is very complicated and unclear, and the cases in which the responsibility of the AU for wrongful acts may be ascertained are various; for these reasons, the matter of responsibility will be discussed separately in this chapter before giving practical examples from the AU mission in Somalia.

2.3.3 Relationship with the host-State

This section will briefly discuss the relationship between the AU peace operations and the host States, that in most of the cases is the actor requesting the AU intervention. The term host State refers to the government leading the country at the moment of the intervention, so it can also be defined as host government.

It must be noted, and it has already been evident from the paragraphs describing the peace support missions from an historical perspective, how much a productive cooperation between the host State and the interveners is important for the positive result of the mission. In Burundi, the peace process had the support of the majority of the stakeholders and the AMIB troops and staff only had to monitor the good conduction of the peace agreements, always being aware of the opponents to the peace process. The support of the Host government was always guaranteed, and the mission proceeded smoothly.

In the case of the Comoros, the intervention of the AU troops was requested by the Host government, and the two actors worked side-by-side in order to push for the pacification of the country, and the two parties were also in coordination for the invasion of Anjouan that occurred in a precise and riskless way, despite the fundamental role it had in the final result of the mission. The unity of the then transitional government with the AU also contributed to strengthening the peace process in the country that in the end was a complete success.

In Mali, the host government support was always guaranteed, even though the government was very weak since it was a transitional government that was established after international pressures increased. The government was not capable of having a role in the mission since it was too weak, and only had full control in the territories. When the situation was restored, the weakness of the government contributed to keeping the country in instability and this is evident from the successive eruption of violence that still continues nowadays. However, the host Government cannot be said to be an obstacle to the peace interveners, both in the case of the AU and external actors like France and MINUSMA.

In the Sudan case, the relationship with the host government was the worst. The Al-Bashir regime was never accepting the international presence within its country, unlike the previous cases, and was only forced to do so by international pressures. Nevertheless, the host government did everything to make the job of the interveners as hard as possible, leaving the contingents without the legal possibility of acting proactively for the resolution of security problems. In the same vein, the Sudanese government and the elite group of Northern Sudan did not do much to ensure a stabilisation in the country and an inclusive dialogue with the Darfurian rebels and population. The effort of AMIS and UNAMID after it turned into a failure mostly because of this problem since issues like lack of funding have occurred also in other cases but in some way the contingents have found a way to

overcome the difficulties. Many other negative aspects arose from a peace operation that was almost subordinated to the host government, like the absence of support from the local population and the shortcomings of the mandate, which was adapted to the requests of the Government of Sudan. In the end, the main reason for the failure of the peace support efforts in Darfur rely on the reluctance of the hosts to support the mission and the further reluctance of internationally relevant actors to compel the government to comply and fully cooperate.

In the CAR the MISCA work was made harder by the internal conflicts among the political elites that tried to make the ethnic tensions escalate. No interest in finding a compromise between different interest groups was made, and the different governments that succeeded, from the Djotodia one to the Samba-Panza transitional government to the elected government of Touadéra, did nothing to solve the structural imbalances inside the Central African country. When there is no will to foster the developmental and social dimensions of a peace process, providing an environment that is conducive to intercommunal dialogue, the effect is also felt by the AU peace support mission. No obstacles were put for the deployment of MISCA, that was authorised by the UNSC before an UN takeover, but the conditions of the country created an indirect problem for the ability of MISCA to pursue its mandate. By the way, the peace process found an improvement with the creation of a transitional government, though totally ineffective, and a reduction in violence related to non-State actors, that still remained a constant problem. In the end the main problem of MISCA was not the obstructionism of the host government and political elite, but rather their inability to push for a positive environment for peace.

To come up with a conclusion, it is possible to see that the support of a host government can contribute in many ways. The government must be a reliable partner, while in many cases it has been an uncapable or unreliable actor. It is difficult to say if it is worse to have a State that does not cooperate with the mission, like in the case of AMIS-UNAMID, and tries to obstacle it, or a State that does have the will of being a partner but does not have the capabilities to create a positive environment for the mission. In both cases though the result is a decline in the effectiveness of the mission.

2.4 IOs and the dilemma of responsibility for wrongful acts: legal issues, practice and the AU

The issue of responsibility for wrongful acts has been discussed briefly in the first chapter of this dissertation. However, it is now important to expand this theme, because as seen in the previous section some wrongful acts have been committed by the AU forces during their missions, and it is important to point out how much the single actors are accountable for their wrongdoings and how much the IO mandating them is liable for any misconduct. For this reason, two different parts will be present in this section. The former, through the DARIO, will mention all the articles and norms that can make an IO incur in responsibility for wrongdoings, while the latter will see how regional organisations in general may be affected by the said norms and, in particular, whether the African Union has incurred or may incur issues of responsibility.

<u>2.4.1 Responsibility of IOs for wrongful acts: legal basis and practice</u>

The present part will mention the normative dimension of responsibility for wrongful acts. It has already been pointed out that the norms concerning responsibility for wrongdoings committed by international organisations are not clear, and the lack of a universally accepted document contributes to leaving this matter unsolved. However, the role of the ILC in drafting the Draft Articles on the responsibility of international organisations may serve as a basis for settlement of responsibility issues. The DARIO have already been used in some judgements against States, or in matters of dual attribution that will be briefly discussed.

There are many articles in the DARIO that are worth mentioning. For some of them it is difficult to find a practical example in which the norms will be applicable, while others may have wider application. The first article that is worth mentioning is Article 6, that states that "the conduct of an agent of an international organisation in the performance of functions of that organ or agent shall be considered an act of that organisation under international law"[361]. This article specifies that every action committed by an agent performing its functions on behalf of the organisations acts as an instrument of the organisation itself; therefore every wrongdoing committed by said agent is to be considered as made by the organisation.

Article 6 is important since it creates a direct link between the IOs and their agents. However, in peace operations often the agents are put at the disposal of the IO by third actors, like States but also other IOs. Article 6 can regulate only actions of staff of the AU for example, or military personnel that is in some way directly employed by an IO. This creates the need to ascertain who is liable for wrongful acts committed by the latter agents. This dimension is filled by Article 7, which introduces the effective control test. The requirement of effective control, even if sometimes it is challenging to find where such control really is, on many occasions dispenses from responsibility the IOs undertaking peace operations. As a matter of fact, the IOs and regional organisations, in their functions of deploying peace missions and their contingent, benefit from troops that are sent by States, and that most of times are controlled by them[362].

The DARIO give further specifications of cases of misconduct. In Article 8 it is specified that the action of the agent acting *ultra vires* in relation to its functions still creates a responsibility to the IO for which it acts, if he is in the official capacity. This specification is necessary in order to consider as wrongdoings all those actions not covered by the functions of an IO; doing a human rights violation is not a function of IO, but this does not mean that the IO should not be responsible for one of its agents committing them. Article 9 further adds that also an acknowledgement of a consideration of an act done by third parties as its own is to be considered as a violation done by the acknowledging organisation.

The Draft Articles are a pretty long document with different cases in which an IO may be considered liable of an international wrongdoing, plus some parts about what is to be considered a wrongdoing and which circumstances preclude an action to be considered as a wrongdoing. The Articles 14 to 17 point out some other circumstances for which an organisation may incur responsibility; it must be said that some of them are understandable from a theoretical perspective, but it is hard to find practical examples in which

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[361] *Draft articles on the responsibility of international organizations,* Article 6.
[362] ABASS (2017: 632).

such norms would be useful. Article 14 affirms that an IO aiding or assisting another actor, being a State or another IO, in the commission of an internationally wrongful act for the latter actor, it would be responsible if the act would be wrongful if committed by the aiding organisation. Article 15 is the same as the previous one, but concerns direction and control instead of aid and assistance.

The Articles 16 and 17 give other examples of unlawful behaviour by IOs- The former refers to the coercion of another State or IO to commit an international wrongful act for which they would be responsible, if they acted so without coercion. The latter article mentions the case of circumvention, that means that an IO would be responsible for circumventing another actor to do an act that would be internationally wrongful if committed by the former IO.

It must be noted that these articles in many cases create some overlaps and contradictions. Article 15 and 17 for example can be seen as almost identical, the only difference is that in Article 17 it does not matter whether the circumvented actor is liable or not for the commission of the act, while in the case of Article 15 for both the directing and the directed actors the act should be internationally wrongful. Then, in part Article 17 repeats what is said in Article 15.

The most important provision within ARIO for the sake of this dissertation is Article 7. This provision helps give the test of effective control as a rationale to ascertain which is the actor having the responsibility of the international wrongdoing committed by an agent. An example is, as said, a soldier put at the disposal of an IO by a State. The test of effective control is the most accepted by the UN and by the ICJ[363], but it is not the only interpretation of responsibility that has been provided; in the controversial cases *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, the European Court of Human Rights ('ECtHR') used a different rationale, the ultimate authority and control test; in this case, the ECtHR was seeing which actor was having ultimate authority over a situation where a wrongful act occurred. In both cases, the direct responsibility of the States, acting under the NATO mission KFOR, were considered to come from the delegation of powers from the UNSC to KFOR[364]. In the Behrami case, it has been noted by the court that the responsibility for preventing incidents had shifted to UNMIK, the UN mission in Kosovo, and therefore the UN was to be liable; on the other hand, in the Saramati case KFOR was the actor under which effective control was to be found, still under the control of States' military officers, but because of the delegation given to UNMIK and KFOR on the respectively civilian and military administration of Kosovo, the UN should have been liable since it was the actor to be considered in possess of the ultimate control and authority for the sake of the authorisation[365].

The UN has always gone against this rationale, and the ICJ has been keeping the effective control test almost invariable in following judgments, but the fact that an important court as the ECtHR gives such a different interpretation to the matter of responsibility, gives a further idea of the difficulties to legally settle similar problems.

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[363] GRENFELL (2016: 68).

[364] Decision of the Grand Chamber of the European Court of Human Rights, 2 May 2007, App. Nos. 7142/01 and 78166/01, *Behrami and Behrami v France; Saramati v France, Germany and Norway*.

[365] TSEGA (2021: 310-313).

The case of the control test is just one of the possible issues in the matter of responsibility of IOs for internationally wrongful acts. It would be difficult and probably meaningless to enquire about all the possible aspects of responsibilities for IOs. Therefore, in the following sections only the issues where regional organisations may be considered responsible for wrongdoings committed under a prior delegation of the UN will be discussed, going further in the analysis of the issues that have involved the AU.

<u>2.4.2 Legal issues concerning responsibility of regional organisation and the AU in particular</u>

The present section will discuss, after having said about the regime of responsibility that is not so developed, the instances that may bring an issue of responsibility to regional organisations. In this context, not only issues concerning regional organisations' agents will be discussed but also issues related to the organisation when undertaking a peace operation.

The section will be divided in two sub-paragraphs, one dealing with the general issues of responsibility in which a regional organisation may incur, while the other will analyse the issues of responsibility that the AU in particular has incurred, plus a focus on the possible problems concerning responsibility that may arise potentially.

a) Hypothetical issues of responsibility from regional organisation

The issues concerning responsibility in which an international organisation and specifically a regional organisation are different and include different dimensions of international law. In general, the action conducted by IOs may violate both primary rules of international law, like the UN Charter or the same AU Constitutive Act, and secondary norms, like the DARIO.

The first issue that has to be inquired is the relation of regional organisations with the norms of *jus ad bellum* and *jus in bello*. The former norms regulate the way in which States and IOs start conflicts and use force; the prohibition of the use of force between States unless some circumstances are met is, for instance, a paramount norm of *jus ad bellum*, that is also enshrined in the UN Charter in Article 2(4). However, the Charter membership is only composed by States, and therefore if a State uses force against another not on its individual agency, but as a participant of an enforcement operation conducted by an international organisation, it is interesting to see if both actors are responsible for a violation of norms such as Article 2(4). States may be found guilty of a breach of the said article in the case of enforcement actions conducted by an IO that sees MSs as participants; an example may be enforcement actions conducted under Article 4(h) of the AU Constitutive Act. The responsibility for the State may arise both in the case of an individual use or threat of using force in the circumstances of an IO-led operation, or also when such action (use or threat of using) is made by the IO. It is settled in international law that member States do not avoid their responsibilities when acting under an IO's premises[366].

In this case, it is difficult to ascertain what does the IO incur in such cases of use of force. IOs are not part of the UN Charter, and therefore are not bound

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[366] ABASS (2017: 622).

to respect its provisions; however, since the notion of shared responsibility provides for the possibility of both an IO and its MSs to share the responsibility for an act of aggression[367], the IO may incur responsibility issues for the breach of norms to which it is bound. An example, that comes from the same UN Charter, is the Chapter VIII requirement for authorisation before the deployment of an enforcement action by an IO against a State. The provision is contained in Article 53, and it may arise in a wrongdoing for the IO undertaking said act.

Other issues may be related to *jus in bello*, that are the rules of conducting warfare that see as their main legal document in the 1949 Geneva Conventions. It is important to say that the Geneva Conventions and other treaties concerning humanitarian law and the conduction of warfare do not find IOs among their signatories. However, most of the IOs that claim a role in international peace and security, like the United Nations but also the AU or the EU, have provisions in their primary law that bind themselves to the respect of customary international law concerning the protection of human rights. According to some scholars, the fact that the IOs mention the respect of human rights is by itself a recognition of such norms as obligations for themselves[368]. Nevertheless, it is important to say that not all the prohibitions contained into the *jus in bello* treaties and documents create obligations *vis-à-vis* IOs; only those obligations that create norms of customary international law, that should be protected not only by States signatories of some humanitarian law treaties but by the whole of humanity, should create obligations to the IOs that claim their respect of human rights and customary international law[369].

The point of the need for IOs to respect rules of *jus in bello* is, everything considered, not so straightforward and necessitates a reading of the founding legal documents of each IO. However, there are some norms that are to be respected by any subject of international law, being it a State or an IO, without consideration of its willingness to be bound to them[370]. These are the so-called peremptory norms of international law, or *jus cogens* norms, that consist in the prohibition of some gross violations of human rights like torture and genocide. However, also in this case there is no concrete evidence of which norms are *jus cogens* and which are not. Ademola Abass states, for example, that even though it is almost accepted that the use of force in international relations is a breach of such norms, the threat of using force is not accepted as such, or at least there are some doubts about it[371].

Jean d'Aspremont points out that the fact that an IO is accepted among the regional arrangements that are the subjects to which Chapter VIII is referred may, theoretically, make them be part not only of obligations under the same Chapter VIII provisions, but also the whole UN Charter[372]. Even though this position is not so solid into general practice, still many regional organisations include many norms that derive from some UN Charter provisions, in a way to bind themselves to some norms and also to guide their MSs in the respect of these obligations, whose breach cannot be pardoned for the sole fact of being a member of the said organisations.

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[367] *Draft articles on the responsibility of international organizations,* Article 48.
[368] ABASS (2017: 626).
[369] D'ASPREMONT (2013: 6).
[370] Report of the International Court of Justice, 5 February 1970, ICJ Reports 1970 p. 3, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, paras. 33 and 34.
[371] ABASS (2017: 629).
[372] D'ASPREMONT (2013: 7).

Other documents to which IOs are generally subject are secondary rules. An example are the DARIO that are starting to be recognised as guiding documents in such cases of responsibility that involve regional organisations. The cases concerning responsibility of agents put at the disposal of international organisations are many, and all have started to create a practice in the dealing of similar cases. However, the practice is quite recent and still not unified, as the case of the Behrami and Saramati judgement exemplifies. The rules of responsibility create three main possible issues of liability for international organisations: problems with agents put at their disposal, problems with the acknowledging of wrongdoings and problems related to support to wrongdoings committed by third actors.

Concerning the first category, many times IOs are exempted from responsibility thanks to the developed rationale of effective control at the UN level. Since almost no IO counts on its own troops, in the exercise of peace interventions they have to rely on the troops put at disposal by their MSs, who often retain the operational control over their troops on the daily operations.

The second case involves an acknowledgement of some wrongdoings made by an IO for things committed by actors not directly connected with them. Even if this is an understandable and possible ground for responsibility, it is difficult to ascertain such situations and so far no case concerning acknowledgement has risen. Finally, the IOs may incur problems in the case of supporting or direct actors that eventually are guilty of wrongdoings. These cases are likely theoretically, and are covered in the articles 14 to 17 of DARIO, depending on the relationship of the IO with the other actor. However, cases where the responsibility of an IO for supporting wrongdoings have arisen only in one case: the assistance of the UN to the Congolese forces, that were partners of the UN mission in Congo, MONUC, and that eventually were guilt of violations of human rights[373].

Other documents that may be a source of wrongdoing through which responsibility for IOs may arise are the so-called SOFA agreements between IOs and host-States of a peace support mission. These documents often settle some issues of responsibility and the domain of wrongdoings committed by the IOs and the TCCs against the host-State; in case of the occurrence of such events, the host-State can claim compensation against the IO using the agreements as a basis. For instance, the AU settles this kind of legal issues through the African Court on Human and Peoples' Rights, through which all the member States may claim judgement and compensation against the AU. The possession of a court by the regional institution undertaking peace operations is an important instrument to fill the gaps and ensure accountability to the lawful conduct of its interventions.

As seen, the matter of responsibility is very diversified, and many issues may arise. However, it must be said that in many cases IOs are capable to escape most of the liability, due to a mix of factors, like the existence of immunity *vis-à-vis* domestic courts, the unclearness of responsibility connected to assistance, coercion and circumvention and the fact that in many cases the real control of peace operations remain a prerogative of States.

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[373] ABASS (2017: 636).

b) Responsibility issues occurred over the years to the AU

The African Union is subject to the same issues of responsibility of all the regional organisations undertaking peace operations. However, in some way the AU has been able to avoid any issue of responsibility related to its operations; as a matter of fact, no issue of responsibility has affected the AU because of an international wrongdoing of the organisation or another agent that was connected to the AU in peace operations. Nevertheless, in this part all the possible issues where the AU could incur in liability will be mentioned and analysed.

The first fact to be analysed is the one of troops put at the disposal of the AU for the sake of conducting peace support missions. It must be said that the African Union maintains a very low level of control over the TCCs and their soldiers, and just acts in a manner of coordination with the force commanders, that are usually taken from the TCCs that contribute the most[374]. Therefore, the AU creates a division of competences and territories where the TCCs have to operate, but the effective control over the troops, notion of utmost importance in the matter of responsibility, is retained by the States. This fact, with a line of command that is often unclear, makes it possible that the AU escapes responsibility, because the States should be the only one responsible for the acts of their troops. No claims against the AU have been made over the years, confirming partially this position. In all the disciplinary issues that had been mentioned before, the responsibility of the TCCs had prevailed, and the AU has never been involved in these issues. Other issues of responsibility have sprung from the AMISOM effort in Somalia, like the circumstance in which Kenyan forces associated with AMISOM but not under their mandate were responsible for human rights violations. This case will be examined further but also in this case no responsibility for the AU was found.

In addition to the issues related to the AU troops, it may be important to see how much the AU has acted lawfully when deciding to undertake a peace operation. This revolves around the issue of use of force for international peace operations. However, in the deployment of the mentioned peace operations, the AU has always had the consent or the invitation of the host government, and for this reason no issue of aggression can be waived to the AU. In the case of the Comoros intervention, even though the AU did not have a formal UNSC authorisation, it was initially a peacekeeping mission that had the prior consent of the host State; for this reason, the operation may be considered as falling under an Article 52 case, and thus not needing a prior authorisation by the UNSC. The mandate changed later on to include enforcement action without authorisation, but the consent of the host State may be seen as a justification for this act; MAES effort was subsequently appreciated by the UN, and no issues of unlawful use of force have been found.

All the other missions had either an authorisation by the UNSC through a resolution, or fell under the case of Article 52 of the UN Charter, like in the case of AMIB, leaving no room for wrongfulness toward the AU. However, one of the missions in which the AU was present, UNAMID, was conducted with a partnership between the UN and the AU, and therefore it is important to ascertain to whom the responsibility for wrongful acts should be addressed.

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[374] *Ivi*, p. 632.

The UNAMID mission was created under the prerequisite of a unified chain of command and control between the AU and the UN. In such a scenario, addressing the responsibility for the wrongful acts committed by the mission would be difficult, since the two organisations were to be on the same ground. This refers to the control of the troops that still are following the same characteristics of previous missions, but also any other third-party claim. In general, it would be straightforward to think that shared responsibility should apply in this case. However, the issue was settled in the UNAMID case through the SOFA agreement, where the UN accepted to be responsible for third parties claims and allow the AU to act without the burden of responsibility[375]. The UN decided to address all the issues of responsibility to itself, at least those where the control is on the UN-AU partnership, because it has a structure of addressing disciplinary issues that is far more developed than the one of any other regional organisations. By the way, the effective control of troops remained on the TCCs, which were mostly African countries and whose presence assured the acceptance of the mission by the host-State.

The UN, knowing the difficulties of addressing responsibilities in the cases of partnership between an IO and a State, that is typical of any peace support mission, but also in the case of simultaneous presence of two IOs, like in the case of Kosovo, has developed in a structured way its policy of disciplinary attainment. First, the UN has specified, in the last peace operation, the importance of a consistent and clear acknowledgement of where the control of every agent resides during peace operations, being States, agents on their personal capacity or the UN itself, and stressing the importance of ascertaining this also to all the actors involved[376]. Second, the UN has created the Human Rights Due Diligence Policy after allegations of wrongdoings mostly in the African continent; this mechanism is responsible of screening the contingents and ascertain the presence of soldiers responsible of wrongful acts, in order to make them step aside from the mission[377]. Moreover, this policy has the role of training the troops on the respect of human rights and obligations assumed by the UN, in order to make them follow the UN doctrine concerning discipline even when they are not under the operational control of the UN. In the context of the AU, it is this organ that organises the re-hatting of troops and manages the possible disciplinary issues that happened prior to the UN direct involvement, and may also act in the missions that receive direct UN support like AMISOM.

The fact that the UN is so concerned about the issue of responsibility gives the evidence of how much this dimension is problematic for IOs undertaking peace operations. The matter of responsibility will remain unclear insofar the pieces of law like the DARIO will not become founding documents of the domain of responsibility for internationally wrongful acts. In addition, the fact that the IOs depend constantly on States' troops and have to delegate control to them creates problems for the attainment of lawful operation, mostly if the said troops are not trained and motivated to the respect of human rights and international law. To suffice to this last point, the AU should increase its due diligence policy, improving the training and civilian compounds of the missions in order to fill the gap with troops that are often unable to follow the basic guidelines of the disciplinary requirements. The matter of responsibility is very important and involves not only the AU but

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[375] GRENFELL (2016: 66-67).
[376] Ivi, p. 69.
[377] Ivi, pp. 70-72.

goes beyond to every IO that wishes to be delegated by the UN the conduction of peace operations.

2.5 FUNDING OF PEACEKEEPING MISSIONS: LEGAL BASIS AND RELATED PROBLEMS

The problem of funding, as it has been pointed out in the previous sections, is probably one of the most urgent problems to be addressed by the AU in the exercise of its peace and security support objectives. The category of financing peace operations does not come from a unified set of norms or guidelines, but is managed by the organisations following different ways, depending on their capabilities, their financial possibilities and their network of supporters and contributors.

This section will expand on the previous section about funding peace operations. It will be divided in two parts. The first one will see how the peace operations are usually financed departing from the UN peace operations, and later seeing how regional operations differ from UN involvements conceptually. The second part will insist on the funding of regional operations and later on AU peace operations, also seeing the legal documents that have been drafted in order to cope with the recurrent problems of funding and the involvement of the AU in its relationship with donors and MSs; it will be divided in three main focuses. First, a brief summary about the level of UN contributions to regional operations will be provided, to see how the UN contributes to regional operations out of the AU cases. A separate section will further discuss the AU problems in this area and the differences with other arrangements, while a third section will see how much the MSs contribute to problems related to funding.

2.5.1 The legal framework of funding peace interventions

Giving a legal summary of the ways in which peace support missions are financed is very difficult, since there is not a unique way to provide for the financing of said operations. The way in which financial support for peace operations is framed depends on the rules of the organisation mandating it and on the financial independence that the said organisation is endowed with by its MSs. Then, the legal documents that are important in this sense are treaties of the organisation and, more often, binding documents created for the purpose of settling how peace interventions are to be financed. All the IOs that have a role in the protection of international peace and security have some frameworks through which the peace operations are funded. In this section, we will consider the different norms concerning financing peace support operations, describing the methods used by the most relevant IOs active in this field.

The first example that will be brought is clearly the United Nations framework. The UN is the leader and forerunner of international peacekeeping operations, and its model has been influential to subsequent regional efforts. The UN system of funding peace operations has varied since its establishment. The early peacekeeping operations conducted by the UN were financed by its regular budget, but due to opposition of some of the P5 in the 60's it became necessary to divide the budget for peace operations from the regular budget of the UN. Since 2008 the UN total budget for peace support operations has always been above 7 billion USD per fiscal year; however, it is important to say that the budget is not a unique one, but is

composed of different small budgets. Three main budgets constitute the total, and they are the budget for the UN logistic bases in Entebbe (Uganda) and Brindisi (Italy), the budget for supporting AMISOM in Somalia and the financial support to ten out of twelve peace missions of the UN (up to the early 2022), UNAMID included. Of these three dimensions of the peacekeeping budget, it must be said that the financing of the peace operations constitutes the vast majority, 94.78% of the total in 2014[378]. Two monitoring operations out of twelve are still financed through the regular budget of the UN.

The budget for peacekeeping operations is in decline in the last years, and the latest 2021-2022 budget is less than the previous fiscal period, and amounts 6.38 billion USD[379]. These funds come from the contributions of the member States, and are mandatory, since they are part of the required contribution as required by Article 17 of the UN Charter. The amount of the due contribution by each MS is variable, and depends mostly on its financial capabilities. Different categories of contributions have been made over the years, and the latest allocation divides the MSs in ten categories, with the per capita gross national income as instrument for distinction and special categories for the permanent members of the UNSC[380]. The US and China are the two most important contributors, and only developed States are part of the top ten of UN peacekeeping contributors. As for the regular budget, the arrears in payments of the individual contributions of MSs may bring to sanctions for the concerned State, like suspension of its voting rights as the most common.

The disbursement for the individual mission constitutes a financing for all the equipment and necessities of a mission, also accounting for the wages of the civilian and police components. Moreover, the military personnel is endowed with an allowance of roughly 1400 USD per soldier, that adds to the retribution paid by their countries. The UN further reimburses the States that contribute through equipment and support service to the military and police components. All the process is transparent and the procedure for reimbursements and expenditure is well defined by reports, notes and resolutions of the Secretary General or the UN General Assembly, creating a system that generally is as transparent and structured as possible.

This model, also due to the almost universal membership of the UN, is difficult to be brought to other regional organisations that have to find different ways to finance their missions. Two examples that may be taken are the European Union and the NATO, two organisations of Western states that have been active in peace operations in the last decades.

The European Union has been increasingly active in the matter of peace support missions, mostly in the African continent and the area of the Balkans, even though this does not figure among its founding purposes. The EU has usually been reliant on some external partners for its peace support efforts, mostly due to the lack of the equipment and logistics necessary to the missions. Its capabilities have however increased, and the EU may be considered now a regional organisation active in the area of peace interventions, even though most of its efforts have been training and monitoring missions. Nevertheless, the action of the EU moves along two

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[378] COLEMAN (2014: 4-5).

[379] Note of the Secretary General of the United Nations, 29 June 2021, UN Doc A/C.5/75/25, *Approved resources for peacekeeping operations for the period from 1 July 2021 to 30 June 2022*.

[380] Resolution of the United Nations General Assembly, 3 January 2019, A/RES/73/272, *Scale of assessments for the apportionment of the expenses of United Nations peacekeeping operations.*

pillars: the creation of its own peace support missions, being on the humanitarian, training or military side, and a second pillar concerning the assistance given to partners for strengthening their military capabilities in the resolutions of problems that may have a resonance for the EU. The partners may be of any different type, but mostly the EU assists third States' military and regional organisation; in this sense the main contributions are to AU and the most prominent RECs like ECOWAS and SADC, but also some funds are given to the UN[381]. In order to have a more coherent expenditure on its external efforts, the EU created the European Peace Facility ('EPF') in 2021. It must be noted that the funding of peace support operations falls under the Common Foreign and Security Policy ('CFSP'), that is one of the inter-governmental competences of the EU, *i.e.* being under the common agreement of all MSs. The EPF consists in a merger in the same budget of previous support instruments for partners and for own missions, including efforts as the African Peace Facility[382]. This framework is divided in two pillars, the operations and the assistance measures; the former consists in the operations conducted directly by the EU, while the latter consists in the contributions to partners in forms of financial or logistical support. However, the budget covers both categories and is not divided in two parts.

The EPF is an off-budget contribution under the CFSP, and it is approved for the same period as the EU budget. In this case, the EPF has validity for the period 2021-2027 and has been endowed with 5 billion euros in 2018 prices[383]. The EPF is financed by the individual contributions of the member States, that are organised in a way to reflect the share of contributions to the regular EU budget. MSs may decide to abstain from financing an assistance measure, but they have to reinvest the allowance that they did not give to other assistance efforts[384]. The European Union can be considered as a remarkable organisation in the creation of budgets and financing of its initiatives, and this spirit is present also in the measures related to its European External Action Service, like the European Peace Facility is. The fact that the ways in which the budget is financed reflect the general allowances of MSs simplifies things, and creates a model that should be followed by similar organisations like the AU.

Other organisations finance peace operations in simpler ways. Since the other regional arrangements are almost totally following intergovernmental characteristics, most of the operations of these organisations are financed directly by its MSs. NATO for example, even if it is conceived as a collective defence organisation, has undertaken operations of different kinds inside and outside the territory of its MSs. However, NATO is just a forum for collective decisions and every operation is organised and funded by the States; the only budget that NATO has is the one for running its daily activities, for paying allowances to their staff and for its headquarters and facilities around the world. This budget is divided into a civilian component and a military one, depending on what kind of staff and infrastructures are to be financed. The members of NATO have decided to give to the budget a sum that is equivalent to the 0.3% of each MS's defence spending. The model of NATO is common to many intergovernmental arrangements, where the States use IOs as fora for discussion in matters of support to peace and security, but also as a way to coordinate the operations through the operative structures of the said organisations. Similar projects do not

[381] BJURNER (2014).
[382] Decision of the Council of the European Union (CFSP), 22 March 2021, Council Decision (CFSP) 2021/509, *Establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528*, Art. 73.
[383] Decision on the European Peace Facility, Annex I.
[384] Decision on the European Peace Facility, Art. 5 para 3.

need particular funding but their logistical and operational expenditures, and the funding of the operations proceeds as it would do if the organisation was not used in the process of organising the effort.

In this section different models of funding peace operations have been provided. As it is possible to see, the most effective organisations in this sense create an *ad hoc* budget that sustains the operations, whose costs are forecasted by the branches of the organisation that are competent on either the counts or the peace and security side of the organisation. The African Union in this sense is not as organised as these examples, and still has to find a structured way through which financing its peace support missions.

After having seen how most IOs finance their own missions, in the next section the relationship of regional organisations with the UN will be analysed, in order to see how much the partnering is conducted in this sphere and how the financing of regional peace operations is different from broader international missions.

2.5.2 Funding regional interventions and the role of the UN: possible flaws

The funding of regional interventions, theoretically, is not different from efforts conducted by the UN, since both operations are conducted in a similar way. The operations have different components, like the military one, the civilian one and the police one, and in both cases of international (UN) and regional operations these components have to be adequately funded. However the main difference is that the UN has a capability of drawing participation and having a more sustained environment and capacity-building for all its components that the regional arrangements in many situations do not have. The only organisations that can match the UN are regional arrangements made of developed countries like the EU and NATO. However, other IOs like the AU do not have the same capabilities since their military is not as advanced as the main military powers of the world, and the same applies to their economies. This fact is more evident in the civilian and police components of these missions, that in many cases are the most underfunded and are not endowed with the capabilities for undertaking their tasks[385].

For these reasons, these kinds of regional organisations necessitate a wide range of partners and contributors to sustain their actions, and most of the times they have to stay in a position of subordination to the UN for having increased capabilities, but losing the independence on the mission that is a goal for every State undertaking peace support missions. The relationship with partners, departing from the UN, is the main focus of this section. The subject will be regional organisations in general, but if we exclude those regional organisations that have the power and capabilities to pose themselves on almost an equal stance with the UN, the AU is the only IO left among the poorly funded organisations that still have a broad range of activities and responsibilities on peace and security protection.

The matter of the funding of peace operations is often left to practice, and this is why this section cannot insist much on normative matters, but it will most of all analyse the main ways in which IOs finance their missions.

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[385] Akpasom (2016: 105-110).

a) The funding of regional interventions and different kinds of UN involvement

The previous sections have exemplified that in most cases regional organisations do not have the capabilities to sustain peace interventions that are as effective in terms of equipment, funding and quality of the contingents as the UN efforts. The consequence of this lack of capabilities, that is evident in the African case, stimulates the debate on the necessity of the UN to contribute for regional interventions under Chapter VIII. The African case is probably unique, since the African States do not show the will to be so involved in pan-African involvements, but rather contribute more to the RECs that reflect their relative influence in their region. This leads to a dual lack of support to the AU, both from the MSs that do not give their total support to the AU, and also from the UN whose most powerful countries are reluctant to contribute totally on something over which they do not have the control.

The UN contributes heavily on the peace operations of the African Union, but the support is not so relevant on the financial side, where third contributors have the highest share, but rather on the political side and on the support given in re-hatting the AU missions under UN ones once the situation is stabilised. Moreover, the UN contributes with practices and know-how for the African partners, and a long list of reports have discussed the necessity of the UN to re-discuss the financing of regional operations; the UN, delegating to regional organisations, does have an advantage thanks to the better knowledge and political influence of regional actors, and also on the early deployment that these actors may give, but have to take into account the lesser capabilities of these actors and for this reason they have to substitute them whenever necessary.

The UN has provided some guidance to the AU for improving the framework of funding. The Prodi Report, published in 2008 and being named after the then president of the UN-AU Panel on Peace Operations and former Italian PM, gives some suggestions on the relationship between the UN and the AU and recalls some previous proposals; the report tries to find a compromise between the reluctance of the UN to sustain Chapter VIII involvements with own resources and the unwillingness/inability of African actors to sustain their own involvements. It is clear that authorisations of Chapter VIII measures by the UNSC does not mean an authorisation to support from the support framework of the UN. The solution of the Panel is a case-by-case contribution by the UN to the AU through their assessed contributions, depending on the relevance of the mission, but also a need of the AU to build a sustainable framework of self-financing of their own missions. The contributions are conditional to a coherent reporting on respect of human rights and accountability of the spending[386]. The AU has praised the proposal and started creating its own measures for sustaining its own efforts, like the 25% contributions from Member States. However, the level of self-financing is still very low, and further the UN did not do much to confirm what was proposed by the Panel, confirming the reluctance to contribute to African missions without assurances on their effectiveness[387].

This lack of progress from both sides creates a stalemate, and the UN has to contribute in other ways, either by re-hatting African missions and providing it pre-eminence in the raising of funds. The main results from the UN

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[386] Letter from the Secretary General of the United Nations, 31 December 2008, A/63/666–S/2008/813, *Comprehensive review of the whole question of peacekeeping operations in all their aspects*.
[387] COLEMAN (2017: 111-115).

support have been, in fact, trust funds put at the disposal of the AU, that however have been criticised for their unpredictability. The UN mostly through the Secretariat has been willing to overcome the problem, but the main issue comes from the support of UN most powerful MSs, that is partially justified by the lack of progress of African partners on their empowerment[388]. This problem is unique compared to the relation of the UN with other regional organisations, that on the contrary have big capabilities and creates doubts on the power of the UN to control them.

Accordingly, the different kinds of support to the AU are mostly political support, help in raising funds, contribution to the know-how of the Union and, most importantly, the subsidiary of taking over African Union operations to complete their mandate. The UN and the AU have shown conflictual relationship, and despite the many calls from many UN sources to implement the capabilities of regional organisations to support peace and stability on behalf of the UN, the two actors are both responsible for an ambiguous situation, augmented by the weakness of the support to the AU from its MSs. This makes possible that the contemporary scenario creates a dependence of the AU from third contributors and alternative sources, as we will see next.

b) Funding of the African Union's interventions and relationship with donors

As already pointed out, the African Union has to rely on often inconstant and uncertain sources of funding, that create a subordination of the AU *vis-à-vis* its contributors. The issue of the AU diversifying and expanding its sources of funding has been discussed already, so in this section the main focus will be on discussing the main ways to finance the peace operations of the AU. Since the AU often relies on third actors for the disbursement of these funds, it will then be necessary to address the relationship of the AU with these parties. As for the last part and this whole section, almost everything has been said before since not much in the matter of funding comes from pieces of law, but a case-by-case basis often governs this domain.

Walter Lötze lists four main ways through which African peace interventions are financed and supported, analysing the practice that have evolved over the years. These models are the lead nation model, the bilateral support model, the trust fund model and the support package model[389]. First, the lead nation model consists in a country that takes the burden of the logistical and strategic sides, the financing and support of the mission, being on voluntary contribution or with cost-sharing with the other MSs or the mandating organisation. This model was implemented only in the AMIB case, with South Africa acting on behalf of the AU for the sustainment of the mission; this kind of involvement is usually implemented also by RECs, like ECOWAS missions that often see major contributions by Nigeria[390].

The bilateral support model is the second example of a funding method, and it is by far the most used. This model consists in direct contributions by partners in order to pay for services for which TCCs or the host-State benefit, and is mostly used by third States like the US or other western countries to support the missions. These kinds of services are usually used to avoid conditionality, like the prohibition to spend the money on military

[388] *Ibid.*
[389] LÖTZE (2016: 80-81).
[390] *Ibid.*

equipment. This model does not only consist in paying some services or equipment instead of the actors on the ground, but also involves the direct offer of services, like the shipping of troops like the transport of Senegal troops offered by France in the context of MAES. The model has also been used intensively in Mali, Somalia, CAR and Darfur.

Thirdly, the trust fund model consists in a fund that is created by an actor, mostly an organisation, and whose role is to be the recipient of the funds of different contributors, either States or IOs. The actor establishing the fund may vary from the mandating organisation itself or other organisations, mostly the UN. The trust fund model has been used in Somalia, the CAR and Mali, where in the first two cases the fund was administered by the UN, while in the case of AFISMA both an AU and a UN fund existed. The problem of funds, that is partially existing for some bilateral contributions as seen earlier, is that the funds are disbursed prior the realisation of some guarantees, and then the first stages of the deployment have to rely on alternative sources.

The fourth and last model is the support package model. Used only in the case of AMISOM, the support package consists of an integrated funding framework organised by the UN and paid through the assessed contributions; this model is the same used for the UN missions, and is the best solution since it relies on predictable and constant contributions. Further, this is the model preferred by the AU, that has freedom on the manoeuvre of the mission, but the funding and the equipment is like a UN mission. Although this last model is surely the most effective, it has been only used once, and the UN has always been reticent to increase the likelihood of these support models; therefore, the support package model has to be seen as an exception to the practice of funding for African peace support operations.

As it is evident and as pointed out before, many alternative solutions to an integrated and own support model have been created in order to respond to the systematic shortages of resources of the AU to finance its own operations. The external contributors recognise the necessity of providing the AU with resources for undertaking its tasks, for which also contributors like the UN or third States benefit; however, it is difficult for these contributors to always respond quickly or to remain constant in their contributions, since many challenges arise, and the agenda of contributors often shifts elsewhere. This creates problems in the predictability of the financing. Moreover, the fact that the funds are many times administered by external actors affects the capabilities of the AU to increase its responsibility and expertise in the management of funding, and this is evident in the difficulties and delays incurred in the deployment of the ASF, that lacks mostly planning and efficiency[391]. The AU has not been efficient in allocating the funds also for their scarcity, and this has led to cuts mostly on the civilian and developmental sides of the missions, and consequently the AU has not collected experience on how to use these tools in order to strengthen its position, and alleviate the job of the troops. To further contribute to these problems, one should add the discrepancies between the UN and the AU in the management of funds and the tensions with the RECs in the administration of the troops of the ASF.

The African Union did not show particular tensions or problems with its donors, but the problem relies not on the relationship with contributors but with the methods themselves. If the AU does not respond to these problems with the empowerment of its financial contribution for its missions, it will

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[391] *Ivi*, pp. 82-84.

always rely on contributions that are unpredictable, and may also worsen the relationship with donors that may feel less and less disposed to contribute for an institution that does not show progress in the increase in capacity building for its own tasks.

c) Troops Contributing Countries as source of funding-related problems

The last part will analyse how much the problems brought by TCCs affect the overall funding of the AU missions. This last element is not so prominent compared to others, since the TCCs often do whatever they can to contribute to missions, and often have to use their own resources to fill the gaps created by the weaknesses in funding. However, big problems spring from African States in general in the support of AU missions.

The main problems are the preference to support UN missions compared to the AU ones and the reluctance to increase the financial contribution to the missions. The first issue is evident in all the missions of the AU that have experienced a re-hatting into a UN operation. Overall, the participation of African States in terms of troops and own equipment has been wider for the latter efforts, due to the opportunity to benefit from the advanced support structures of the UN compared to the AU ones. Moreover, it has been evident that the African countries expect the re-hatting of the missions whatever the result, as many external contributors do, and so the AU missions do not rely on their full potential.

Moreover, the second point consists in the fact that the African troops feel dispensed from contributing financially since they contribute with their own soldiers; however, this only creates the need of finding a donor that is external to the African countries, ultimately generating a situation of subordination to third actors. Instead, African countries should insist on the improvement of the self-financing side of the missions, mostly considering that many times powerful countries of the continent do not contribute neither with funds nor with troops to missions that are far from their areas of influence. This is the main problem to be addressed.

Remaining on the problems referred to TCCs, the main issues are indirect problems that derive from the scarce funding of missions. The case of soldiers selling their ammunition to provide for their sustainment exemplifies the problems that involve many times the contingents; increasing the financial capabilities of the missions would consequently avoid the occurrence of these episodes.

Some problems related to the discipline of the contingent have been mentioned, and they contribute to drawbacks for the reputation of the missions, which in the end may create a lack of support from contributors. In this sense, increasing the respect of human rights and improving the due diligence practices of the AU for their troops should prevent the emergence of such episodes. However, not all the problems related to TCCs may be avoided, mostly because of the presence of undisciplined soldiers in the armies of African States that often create only problems, asking more than they need and turn dangerous for the population and the reputation of the mission. Addressing these problems is difficult, since it means to solve the inner deficiency of the African States, something that is probably beyond the power of the AU.

In the end, most of the solutions for the financial side of AU missions come from an internal reshaping. Only increasing its contribution and capacity

building the AU may solve many chronic problems, generating spillovers that may also solve some consequential effects of these issues.

Chapter III

The case of AMISOM

After discussing the nature of the African Union and its role in support for international peace and security, and having considered the majority of the AU interventions during its existence, this third paragraph will provide the analysis of a case study: the African Union Mission in Somalia ('AMISOM'). The analysis of this mission could have been done in the previous section, but it is probably more useful to analyse a mission after having given a summary of the general trends that have affected the action of the AU. Furthermore, AMISOM is different in many ways from the other missions of the AU, either for the size and conditions of the country that are pretty unique and for the managing and support of the mission, that show new methods and conditions compared to prior involvements.

The chapter will provide the general outline of the conflict in Somalia and the evolution of peace missions in the country, highlighting mostly the intervention of the AU. Following this, an analysis of the attitude and the role of every State participating in the mission will be provided, in order to see how much the attitude of individual countries affect a mission; not only States will be part of the discussion, but also relevant IOs like the UN, the EU or some RECs. In the other sections, an evaluation will be provided, considering the same indicators and concepts that have been analysed previously; these elements are the security and political stabilisation results of the mission, the problems related to mandates, international support, relationship with the host-State and the local population and, finally, a focus on the ideological and strategic problems that have affected both the political and institutional sides of the mission, eventually affecting the AU-UN relationship.

The last part of the chapter will analyse the main legal elements that have been afore considered, namely responsibility and funding, trying to adapt the notions that have been provided to the mission and to see how much theoretical notions, mostly in the case of responsibility, apply in the reality of a mission.

3.1 HISTORICAL CONTEXT

Somalia is nowadays one of the frailest countries in the world and, if looking back in the years, it is probably one of the countries that have remained in a conflict and instability situation for longer among the nations of the world. The country was already having social tensions and a situation that was near to explode in the years from independence in 1960 to 1991. The country managed to stay in relative stability under the regime of Siad Barré, whose leadership ended in 1991 after a *coup* that left the country in disarray, with different actors claiming for the control of the country. The State institutions were weak due to the personalistic rule of Barré, while the economic advantages due to the ambiguous position of the country during the Cold War ended with the end of bipolarism. To further complicate things, the irredentist war with Ethiopia in 1977 for the Somali region of Ogaden led to the Somali defeat and a further worsening of socioeconomic conditions. This left the country into chaos, with different warlords and secessionist movements that battled among themselves for the control of State power. In

this context, the northern part of Somalia, that coincides with the colony of British Somalia, seceded in 1991 after some years of civil war in the previous decade and took the name of Somaliland. This internationally unrecognised State will survive until the present day and remain a *unicum* in Somali state-building.

The rest of the country remained in a vacuum of central power. The structures and institutions of the State were collapsed and their role of social contract and keeping people together was replaced by clan society, that was balancing the role of Barré's regime before but now was just a new source for conflict between social groups[392]. Two main warlords were confronting each other: Farah Aideed and Ali Mahdi Muhammad. The two leaders confronted mostly for the control of the capital, Mogadishu, that is the first place to hold if there is the intention of controlling the whole of the country.

It was in this context that an intervention from the international community was needed, since Somalia had become a country already fallen into chaos, where the refugees were spilling out to neighbouring countries feeding social tensions and where alimentary and economic crises affected the majority of the population. The first international response was organised by the UN with an observer mission called UNOSOM, that had the role of bringing the two main clashing factions to terms, supported by an alliance of tribal and clan forces aiming at restoration of order. The mission was authorised by the UNSC in April 1992[393]. The mission however could not do much, since the situation escalated, and the country was struck into civil war. The mandate of UNOSOM was strengthened, and a mission initial mandate was replaced with Chapter VII tasks[394]. However, the small contingent and international support gave the input for a new mission under American command with increased international support by the end of the year: the United Task Force ('UNITAF').

UNITAF had the participation of TCCs from various regions, including western States like the US, but its activity was jeopardised by the differences in the understanding of the mission role, mostly between the US and the UN; the former saw the need of only giving humanitarian assistance, while the UN realised the necessity to foster the improvement of the Somali institutions, contribute to the civilian institution-building and a reconciliation of the main local actors[395]. This created ambiguity over the mission, and the civil war continued without many changes. UNITAF was eventually included in UNOSOM II in March 1993, that had an increased mandate[396], also including the disarmament of the fighting militias and the enforcement of a ceasefire.

UNOSOM II became sadly known for the casualties among the international contingents and the differences between the UN and US leaderships. The death of around 25 Pakistani soldiers during an attack against Aideed militants increased the magnitude of the military confrontation, creating an open warfare between the UN forces and the militias. After this event, some casualties were registered among the Italian contingent, but the most mediatic event was the tearing down of two US helicopters and the consequent death of eighteen soldiers in June 1993; at this point, the disenchantment of the TCCs with the mission was manifest, mostly from the

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[392] JENG (2012: 248-249).
[393] Resolution of the United Nations Security Council, 24 April 1992, S/RES/751 (1992).
[394] Resolution of the United Nations Security Council, 3 December 1992, S/RES/794 (1992).
[395] JENG (2012: 252-253).
[396] Resolution of the United Nations Security Council, 26 March 1993, S/RES/814 (1993).

side of western countries, and the decision to withdraw troops, made from the US first, was a consequence. The US contested the way in which the UN conducted the operations and mostly it criticised the chain of command that was used during operations. By 1995 the mission ceased to exist and all the international contingents withdrew from the country, while only some UN staff remained until 2001, when their safety was not ensured anymore and were withdrawn as well.

Many interpretations and theories have been given about this period, but this is not the purpose of this dissertation. What is important to say is that the international community, with a high level of equipment and a high quality of troops, was not capable of restoring peace in the country, probably because older and more complicated factors were to be addressed. Nevertheless, the effect was leaving the country to itself for almost ten years, creating a constantly decline of socioeconomic and security conditions for the population; moreover, the Somalia situation became a threat for the stability of the neighbouring countries, and also the international community was affected, due to the great humanitarian crises of the country and the widespread violence and crime that emerged, which had strong effects also with the emergence of the phenomenon of piracy to affect the global trade.

In this context, several attempts to find a reconciliation were made. The 2000 Djibouti Conference managed to find some sort of agreements, and create a Transitional National Government. However, the reconciliation obtained with the Conference was short lived, and international actors started to get more involved. Thanks to the support of the Intergovernmental Authority on Development, that is the main REC of the Horn of Africa, the AU, the Arab League and the UN, a new agreement was found in 2003, with the creation of the Transitional Federal Government ('TFG'), that will come from the reconciliation of the main opposition group, led by the son of Aideed, and the TNG. This reconciliation, however, could not apply to the whole of Somalia's territory, where the north had seceded into the new State of Somaliland, remaining detached from the rest of the country's turmoil. The rest of the country was fragmented, and along with independent clans and warlords also other actors started emerging, most notably islamist groups and the terrorist group Al-Shabab, the strongest enemy to the pacification of the country.

The aid brought to the peace process by Ethiopia created harsh controversies, starting from 2003, due to the rivalry between the two countries and the often-ambiguous policies of Ethiopia in the resolution of the Somali crisis[397]. This led to a disaffection of many parts of the Somali society with the TFG, and also contributed to the radicalisation of many islamist groups, that started coalescing into the Union of Islamic Courts ('UIC'). The several military incursions from Ethiopia into the territory of Somalia just contributed to this. However, in the late 2006 and the first stages of deployment of AMISOM, Ethiopia was the only real partner of the TFG and contributed to reconquer Mogadishu that was conquered previously by the UIC.

The need for an international response became evident, and the first institution to respond was IGAD. This REC created a peace support mission to support the transitional institutions and secure a peace process that would have led to elections in 2009, as provided by the 2003 agreements[398]. IGAD effort was authorised by the AUPSC and by the UN through Resolution

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[397] Cocodia (2018: 102).
[398] Ibid.

1725 of December 2006, where it indicates the federal institutions the only conducive way towards stability[399]. The UN acted under Chapter VII of the UN Charter, but the mission, denominated IGASOM, had the only role of monitoring and supporting the peace process between the TFG and the UIC, and to provide VIP protection. Along with the low capabilities of IGAD in attracting support for the mission, IGASOM could not do much to sustain the peace process and actually it did not even deploy to a sufficient level, given the almost non-existent support it received. The only actor in this phase supporting IGASOM and the TFG was Ethiopia, whose intervention seemed an excuse to exercise its influence in the country for internal gains. The need for a broader intervention was evident and this brought the AU to actively step into the scene.

The UN expressed the necessity of the deployment of the AU mission; the mission was authorised through Resolution 1744, where the mandate was initially six months. The AU hoped for a quick takeover of the UN, like in the recent Burundian case[400], but as it is evident nowadays it never happened, although soon after the UNSC mentioned the possibility of a re-hatting[401]. The mission was named African Union Mission in Somalia ('AMISOM'). The PSC had previously authorised the mission in January 2007, but it is evident from the text of the communique that the AU has done so reluctantly, due to the weak support given by the international community, and it pushed the UN to deploy an UN mission as soon as possible and the external partners to provide the financing, since according to the AU the mission was done on behalf of the whole international community[402]. The president of the AU Alpha Konaré had recognised the difficulties of the AU to deploy the mission, mentioning mostly the chronic difficulties to provide an internal assessed contribution in the UN way, but nevertheless stated the importance of deploying in order to meet the responsibilities that the AU has accepted, even though the early times of the mission would have been hard[403].

The mission was mandated with the following tasks: (i) supporting the peace process and protecting all those that are involved in it, (ii) providing protection to the TFG for conduction of its functions of government, (iii) implementing the country's stabilisation plan with a particular attention on the strengthening and rearming of the Somali security forces, (iv) ensuring the security conditions for the provision of humanitarian assistance, (v) provide for the security of its own personnel, equipment, facilities and mission[404]. The mandate, done under Chapter VII of the UN Charter and both paragraphs (h) and (j) of Article 4 of the AU Constitutive Act, gave a wide range of possibilities to the AU troops to undertake enforcement actions. The mission was given enforcement action, that usually is evident from the writing of the Resolution mandating it, like in the case of Resolution 1744 where AMISOM is authorised to "to take all necessary measures as appropriate to carry out the […] mandate"[405]. However, the mission could not undertake direct attack against enemy positions, since the meaning to be given to this wording is an authorisation of using any measure when in the threat of an attack, meaning only when acting in defensive

[399] Resolution of the United Nations Security Council, 6 December 2006, S/RES/1725 (2006).
[400] COCODIA (2018: 103).
[401] Resolution of the United Nations Security Council, 15 May 2008, S/RES/1814 (2008), para 8.
[402] Communique of the African Union Peace and Security Council, 19 January 2007, PSC/PR/Comm(LXIX), *Communique of the 69th Meeting of the Peace and Security Council*.
[403] WILLIAMS (2018: 17).
[404] Resolution of the United Nations Security Council, 21 February 2007, S/RES/1744 (2007), para 4.
[405] *Ibid.*

peacekeeping[406]; the expansion of the mandate occurred in 2012, bringing immediate advantages to the mission.

The authorisation for the mission arrived *post-facto*, but it was evident that such authorisation would be given. The AU when authorising AMISOM decided its force size to be around 7600 soldiers, divided in 9 battalions and comprising land, air and maritime forces. However, in the early stages of the mission the AU could not deploy such a number of troops, due to the initial reluctance of the African countries to contribute with their soldiers. Uganda was the only country to reply and deploy quickly, and by the end of 2007 no other country joined the mission. This made possible that the Ethiopian contingent, that was acting outside the schemes of the mission, had a considerable leverage on the situation, despite the demands of the AU to its MSs, through the PSC Protocol[407], to refrain from becoming a party of the conflict in countries where an AU mission is deployed. The Ethiopian contingent further complicated things for the AU, demanding to sit at the meetings for the planning of the mission and undertaking indiscriminate actions against the UIC and other insurgents, that eventually brought to several civilian casualties[408]; this urged the AU to enlarge the number of TCCs and their soldiers.

The first contingent out of the Ugandan one that stepped into was the one from Burundi at the beginning of 2008. These two countries were the sole troops contributors by April 2009, when the total force size reached 4300 soldiers[409]. The difficulties on the field and the high violence of the conflict made the other countries reluctant to step into, also because the presence of the Ethiopian forces was ambiguous for the AU: many critics said that the AU was enslaved by Ethiopian interests and Western ones, according to the civilian population. The condition of the soldiers were harsh, also because of the low wages and the very difficult conditions of the military side of the mission, with terrorist groups acting in an unorthodox way and a mostly urban type of warfare for which the troops were not really prepared[410].

The Ethiopian contingent eventually withdrew between the mid-2008 and the beginning of 2009. This move brought both positive and negative effects; the positive ones are related to the controversial presence of the soldiers and the interests guiding them, that ultimately were a source of unrest in the country and a theme that Al-Shabab used for its recruitment[411]. The negative effect was that by that time the Ethiopians had been the only reliable actor to assist the TFG, and even though the methods of both did not follow the guidelines of due diligence and conduction of warfare, the strategic results obtained were encouraging, mostly for the conquering of Mogadishu, where still many rebel forces existed, like the radicalised side of the UIC, Al-Shabab and many loyalists of some warlords.

The withdrawal was needed by AMISOM, and the AU had plans to make a reconciliation in the Somali scenario to coincide with the Ethiopian withdrawal, in order to avoid the consequences of the vacuum left. In 2008 the new Djibouti Agreements were signed, where the UIC moderate side reconciled with the TFG, and its leader even became the president of the transitional government after the resignation of the incumbent. The effect of

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[406] COCODIA (2018: 106).
[407] Protocol Establishing the Peace and Security Council, Articles 8-9.
[408] WILLIAMS (2009b: 517-518).
[409] *Ivi*, p. 519.
[410] WILLIAMS (2018: 35).
[411] *Ivi*, p. 51.

these new events was that AMISOM was left the sole actor to support the TFG, where it could at least work independently without allegations of subordination. However, the contingent composition did not change before 2011, and the area secured by AMISOM and the TFG was only the capital city.

Most of the reluctance to cooperate with AMISOM in terms of troops came from the fact that it became clear that the UN was unwilling to transition the AU effort into an UN one. This led many MSs to refuse deploying their troops, although pledges had been given at the early stage of the mission. This caused a lack of capabilities for the mission, which could only insist on the removal of Al-Shabab from Mogadishu. The problem was mostly financial, because the UN, refusing to deploy a mission, did not provide financial support to AMISOM before 2012, thus making the African countries unwilling to participate in this situation of scarcity of equipment and funding. The side of financial contributions will be expanded later; here, it is important to note that these shortcomings had an important effect on the support to the mission also in terms of troops.

AMISOM in this phase had to fight for the control of Mogadishu, due to the increase of the forces of Al-Shabab, mostly coming from deserters from the TFG army that had been trained by Ethiopia but that left in the majority of cases[412]. This situation left AMISOM in the need of contributions, and brought pressure to Uganda and Burundi that accepted to increase their troop support. The two TCCs asked for an increase of the support to the mission and an expansion of the mandate, to include offensive action. This period, between 2009 and 2010, can be considered as a stalemate where AMISOM had to fight to keep the positions in Mogadishu and defend the TFG institutions. The mission was close to defeat.

The partnership with the TFG was unstable, since the transitional government was highly corrupted, and many of its members came from the former enemies, creating ambiguity in the relationship with them. Moreover, the TFG had low control of their soldiers, and this created many occasions for wrongdoings by the Somali soldiers to which the TFG was unable to respond[413]. This will be discussed in the section about the host State.

In 2009 the most important evolution was the creation of the UN Support Office for AMISOM ('UNSOA'). The UNSOA consisted in a mechanism for the management of a support package created by the UN to provide for the equipment of the AU effort, bearing in mind the fact that this would be a less dangerous move compared for the UN to the deployment of an own mission. UNSOA, as it will be explained in the section about funding, was to sustain most of the equipment side of the mission, from armoured vehicles to clothes, and from logistical facilities to medical equipment. UNSOA personnel when arriving in Somalia are confronted with a terrible situation as regards equipment and conditions of the troops. However, the Ugandan and Burundian forces were still vigorous and thanks to the renewed and unprecedented support for an AU mission by the UN, decided to increase their contribution with troops, bringing the total number of troops to 8000 by August 2010, and authorising a recommended and expected total of 20000 to be reached in the following months[414]. Crucial to the strengthening of the AMISOM operation, the police contingent was also to increase and was expected to reach the level of 1600 policemen, while at that moment it was

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[412] *Ivi*, p. 51.
[413] *Ivi*, pp. 72-73.
[414] *Ivi*, pp. 82-83.

just few hundreds. However, the UN was unwilling to finance the mission for a number of troops it thought unreachable in the short term, and it imposed that if the number of TCCs would not have increased, the authorised number of troops would not have been more than 12000, meaning that the UNSOA would have covered expenditures only up to this level. This created disappointment from the AU side, also because of the reluctance of the UN to impose a no-fly zone over Somalia or a naval blockade, to stop the supplies that the rebels managed to receive by sea.

By the end of summer 2011, the TFG and AMISOM forces managed to reconquer all the districts of Mogadishu, pushing the Al-Shabab forces to the outskirts of the city and reconquering many key positions and buildings. This created the need to shift the focus of the fighting, since the troops had by that time became skilful in urban warfare but now had to focus on securing and defending the newly conquered territory, due to the possible emergence of warlords that had been out of the scene for the stronger presence of Al-Shabab. AMISOM in this period managed to empower the TFG soldiers that acquired more responsibilities and were able to become a valid partner in some important operations against Al-Shabab. This was fundamental, since AMISOM could not be involved in purely offensive operations, but had to support the TFG in the conduction of theirs.

The situation shifted for the better in this period, and the gains obtained by AMISOM and the TFG made new actors more willing to support the mission. For instance, in October 2011 Kenya decided to deploy a unilateral mission in the south of Somalia, with which it shares a border, in order to attack the Al-Shabab positions in that area; the group was strong in the region, and it was employed in kidnappings and violence that affected the border with Kenya, also because of the flow of refugees. Kenya however considered the operation to lack legitimacy, even though it was successful since its early stages to reconquer a lot of territory from Al-Shabab; Kenya was pressured from the Somali government side, since it was seen as an invader even though it acted against a common enemy, and also other actors of the region feared the unilateral action, like Ethiopia[415]. Therefore, also due to IGAD and AU pressures, it was decided by the beginning of 2012 to integrate its forces inside AMISOM, due to financial and legitimacy interest, but eventually contributing an additional number of soldiers to the mission.

The inclusion of Kenyan forces created new prospects, and increased the willingness of other countries to contribute with its troops. IGAD capitalised asking the other main actor of the Horn of Africa region, Ethiopia, to step in. Ethiopia accepted and deployed a force of around 4000 soldiers, that however were not included in AMISOM but only acted as partners[416]. Nevertheless, Ethiopian troops were fundamental to reconquer key positions, like the city of Baidoa that constituted a crucial hub for trade routes. Kenya and Ethiopia coming into play contributed to double the force of AMISOM troops if we consider Ethiopian troops as AMISOM ones. Accordingly, the UNSC in January 2012 authorised the expansion of the military contingent to 17731 soldiers, plus 260 police officers[417]. This number was reached also thanks to the stepping in of Djibouti as a TCC, that deployed around one thousand troops by November 2012, after many delays concerning the payment and the supplies it would have received by UNSOA. The new structure of the troops also contributed to the reshaping of the division of

[415] *Ivi*, pp. 122-124
[416] *Ivi*, pp. 131-133
[417] Report of the UN Secretary General, 31 January 2012, UN Document S/2012/74, *Special report of the Secretary-General on Somalia.*

areas of competence, that was made in connection with the UNSC, the local government and the TCCs and had as a result the new version of the CONOPs, that as said is the main document giving the guidelines and the planning for the military side of a mission.

UNSC Resolution 2036 is the final product of all the evolutions that arose in this period. In addition to the confirmation of what was mentioned before, the Resolution expanded the mandate of AMISOM to engage enforcement action in any way it deemed necessary in order to reconquer the positions held by Al-Shabab, neutralising its militants[418]. AMISOM in this phase expanded its structure with two new mechanisms for intelligence and coordination in the conduction of operations and through the realisation of a new headquarter in Mogadishu. The port city of Kismayo was conquered, and every day Al-Shabab troops retreated to new positions.

In 2012 the transitional period came to an end. The mandate of the TFG was ended, and a new parliament was appointed, which accordingly nominated a new President and government. Furthermore, a new constitution was drafted, that confirmed the federal nature of the country, where many regions had appeared acting in many cases as quasi-independent actors; however, the new government managed to keep them under its authority, and even managed to bring back Puntland as a federate part of the State, leaving Somaliland as the only secessionist region of Somalia.

By 2013 the tasks of AMISOM changed due to the appointment of the Federal Government and the slowdown of the pace with which AMISOM conquered a lot of Somali territory from Al-Shabab. The risk of overstretching was present and the mission tasks were revised in seven main objectives: (i) to maintain a presence in the four sectors set out in the CONOPs of 5 January 2012, and reduce the threat posed by Al-Shabab and other armed opposition groups, in order to establish conditions for effective and legitimate governance across Somalia; (ii) to support dialogue and reconciliation in Somalia by assisting with the free movement, safe passage and protection of all those involved with the peace and reconciliation process in Somalia; (iii) to provide, as appropriate, protection to the Federal Government of Somalia to help them carry out their functions of government, and security for key infrastructure; (iv) to assist the implementation of the Somali national security plans, through training and mentoring of the Security Forces of Somalia, including through joint operations; (v) to contribute to the creation of the necessary security conditions for the provision of humanitarian assistance; (vi) to assist, within its existing civilian capability, the Federal Government of Somalia, in collaboration with the United Nations, to extend state authority in areas recovered from Al-Shabaab; (vii) to protect its personnel, facilities, installations, equipment and mission[419].

Out of the requirements of the mandate, it was evident that the mission had reached its operational limit, and had to rely mostly on political tasks in order to foster the stabilisation and strengthening of the federal government. An objective was the realisation of general elections that would include every Somali citizen by 2016, when the term of the incumbent government and parliament expired. The main threat to stability in this sense was posed from the excessive demand of autonomy that many regions within the federation manifested; an example is the fact that the federated State of Jubaland managed to make contacts with the Kenyan authorities in order to

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[418] Resolution of the United Nations Security Council, 22 February 2012, S/RES/2036 (2012).
[419] Resolution of the United Nations Security Council, 6 March 2013, S/RES/2093 (2013).

pursue an alternative and autonomous political agenda[420]. AMISOM promptly responded, also due to the protests of the federal government, relocating a part of the Kenyan troops to other sectors and substituting them with troops coming from Sierra Leone, that in 2013 deployed a contingent and became the sixth TCC. However, the troops from Sierra Leone were not so many, and so it was needed to keep most of the Kenyans in their positions.

Not many evolutions in the mission situation occurred in the following period. Through Resolution 2124 the contingent size was increased to more than 22000 troops, with the incorporation of a part of the Ethiopian contingent, numbering 4000 soldiers, within AMISOM, leaving the rest of the Ethiopian troops supporting the mission from outside. From this moment, the surge phase of the mission started; the TCCs received further equipment, mostly heavy weapons and vehicles, along with helicopters, but also logistical and communication equipment, that had someway been poorly distributed in previous years. With 2014 CONOPs, four operations were planned, aiming to first reconquering some strongholds of Al-Shabab in southern-central Somalia and then to secure and defend them. In this period the UNSOA was converted into the United Nations Support Office in Somalia ('UNSOS'), providing further support to the Somali National Army along with the always present support to AMISOM. Consequently, the operations counted on increased equipment and capabilities of the contingent that were operating with better expertise at that time, and a new division in six sectors in which the different contingents had to deploy. However the operation suffered from delays, mostly because of some misunderstandings on the supply of equipment and the role of some non-AMISOM troops. This brought the end of the four operations to be delayed from early 2016 to mid-2017.

The surge phase did not give a clear victory against Al-Shabab, thus delaying the plans of exit and hand over of the mission to the Somali authorities. Al-Shabab was not destroyed, but just displaced, and this caused the creation of a more cautious exit plan. This made the possibility of ending the mission by the 2016 elections impossible to follow.

The June 2016 CONOPs and later Resolution 2297 provided three strategic objectives:

> to reduce the threat posed by al-Shabaab and other armed opposition groups; to provide security in order to enable the political process at all levels as well as stabilization efforts, reconciliation, and peacebuilding in Somalia; and to enable the gradual handing over of security responsibilities from AMISOM to the Somali security forces[421].

The main result, namely, to make the general elections possible in its most democratic and inclusive way, partially failed. The 2016 elections were conducted and went smoothly, but were again not including all the population but consisted in the appointment of some 14000 delegates that would have appointed the Members of Parliament and ultimately elected a new president and government.[422] Despite the partial result, the country for the second time experienced an untroubled transition of power from one candidate to another, and the same will occur with the 2021-2022 elections.

The mission of AMISOM was almost concluded on the military side, with Al-Shabab that lost most of its positions but still unable to be defeated; the

[420] WILLIAMS (2018: 165-166).
[421] Resolution of the United Nations Security Council, 7 July 2016, S/RES/2297 (2016), para 5.
[422] WILLIAMS (2018: 203-204).

reason stands in the federal government, that is the only actor that can foster the improvement of political and socio-economic conditions to get rid of Al-Shabab through cutting its recruitment and propaganda abilities, that made many problems to AMISOM and to the Somali institutions[423]. Moreover, AMISOM could not do much to change the loyalty relationship between the federal government and the regional administrations: these actors had to find the solution alone, empowering the 2012 constitution without creating a weak State. AMISOM, eventually, started planning its withdrawal, and the most important things made from 2017 onwards were planning activities, including the support of the UN, and concerning the stabilisation of the federal-regional relationship and creating a plan for the empowerment of the Somali National Army. Indeed the best result that AMISOM reached in this phase was the empowerment of the Somali forces, that reached new troops and police sizes and whose integrity was improved, overcoming most of the problems of desertion that occurred in previous times. However, these forces are still less capable and funded than the international contingents, and this will remain a challenge, delaying the exit of AMISOM.

AMISOM during the last four years of its mandate continued the agenda that was solidified at that time, and was built around two main pillars: the empowerment of the Federal Government *vis-à-vis* regional and non-State actors and the strengthening of the Somali National Army and the police forces to contrasts the residual forces of Al-Shabab and other insurgents. The security tasks were not abandoned, since the asymmetrical warfare brought by Al-Shabab could make every target vulnerable, using suicide bombings and IEDs. The expertise that AMISOM had acquired in this sense was to be transferred to the Somali forces.

Plans for the transition started in 2017, with UNSC Resolution 2372 slightly reducing the number of troops of one thousand and extending the mandate until the end of May 2018. The mandate was however extended many times, until it was clear through Resolution 2472 that AMISOM would have had to contribute to the conduction of 2020 general elections. Delays in the conduction of elections, also because of some political turmoil and the 2020 Covid-19 pandemics caused the parliamentary elections to be delayed more and more, and then prolonging the AMISOM mandate many times, with a constant reduction of troops that however remained always around 20000 soldiers. Eventually, parliamentary elections were held at the end of 2021 and a new president was elected in May 2022. The AMISOM effort was completed and, prior to the recommendation of the AUPSC, the UNSC decided to transition AMISOM into the AU Transition Mission in Somalia ('ATMIS').

The mandate and structure of ATMIS was decided jointly by the Secretary-General of the UN and the AUPSC and authorised first by a communique of the PSC, later endorsed by the UNSC with Resolution 2628. ATMIS would consist of a force of around 20000, mostly coming from the former AMISOM troops, and it will follow a four-phases plan that would bring to an end the mission by November 2024. The four phases will be divided as following: Phase I –Reconfiguration; Phase II – Joint shaping and clearing operations and the handing over of some Forward Operating Bases to Somali Security Forces; Phase III – Decisive operations and handing over of the remaining Forward Operating Bases; and Phase IV – withdrawal and liquidation of ATMIS[424]. The Forward Operating Bases are those

[423] ANDERSON (2014: 943-944).
[424] Communique of the African Union Peace and Security Council, 8 March 2022, PSC/PR/COMM.1068(2022), *Communique of the 1068th Meeting of the Peace and Security Council on the reconfiguration of the AU Mission in Somalia (AMISOM)*.

strongholds reconquered from Al-Shabab and that are situated in remote or dangerous places, making them the most difficult to secure. The different phases will have different force sizes, declining from the initial 19000 to some 11000 in Phase III and eventually reaching zero by the end of 2024. The main focus will be the takeover of the responsibilities of peace and security by the Somali government, that has been more resilient and is improving both its capabilities concerning the security forces and its relationship with the regional bodies; however, it must be noted that the Somali army still remains divided by many clan interests, that is a challenge that ATMIS must overcome before leaving Somalia[425]. After almost twenty years the effort of the African Union would come to an end, and despite the big losses and problems encountered, it managed to stabilise the situation in a State that many have considered hopeless. Nevertheless the situation for Somalia and its institution is still difficult, but at least hope was restored.

3.2 THE ACTORS

After having provided the historical context of the conflict in Somalia and the peace support effort of the African Union, this section will consider one-by-one all the relevant actors that have served a role on the action of the AU, influencing, contributing or complicating the operations. Part of the role of every country has been mentioned, but it is important to see the reason why some countries have decided to deploy, and which interest has pushed them to do so.

The sense of the present case-study on AMISOM is to give examples that may create general patterns applicable to every situation. In this vein, the analysis of all the actors involved is important since it will provide all the different positions that a MS of the AU may hold and the problems that States and institutions may pose to a peace operation. The section will be divided in three parts; the first one will consider only African States, both those contributing as TCCs and those that have given a different kind of support, also including those that have affected the political agenda without contributing, like in the case of Eritrea. Secondly, the focus will go on the actors that are external to the African continent, mostly institutions like the UN and the EU, that have been important contributors in many ways, and influential States like the US or other countries. In the end, a small focus will be provided about the enemies of the mission, where the main actor is surely Al-Shabab; the analysis of the enemies is important since it can give an idea of the threats that future missions of the AU may face and on the asymmetrical and unorthodox fighting that these actors undertake.

3.2.1 Neighbouring Countries and TCCs

The present part will insist on the analysis of the actors of proximity to the mission, mostly neighbours of Somalia, that have all been involved in some way, and other countries from Africa that have supported the mission either with troops or with other means. The countries will be analysed in order of relevance for the mission, also considering the different capabilities and potentials that the countries may have.

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[425] AJÙ (2022- 9).

a) Ethiopia

The case of Ethiopia is probably the most ambiguous among the countries that composed the troop contributors for AMISOM. Ethiopia was both a key actor for the support of AMISOM and a destabilising factor because it is the country that is most perceived as a threat by the Somali society. The war for Ogaden in the 70's gives just an example of the tensions and rivalries between the two countries, and for every help given by Ethiopia Somalia perceives that something in exchange is demanded. We can divide the involvement of Ethiopia in two different periods of involvement, showing totally different courses of action: the period between 2006 and 2009 and the post-2011 period.

The first period of interest shows that Ethiopia has been the only actor to really support IGASOM and the TFG in the period of the threat posed by the Islamic Courts. However, this is the period that created most concerns to the population because Ethiopia was acting indiscriminately to install the TFG in Mogadishu and even caused collateral damage to civilians. However, the main unhelping factor in this period was the fact that the TFG was perceived as being heavily influenced by Ethiopia, which used the government to pursue their interests. It must be noted that Ethiopia is the most concerned country in the Somali scenario, either for the reflections of events in Somalia to the Somali minority living in Ethiopia and for the proximity of the country that may cause flow of refugees but also destabilisation and infiltration of terrorist groups, acting against the Christian majority.

Ethiopia had to be kept in place insofar it was the only TCC, but with the stepping in of Uganda and Burundi later on all the efforts of AMISOM were directed to push the Ethiopian contingent to withdraw. The unilateral project had been costing both economically and in terms of public opinion, and the effects of having terrorist groups proclaiming jihad over the Ethiopian territory was a matter of concern. Ethiopia left, since it perceived the animosity against its action and the difficulties of pushing the agenda of the TFG further, due to other actors and stakeholders coming into play.

In 2012 the tide changed, and Ethiopia came back to Somalia. The reasons may be found as a balancing of the stepping into of Kenya, as may be confirmed by the will of IGAD to include both the influential countries of the area. Ethiopia's role in this second phase seems less interest-focused, even though the contingents were kept outside AMISOM and acted unilaterally also after the integration into AMISOM around 2014. Ethiopia however continued pursuing its interest, at least in order to stop the spillovers of terrorist activities and discontent that would have affected the country's internal affairs. Ethiopia shifted its way of acting, and through a more transparent and cooperative attitude it contributed effectively to the AMISOM activity. Nevertheless some controversial factors remained, like the ambiguous relations existing with the State of Jubaland, creating animosity with the federal government, and an activity of pushing IGAD agenda along with Kenya that was perceived as a way to keep Somalia fragmented; to this, the creation of a memorandum for the status of Jubaland that eventually created a condition of great autonomy for this region but that upset the government of Somalia[426].

Ethiopia has been a fundamental actor in the military operations against the Islamic Courts first and Al-Shabab, and many key accomplishments were made thanks to its activity, like the instalment of the TFG in Mogadishu or

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[426] WILLIAMS (2018: 165-166).

the reconquest of key cities like Baidoa from Al-Shabab. Ethiopia also contributed to the training and rearming of the Somali National Army when nobody could undertake this task, but the high rate of defections that followed gives a bad light to its involvement. However, this came with some costs, mostly the propaganda that affected AMISOM as a means of neighbours interest and destabilising the Somali institutions, firstly with the subordination of the TFG to the Ethiopian instances, and secondly creating a perspective where Ethiopia was pushing for keeping Somalia weak and fragmented. Nevertheless, Ethiopia changed its behaviour and became a more reliable partner by time, denoting that AMISOM has been able to keep an independent agenda and be reliable; the fact that Ethiopia return was not followed by concerns from the population may be seen as an indicator of this[427].

b) Kenya

Kenya is probably the second most influential actor in the Somali scenario after Ethiopia, and the reasons for its involvement are similar. Even though Kenya does not have a region of Somali ethnicity like Ethiopia, it shares a border with Somalia, and this has been a source for destabilisation and increasing violence that crossed the border. Kenya has stepped into the Somali territory unilaterally in 2011, following the same method used by Ethiopia in 2006; Kenya was mostly forced to intervene in order to expel Al-Shabab from southern Somalia, after that many refugees were floating into Kenyan territory, and the border with Somalia was also becoming a buffer zone for illicit activities, affecting directing Nairobi. Kenya before 2011 was also part of the pacification process that was conducted by IGAD, that insisted on its more influential members[428]. Kenya was also fundamental for the establishment of the TFG, which stayed in exile during its earliest stages. However, it soon recognised the difficulties in undertaking a mission without the legitimacy and the endorsement of the Somali institutions. Therefore, the Kenyan contingent was integrated into AMISOM, and constituted a key element for the defeat of Al-Shabab in many areas of Southern Somalia. The most important accomplishment was the conquering of the port-city of Kismayo, key hub for Al-Shabab reinforcements. Kenya also suffered the countereffect of its deployment in Somalia, becoming a target of many Al-Shabab activities within the Kenyan territory: an example is the massacre occurred through the terrorist attack in a mall of Nairobi in 2013, leaving many civilian casualties[429]. Kenya contributed before its deployment through the offer of medical treatment for wounded AMISOM and TFG troops inside its territory[430].

The Kenyan forces have been a valid partner, but some occasions where the interests of Kenya contradicted its loyalty to AMISOM mandate still occurred, like the mentioned case of Jubaland that forced AMISOM to relocate part of the contingent. The Kenyan forces were also responsible of some wrongdoings, like their contribution to the illicit trafficking of charcoal that was put under embargo by the UN[431] or indiscriminate violence against civilians on the same occasions, with collateral damage or shootings against civilians that were mistaken for Al-Shabab troops. In the end, Kenya may be

[427] COCODIA (2018: 110).
[428] MAJINGE (2010: 495).
[429] ANDERSON (2014: 953).
[430] WILLIAMS (2018: 52).
[431] BROSIG (2017: 120-122).

seen as an example of a country that, pushed to intervene by internal reasons, found necessary to cooperate loyally with the AU in the conduction of the peace operations, still trying to push the agenda on its side both through the AU and at the REC level through IGAD.

Kenya evaluation is similar to the Ethiopian one; both countries intervened unilaterally for their strategic interests and security, but when realising that the unilateral project was unsustainable they integrated into AMISOM. The support of Kenya was fundamental in securing wide areas of the south, but its position remained often an ambiguous one, due to the Kenyan interest in pushing the Somali agenda towards their interest, contributing to empowering regional actors that further fragmented the country.

c) Uganda

The case of Uganda is different from the Ethiopian and Kenyan ones. Uganda may be seen as the most loyal and trustworthy TCC of AMISOM, along with Burundi. The contribution from Kampala was the first to arrive, and the Ugandan troops were the only ones to deploy for the first year of the mission until the Burundian contingent joined the mission. Uganda may be considered the lead state of the mission, since the contingent size has been the biggest for all the period from 2007 to 2022, without considering the non-AMISOM personnel operating in Somalia; for this reason, most of the force commanders of AMISOM have been Ugandan officials. Uganda controlled the Sector comprising Mogadishu and the main institutions and headquarters of both AMISOM and the Somali government, and its role in the defence of the city in the darkest hour of the mission was fundamental. Moreover, estimates say that Uganda is the country that has suffered most losses among its troops, but all TCC do not want statistics about fatalities to be published to avoid a negative reaction at home.

The reasons for the deployment of the Ugandan contingent rely mostly on the will of the Ugandan president Yoweri Museveni to play a leading role in the regional agenda, to pursue a Pan-African agenda in which he believed strongly and to benefit of an increase in skills and leadership for the Ugandan troops[432]. Uganda was a key partner, since it also ran some medical facilities that proved fundamental in the early stages of deployment and had to operate in the most dangerous environments, compared to the safer situation of the years after. Uganda also contributed to the training of TFG forces when the Ethiopian contingent withdrew, but on the contrary to the Ethiopian case, Ugandan troops have been often diffident about the Somali forces, mostly in the early stages where they feared infiltration of Al-Shabab inside the regular army; this created some operational problems on the ground[433].

Uganda also suffered consequences at home, like the terrorist attacks committed in Kampala in 2010, but the reaction in that case was a revenge one with an increase of troops number and resoluteness in continuing the mission. In this period, Uganda was the main force behind the main reconquering of territory in Mogadishu and the surrounding district. Like all the previous TCCs, Uganda contributed with some of their aircrafts and helicopters and also was a major contributor of the police forces.

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[432] WILLIAMS (2009b: 519).
[433] WILLIAMS (2018: 75:76).

Uganda may be seen as an ideal lead state for a peace mission since it does not use its relative primacy in troops contribution as a way to influence the political agenda and contributes loyally with the mission mandate and the other contingents. The Ugandan contingent on many occasions also built trust with the local population, providing medical care and trading with locals, trying to overcome the negative opinion that many Somalis had about the mission. Even if Uganda had its internal interests in conducting the mission, they never constituted a harm.

d) Burundi

Burundi has been acting in a similar way to Uganda, but with a lower contribution of troops. Arriving on the frontline in early 2008, the Burundian contingent was the second to deploy and it could give a sort of relief to the Ugandan troops during the phases of the conquering of Mogadishu. Burundi joined the mission both for its interest of testing and empowering the newly created armed forces after the civil war, but also as a sign of gratitude to the AU after the successful pacification and stabilisation of the country thanks to the AMIB mission. The Burundian contingent however was less trained compared to the Ugandan counterpart, and it could not be given the same advanced equipment and task as the Ugandans since there was a lack of experience in using such weapons; nevertheless, training programs from western States increased the Burundian capabilities, and Burundi was a fundamental supporter of the mission for almost all its duration. The Burundians have been deployed on the same sectors of the Ugandans, with whom a good harmony was reached since the first stages of AMISOM, even though initially language barriers and lack of communication devices complicated things.

Even though the Burundian contingent was probably the second one with most fatalities, this never meant a turn back in the allegiance to the mission; for example, when eleven soldiers had been killed in a suicide bombing at their headquarter, the reaction was to increase the number of troops and pressuring the AU to both expand the mandate of AMISOM and including new TCCs in the mission. The following period saw the Burundian contingent participating and being protagonists of many reconquering inside Mogadishu. Another element worth mentioning is that the Burundians, after many cases where their soldiers were struck in unknown territories being victims of ambushes, brought to a strengthening of the relationship with both the TFG forces and the local population, in order to use their knowledge of the ground and improve the reputation of the mission. In one of these ambushes, the deadliest event for AMISOM troops occurred in October 2011, where reportedly more than 70 Burundian soldiers were killed by an Al-Shabab attack after trapping two columns of Burundian vehicles[434]. Burundi chose not to report the actual number of soldiers killed in action in order to not create a drawback on the domestic opinion, as it is common for all the African contingents[435]. This event highlighted the problems of communications and equipment of AMISOM in this phase.

The Burundian support continued until the end, and the soldiers of Burundi were also employed in high-risk activities in the most remote outpost of AMISOM. Burundians were used also for training activities, clearing of roads and trade routes and contributed to the police contingent, making it a

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[434] WILLIAMS (2018: 119:120).
[435] *Ibid.*

trustworthy supporter in every dimension of its involvement. However, some problems arose around 2015 because of the eruption of protests in Burundi, which led to a strong reaction by the government against the population. Many observers noted that it was improper that through the rents and allowances given to the Burundian contingent the indirect effect would be to support the violations of human rights at home[436]; this led to the stop of funding from the EU to the Burundian contingent and forced the AU to find alternative sources only for this contingent. This is probably the only wrong effect brought by the Burundians, that was related mostly to the political leadership than to the behaviour of the troops.

e) Sierra Leone, Djibouti and Eritrea

To the previous list of TCCs that has been provided we should add three countries that have had a role in the mission: Sierra Leone, Djibouti and Eritrea. The first two have been supporters of the mission through their troops. Djibouti has also employed its diplomacy and role inside IGAD to make the political process go ahead. On the other hand, Eritrea did not contribute with soldiers, but was involved in affecting the agenda of the political process for its own interests, many times contributing for the worse.

First, Sierra Leone became the last country to deploy a contingent into the mission in the sector of Kismayo and southern Somalia. They had deployed in 2013 but their experience was short-lived due to the Ebola pandemic that affected the country and forced their withdrawal. The deployment of the Sierra Leoneans came mostly to reform the security sector and army of the country and create a better reputation for the soldiers that have been highly condemned for violations of human rights during the civil war in Sierra Leone. Nevertheless, even though they stayed only two years, the role of this contingent was important, and the fact that it was constituted mostly by Muslim soldiers was positive for the relationship with the local population. The Sierra Leoneans substituted partially the Kenyan forces, and were not cause of any major problem for the mission, excluding some delays in the deployment due to the excessive requests of equipment that could not be met. In the end, every mission has a smaller contingent that operates in a limited area; the important thing, in this case, is that they do not engage in major wrongdoings both against the civilians and against the mission's mandate.

The case of Djibouti is similar. The Djiboutian contingent counted around 1000 soldiers and was stationed mostly around the central regions of Hiran and Galgaduud, north of Mogadishu. The main utility brought by the Djiboutian contingent was its ethnic and linguistic link with the Somali population, since one of the main ethnic groups of the country is related to the Somali one. The main problems with the Djibouti contingent remained in the deployment of the troops in the early stages; even though the Djiboutian president had shown its will to participate into the mission already in 2010, it was not until early-2012 that the contingent could be said to be fully operative. The main reason was both the high and over-dimensioned requests that the contingent asked to the UNSOA and other partners, that many times were refused and created problems and delays, and also the fact that the contingent in the early stages did everything to stay as close as possible to the Mogadishu airport, in an environment that was considered safer. Nevertheless, the problems were eventually overcome, and the Djiboutian

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[436] Brosig (2017: 118-120).

responsibilities were expanded, leading to the stay of their soldiers, who also transitioned into ATMIS. It must also be recalled that Djibouti was highly involved in the peace process also before 2012, and that many peace meetings were done in Djibouti or under Djiboutian impulse, like the 2003 and 2008 agreements.

The last focus concerns Eritrea. Eritrea was never involved actively in the peace process as a troop contributor, nor as a supporter, but it has been very active in influencing the agenda and creating destabilisation in the country, mostly for its intention to create a proxy war with Ethiopia in Somali soil. Eritrea saw the early deployment of IGASOM and AMISOM later as a product of Ethiopian interests in Somalia, and then became a major supporter of the UIC that was combating against Ethiopia in 2006. Moreover, Ethiopia criticised the deployment of AMISOM and even suspended its membership from IGAD in 2007[437]. It was even reported by some sources that Eritrea supported Al-Shabab once the threat of the Islamic Courts disappeared. The example of Eritrea, a country that has a bad relationship with almost everybody in the region, is needed since it can make us understand that many times some actors, even States, may act as spoilers and act against a multilateral intervention if they deem that it goes against their interests. This possibility is always to be considered when deploying a mission, since it can augment the threat posed by opponents to the mission through the support of these countries.

f) Countries contributing without troops

Inside the contributors of the mission, it would be incomplete to mention only the TCCs. As a matter of fact, a crucial role was conducted also by the civilian staff and by the police contingent. The police contingent was expanded progressively with the expansion of the mission, and from a relatively small size of around 200 policemen big departures have been done; even though no official number are given, different UNSC resolutions authorised a police force of around one thousand men, and the actual numbers probably have been close to this amount.

It must be noted that many influential countries of the continent, like Nigeria and Ghana, or other countries that wanted to contribute, like Zambia or Zimbabwe, have helped in this sector. Some countries, like Uganda, Sierra Leone and to a lesser extent Kenya and Burundi, have contributed both with troops and with policemen. According to the AMISOM website, the police forces have trained more than 4000 Somali policemen, thanks to the training conducted by officials and ordinary policemen, and have been fundamental in the patrolling of newly conquered places, along with the management of public order. Other smaller contributors have been Gambia and Niger.

Other countries have contributed through the training of troops; other than the TCCs, that had among their mandated tasks the training of Somali troops, some external contributors have contributed to this task. However, the only African country to contribute to training has been South Africa, in relation to the American involvement in this sector.

This last list of contributors shows that many countries try to contribute in other ways compared to the troop contribution. However, many of the mentioned countries have given just a few policemen or staff to the mission,

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[437] WILLIAMS (2018: 43:44).

so they have benefited from the gratitude of the AU, manifested in many official documents, without actually giving much effort.

3.2.2 International organisation and influential States

Out of the main contributors in terms of troops, here the focus will briefly shift on the analysis of the financial supporters of AMISOM. First, the relationship with the UN will be discussed, since the UN did not only serve e role in support but is an actor that has always to be considered for the mandating and authorisation side of a mission, and no interest in the pacification is possible without including the UN. Later, the focus will shift on actors like the EU that have given many kinds of support to the mission, and other countries outside Africa that have contributed. Among these, the United States of America will be part of a special mention.

a) United Nations

The relationship between AMISOM and the United Nations has been contradictory, and both positive cooperation and issues of disagreement have occurred. Here we will consider the main dimensions of the UN involvement, that we can divide in two main trajectories: the mandating and political support on one side, and the logistical, financial and equipment contribution on another.

The first dimension has been full of problems in the first period of the mission, roughly encompassing the timespan of four years from the deployment of the mission to its expansion, while in the remaining period the relationship has been smoother. The early stages of the deployment saw the UN to almost force the AU to act, seeing it as the only possible supporter of the pacification of the country; however, AMISOM deployed with the hope of a quick re-hatting into an UN mission, due to the difficulties on the ground. As a matter of fact, the AU demanded the UN to provide at least financial support and to lobby for the support of the permanent members of the UNSC for the re-hatting into an UN mission. However, none of these requests was met; the UN could not raise support from the P-5 for a UN deployment, and this solution was also disliked by the UN because of the bad security and stability conditions that had to be improved for a takeover. Moreover, the UN activated only a trust fund in this period, leaving the support of the mission as resembling the other efforts of the African Union: these methods of financing have already demonstrated their inefficiencies.

The UN ultimately made clear that no re-hatting was foreseeable, and this created frustration at the AU level; another source of discontent was the mandate, that did not authorise a wide use of the enforcement potential of the mission, and only permitted defensive peacekeeping. The lack of a provision for the protection of civilians under threat was also criticised. This led to a change in the behaviour of the UN; probably, the AU difficulties and the fact that only two countries had been involved at the time convinced the UN that that course of action would have led to the failure of the mission, and would have left Somalia into anarchy. Another critique that has been done against the UN was a critique to the UN idea that AMISOM did not have to create a strong civilian component, because such role would have been a prerogative of the UN Assistance Mission in Somalia ('UNSOM')[438].

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[438] DE CONING (2019a: 217).

With time a change has occurred, bringing to an empowerment of AMISOM civilian components, that has been an important source for know-how and practices for the future AU missions.

The main turning point of the UN involvement has been, without any doubt, the creation of UNSOA. The UN has never contributed with a support package, funded through the assessed contribution, for a regional intervention under Chapter VIII. UNSOA was the first exception, and so far no other mission has benefitted of such a support instrument. This may be an indicator of the importance of Somalia in the international arena, more than many other African troubled countries. The establishment of UNSOA not only provided a relief to the TCCs that were present at that time, but also convinced other countries to consider a deployment of their troops that had the incentive of an UN backing. It comes without surprise that after this new measure Kenya, Djibouti, Sierra Leone and partially Ethiopia have joined AMISOM.

The evolution of the UN support has been seen also in the authorisation side, like for example the UNSC Resolution 2036 that expanded the mandate of AMISOM, making possible a wider spectrum of possible initiatives. The Kenyan troops have re-hatted also thanks to this change, and the period after 2012 has seen the hardest time for Al-Shabab, which had to run away from most of its positions and retreat to more and more remote ones. In the end, the group had to turn to asymmetrical warfare. The last stages of the AMISOM deployment, after 2015, has seen a total cooperation of the AU with the UN. The AU has been quite free to decide the modalities in which AMISOM would have transitioned, but still decided to cooperate with the UN; most of the decisions in this period have been joint, and the UN has been important in pushing for the mission to remain as long as possible to contribute to the electoral process; this was not done as a command, but giving as assurance the continuation of its support, that was provided until the end and also extended to ATMIS. Moreover, since 2015 the UN expanded the UNSOA role creating the UNSOS, even though many had thought that the main military achievement had been obtained.

Some obstacles have still remained, but they consisted more in disagreements between the UN through UNSOA/UNSOS and the TCCs, since many times the requests went beyond the necessities of the troops or the capabilities of UNSOA. Many times the TCCs have threatened to withdraw the mission, mostly due to the financial support, but most of the times a solution has been found. The majority of such requests was done to take advantage of the support system, and those that can be considered the only founded ones, where an increased involvement from the UN was needed to save the situation, are the requests from the Ugandan and Burundian contingents around 2008-2009, that eventually have been met even with some delays.

To come to an end, the UN has been initially more an obstacle than a resource for the AU, but then the relationship has improved, and the UN was able to provide most of the necessities that it was capable of for the optimal conduction of the mission. It is possible to say that trust may be the main reason behind this change of attitude; the UN has recognised that the will of the AU to conduct the mission was strong, and that the few TCCs were fiercely committed to reach a positive result, despite the heavy losses and the terrible situation of equipment and enemies' strength against which they had to cope. This may be a good prospect for the increase in the delegation of

peace support competences to the regional organisation, even though a change in this sense still has to manifest in another scenario.

b) European Union

The European Union may be considered the most important contributor to AMISOM. The EU has contributed to AMISOM with 2.3 billion € since 2007 to the present day, including the allocation of 600 million € for the three years of mandate of ATMIS; this has been financed through the African Peace Facility first and then with the broader European Peace Facility. The European Union has a fundamental role, since it is the institution that pays the allowances for all the troops of AMISOM/ATMIS, while the wages of the Somali contingents are paid through bilateral agreements with western countries. The EU has also been involved in Somalia with two missions, the EU-NAVFOR mission, also called Operation Atalanta, that consisted in the patrolling of the coasts of Somalia in order to fight the phenomenon of piracy, and the EU Training Mission in Somalia ('EUTM Somalia'), that is one of the many training missions that the EU has, mostly in Africa.

Operation Atalanta is interesting, since it has provided for the control of the Somali sea and has given a big support against the phenomenon of Somali pirates; the Operation Atalanta is one of the few EU missions mandated through Chapter VII of the UN Charter, and possibly is the first that may be given enforcement powers[439]. The mission does not only have the Somali coasts as area of competence, but operates in the wider area of the Eastern Indian Ocean. The mission has been fundamental since it has made possible the shipment of many supplies and equipment that otherwise would have been difficult to deploy. It has been noted that without such involvements, like Operation Atalanta and the broader support through the African/European Peace Facility, AMISOM would have failed many years ago[440].

It must be noted that the EU has not changed its way of financing African missions, and has always been following the requirements of rule of law and respect of human rights. For this reason the EU has chosen on some occasions to stop its contribution in the case of actions going in contrast with these principles. For example, after the 2015 turmoil in Burundi, the EU has decided to withdraw any support to the Burundian contingent, that had to be supported separately from the direct contributions; this shows that the EU recognises the importance of African missions, but it still wants them to be in light of the values that it wants to spread and defend.

c) United States and other contributors

The US relationship with the mission has seen many changes of behaviour, and different conclusions may be drawn. The early stages of the involvement in Somalia saw a will to obstacle the IGASOM deployment, pressuring the UN to not lift the arms embargo on the country and eventually causing the failure of the missions[441]. The close relationship with Ethiopia has been seen as a causing factor, and the activism of this country in Somalia was

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[439] TARDY (2019: 236-239).
[440] DARKWA (2016: 71).
[441] NDIAYE (2016: 58).

considered as deriving from US pressure. Moreover, also with the change of the US president, the American position about the mission in Somalia has been of leaving the burden to the African countries without contributing with external forces; around 2008 and 2009 the efforts for an integrated and multinational mission have failed due to the US obstructionism; a reason may be found in the disaster brought by the UNOSOM missions in the 90's, where the US has stopped to be embarked in any multilateral intervention on which it did not have the control.

However, the United States were also an important source of direct contributions. The US has often preferred to contribute in a bilateral way, making agreements for the contribution to the individual contingents rather than putting money in the UN-AU Trust Fund; moreover, the US has been a major contributor for the Somali National Army, paying most of the wages[442]. The bilateral contribution included ammunition, that however were not given to all the contingent but only some, like the Ugandan one, or airlift for the troops, that in most cases was provided by external contributors. The US also contributed through connecting the contingents with some American private agencies providing logistic support.

Probably the most important help provided by the US is the African Contingency Operations Training and Assistance ('ACOTA'). ACOTA is a training program conducted by the US in many African countries; it consists in training groups that train soldiers before their deployment for missions abroad. In the case of AMISOM, four TCCs were part of ACOTA: Burundi, Djibouti, Sierra Leone, and Uganda. These countries benefitted of this help in different stages; for example, Uganda was already an ACOTA partner, and the effect of the training was evident since the early deployment, while the capacity of the other contingents was built a bit lately, also thanks to the ACOTA involvement. The US has contributed also with drone and air strikes, mostly targeting relevant leaders of Al-Shabab, Al Qaeda or the Islamic State.

The US has been the most active contributor for what concerns individual States, but it was surely not the only one. Many European countries contributed to training operations, like the United Kingdom, France, Belgium or Netherlands. The United Kingdom and France were relevant also in terms of airlift and direct contributions to the contingents, while countries like Italy invested into the payment of wages for the Somali troops in a similar way to the US. Out of the western States, the most active has been China that has been directly funding the AU for the conduction of the mission. The contribution of such countries has been also indirect, for example in the activism in fighting the piracy off the coast of Somalia; in this case, an international task force was created, the Combined Task Forces 150, including some NATO countries and others like Pakistan, involving many forces in the fight against the phenomenon. The fact that the task force was created simultaneously with the deployment of IGASOM and later AMISOM created concerns; the UN in the resolutions issued at that time noted that it was contradictory that a lot of support has been brought to the fight against piracy off the Somali coast while almost no support was given to the mission on Somali soil where the phenomenon found its origin.

External contributors often act according to their interest and their relationships with States involved in the mission, and as said their political agenda causes many changes in their contributions. However, in the case of AMISOM the support was constant, probably because many external actors

[442] COCODIA (2018: 107-108).

thought that the AU was left alone or at least was acting on their behalf, finding it necessary to contribute in some way.

3.2.3 AMISOM Enemies

This last part will briefly consider the main enemies that have been encountered by the AMISOM troops. We can find three main categories of actors: warlords-related insurgents, the Islamic Courts and Al-Shabab.

The first two examples of enemies are traditional ones. Even if they are non-State actors, in many African scenarios the present of insurgents and islamist groups has been present. These groups employ traditional warfare, they control militias and aim to control territory that they want to administer. The warlords have been more involved in the early stages of the Somali Civil War, where they had a lot of power and controlled many troops; in many territories they administered the people in a quasi-governmental way. These actors' resoluteness has declined with time, and no warlord has been an active pretender for governing the country like Aideed and Mahdi in the 90's. Nevertheless, warlords are supported by clans and many times their support bases coincide, creating strong actors that may be difficult to demotivate and defeat. Many warlords have eventually chosen to be integrated in the Somali institutions, reducing the fragmentation of the country. However, in many cases these actors are linked with regional administration, and their power contributes to increase the lack of control of the Federal Government with these decentralised bodies.

The Union of Islamic Courts, that does not include all islamist groups in Somalia, has been the main enemy in the 2006-2008 period. This union of islamist groups encompassed very different kind of ideals, from moderate ones to more radical ones. The difference of these actors with the warlords and militias does not stand in their military characteristics, but reside in the fact that they pose themselves as a political platform. For this reason, we can see that part of them was destroyed by the interveners, mostly by Ethiopian forces, while others decided to cooperate with the transitional institutions, eventually being incorporated into government and parliament. It has been pointed out how the former leader of the UIC, Sharif Sheikh, became the president of the transitional government and now serves as a relevant actor of Somali politics. The radicalisation of many factions inside the Islamic Courts brought some terrorist groups to fight openly AMISOM; the most important is Al-Shabab, that was the former juvenile movement of the UIC.

Al-Shabab in the early times acted like the UIC, controlling territory and being involved in open warfare. However, Al-Shabab militants were very capable of guerrilla operations, hit and run attacks and the creation of IED to attack the AMISOM troops easily but also with big damages. The terrorist group has been the first to employ suicide attacks, and also counted to good weapons, like many RPGs and heavy arms, that used indiscriminately. Moreover, Al-Shabab had no will of preventing collateral damage, and even used the civilian population as a shield, or caused collateral damage from AMISOM sending missiles from crowded suburbs. However, Al-Shabab is mostly dangerous for their use of terrorist tactics. The use of suicide bombings has been a way to create damage even without controlling the territory, and many attacks have been done in the territory of the TCCs, thanks to the following declaration of allegiance to Al-Qaeda. Moreover, Al-Shabab has been skilful in the use of propaganda, creating enemies for the local populations and damaging the reputation of AMISOM. These tactics

have been increasing with the loss of many portions of the controlled territory, making it become a proper terrorist group employed in asymmetrical warfare.

The traditional warfare that AMISOM has employed may be not useful to address the threat posed by Al-Shabab now, and the defeat of Al-Shabab could not be done only militarily, but through the strengthening of Somali society and its socio-economic conditions. For this reason, it is right for AMISOM to transition into ATMIS and look for withdrawal, since the main military and security limits have been reached.

3.3 OUTCOME OF THE INTERVENTION

As it has been done in the previous chapter, this section will analyse the outcome of the intervention in Somalia concentrating on two main elements: the security and the political results. As it has been done previously, the first element will be discussed both in line with some empirical data and through the use of the previous sources concerning the conditions on the field; on the other hand, the political results may be analysed considering how the Somali institutions have developed in the years, also considering the quality of elections, the pacific transition of power and the relationship with regional institutions.

3.3.1 Security results

As it has been done in the previous section, the present one will discuss the security attainment of AMISOM also in light of the empirical data both of the period of the intervention and of the period before, in order to do a comparison.

Data from the Uppsala Conflict Data Program has been collected since 1989. In the 1989-1992 period, coinciding with the end of the first stage of the Somali Civil War and the ousting of Siad Barré, the highest peak of deaths has been recorded, with 2700 deaths recorded in 1990, 8400 in 1991 and 4700 in 1992. The first two years have seen a majority of State based violence, since most of the armed conflict involved the Government of Siad Barré and a multitude of opposition groups that militarised, among which the United Somali Congress, where both Mahdi and Aideed were members. On the other hand, most of the deaths in 1992 have been related to non-State actors, mostly because of the fight for independence in Somaliland against some local clans; Mahdi was recognised as president of Somalia, but even if the armed violence relative to its militia is listed among the State based violence, it is difficult to find the difference between the Somali Government armies and other warlords. In this period (1989-1992) a total of 16945 deaths has been recorded, on a total of more than 54000 in the last 23 years. This means that 30% of the deaths of the ongoing Somali conflict have occurred in just four years.

The years from 1993 to 2005 have been characterised by non-State violence, which accounted for more than 70% of the total of violent deaths. This may be considered a consequence of the anarchy of Somalia in this period, since most of the violence came from inter-clan conflicts for the control of resources and sources of income, or related with the Republic of Somaliland. The minority of State based violence concerns the efforts of the Mahdi militias aided by the then active multinational forces mostly inside

Mogadishu and the attacks conducted by Ethiopia on Somali soil, mostly in the area of Baidoa and against transborder opposition and islamist groups.

The period from 2006 to the present day has been the one with the most casualties in absolute terms, but if we consider the deaths per year it was less deadly than the early 90's. More than 27000 battle related deaths have been State-based, denoting an increase of the involvement of the Somali institutions in the fight for the control of the country. The UCDP does not list AMISOM inside the factions of the conflict, but we must interpret the activity of AMISOM inside the State-based category. In this period, non-State violence has been mostly concentrated in the first years of deployment of AMISOM, from 2006 to 2010, where Al-Shabab fought against other clan militias or Islamist groups for the control of their territories. The rest has been State-based violence mostly inside Mogadishu. Total violence has been on a constant rise in this period, and passed from 1200 deaths in 2006 to almost 3000 in 2012. This rise in fatalities is to be considered a result of the empowerment of both AMISOM and the TFG forces since most of these casualties have been related to the conflict between the governmental institutions and Al-Shabab. The almost total disappearance of the non-State violence is another sign of the expansion of the TFG activities outside Mogadishu.

A further confirmation of the enhanced capabilities of the AMISOM troops and the new federal government, coinciding with the expansion of the AMISOM contingents, is to be found in the period from 2013 to 2021. After a relative decrease in the total level of violence, where in the years 2013-2014 around 1000 deaths have been reported, in the rest of the years from 2015 to 2021 the violent deaths have been stable over 2000. These data are not a good indicator of security, but give a confirmation of the expanded role of AMISOM and the Somali National Army; as a matter of fact, most of the conflict related deaths has been State-based, like in the previous case, but unlike the previous period there have been more victims of the State-Shabab conflict outside Mogadishu, denoting the fact that the State control was extending on Southern and Central Somalia, to the detriment of Al-Shabab activity.

A last point that is worth noting is the unilateral violence against civilians. Data say that around 2500 civilians have died under direct armed attack, mostly because of terrorist attacks or collateral damage. Almost half of these fatalities occurred in the years after 2012, denoting a shift in the activity mostly of Al-Shabab. Al-Shabab loss of territory and of conventional military capabilities has resulted in a rise of asymmetrical warfare, mostly concentrating on suicide attacks and violence against civilians. This is a further confirmation that the kind of enemies that Somalia has to face now are different from the ones of a decade ago. Nevertheless, the State-based violence has been stable, denoting that the use of traditional forces has been necessary also in these last years, since different portions of territory are still controlled by Al-Shabab; the dual presence of traditional warfare and asymmetric one is likely to continue in the future, but the empowerment of the national forces has the objective to make the Somali Government confront these threats alone without the need of an external saviour.

To make a summary, empirical data confirm the analysis of a shifting situation in the Somali scenario. The transition from an open warfare to an asymmetrical conflict is evident from the differences in the kind of violent events. The final picture that is given about Somalia is that the country has almost overcome most of the anarchy of the past years, but the security

situation is still very difficult, and the civilian population has been more targeted today than in the past. It must also be recalled that the Somali crisis has created one million refugees around the world and two million of IDP (UNHR data) inside Somalia, further contributing to the security conditions that remain very bad. Even though AMISOM did not do much to change the absolute number of deaths, the securitization of many urban areas may be seen as an accomplishment; Mogadishu once was a battlefield, while now economical activities are more active and the people feel more secure, despite the terrorist attacks on the streets and in hotels that still occur. To complete the resolution of the security situation, the role of the Somali institutions is of utmost importance.

3.3.2 Political and institutional results

Even though after fifteen years of AMISOM activity the security situation has remained difficult, still with many improvements, the main results of AMISOM and the whole peace process have occurred on the political and institutional sides. Before AMISOM deployed, the country was in anarchy, the government did not control anything but a small portion of the capital and warlords and Islamic groups were acting as rulers, fragmenting the country. Since AMISOM deployment, the situation has improved. The first important instrument for the sake of political progress is the improvement of the security conditions that would lead to a strengthening of the government forces. If we compare the Somali National Army in the period of the TFG and the SNA now we can see a shift in the loyalty of these troops to the federal State. Even though clan dynamics are still present, the army passed from an inexperienced, undisciplined and untrustworthy force to an important actor for securitization. This comes mostly from the political action that has changed the system of loyalties in the country and increased its leverage on the troops.

 On the institutional point of view remarkable things have been done. The TFG was a weak force, dominated by former islamist and warlords, and was too much dependent on foreign forces. The fact that the TFG did not have an effective security force further de-legitimised its role. With the start of a political and electoral process, the governments have started to be elected in democratic ways since 2012, and this has coincided with an empowerment of the federal institutions and a consequent strengthening of the loyalty relationship with the security forces. Somalia has experienced three parliamentary elections and three subsequent presidential elections, where three different federal presidents have been appointed. Even though the security conditions have not permitted to do general elections, the indirect appointment has been a way to resemble a democratic and inclusive process. Moreover, the election of the parliament has started considering the clan society in which Somalia is embedded, contributing to an adequate power sharing in order to not create internal opposers to the peace process.

The situation is still difficult in the relationship between the federal government and the regions. Most of the regions have autonomous ways of conducting their policies, and often the federal government cannot do much to find common grounds with them. Most of the regional administrations resemble former clan structures that are difficult to break, because they bring stronger support from the local population. The federal government has tried to find some compromises with these actors, making many memoranda and meetings and so far, allowing a wide range of autonomy when necessary, they pushed in the same direction of the federal institutions.

Somalia is still partially fragmented. Al-Shabab still controls some territories, mostly rural areas in the south. Moreover, Puntland was brought back among the federated States but is still acting with wide autonomy, more than the other regions; the autonomy of Puntland is most evident in the security sector. This State-region has always had its security forces and has never experienced the deployment of AMISOM troops on its territory. This autonomy creates problems with the federal government. For example, Puntland and Somaliland have border disputes and they have often resorted to armed confrontation in order to solve them. This complicates the process of pacification of the whole country and the strength of the federal government to control all its regional bodies.

The last mention is to Somaliland. This *de facto* State has always experienced an independent history since the 90's, and has been able to create its own institutions and a power sharing comprising both modern and tribal/clan methods, eventually coming up with a system that has ensured stability. Somaliland has experienced less infiltrations of islamist groups, and has been resolute in keeping the threat of Al-Shabab outside their borders. Al-Shabab and the other opposing actors have found their origin in circumstances of absence of State presence, making them create bonds with the local population and their own system of power control. In Somaliland this did not happen for the presence since day one of some State institutions. This is a remarkable fact, but it is difficult to see Somaliland renouncing to this system that has been positive for its past in order to be reincorporated into the Somalian Federation. This poses a big issue for the future of the country that cannot be addressed through this dissertation.

To come to a conclusion, the political and institutional situation of Somalia has improved a lot, compared to the almost anarchic country Somalia was before AMISOM entered   the country. However many problems are still present, but they are similar to many problems of State control and rebel or terrorist groups that many other countries in Africa experience. The fact that Somalia can be considered again a State, with all the problems that have been mentioned, is a sign of the success of the AU involvement.

3.4 PROBLEMS AND PATTERNS OF THE INTERVENTION

The present section will consider the main problems and recurring patterns that have occurred over the AU Mission in Somalia, considering the elements that have been the focus of the previous sections on the other AU peace interventions. This section will be divided into four main parts, and their relative subparts.

Firstly, an analysis of the mandates will be provided, and a comparison with other AU involvement will be done. The main problems relative to the mandate will be mentioned, along with the positive aspects and the patterns that have been recurrent in other missions of the AU; exit strategies will also be part of this analysis. Secondly, the focus will shift on the international response to the mission, both in terms of MSs involvement and on the side of the external contributors, with a special focus on the UN; most of these elements have been mentioned, but this section serves the purpose of gathering together all the positive and negative elements to draw lessons that AMISOM gave for the next peace support missions. Thirdly, the following section will be focused on the relationship that the mission had with the local population and the host-State, analysing whether shortcomings of the mission may derive from these elements. Lastly, the analysis will go on the

recurrent practice that the UN has in terms of State-building and stabilisation, but also seeing the matters of disturbance brought by the UNSC and the problems related to traditional peacekeeping, mostly relative to the control of the AU on its MSs and their troops; the main purpose of the said analysis is to see whether old schemes apply well in scenarios like the Somali ones, or otherwise they need some reframing in order to adapt to new challenges.

3.4.1 Mandates and exit strategies

The setting up of mandates for peace interventions is always a critical aspect because the mandate also tells which are the capabilities of the contingents of the mission. The important thing is not that the mandate gives a lot of freedom to the contingents to operate, but rather that their responsibilities and powers are coherent with the scenario they have to find.

Most of the cases that have been mentioned previously where the mandates have been insufficient concern when the conditions of the ground require powers that the mission is not given, creating a gap between expectations and reality. In the case of Somalia, it is difficult to say that the setting up of mandates has been a major issue for the mission, but still some problems may be encountered. First, the earlier mandates given by the UNSC have used a language that would have made assume that the mission was going to transition to an UN mission in the near future. Such a thing, mostly when the reality goes on the opposite side, only creates expectations on the international community and the local government and population that eventually are disillusioned. Moreover, it has been evident by previous interventions that African MSs are reluctant in the support of missions under the AU flag that will surely transition to the UN, preferring to contribute later when conditions and equipment are better. This has made possible that the participation of the mission has lagged behind this expectation, that actually was also foreseen and demanded by the AU at some point. The late deployment of most of the TCCs is an indicator of this, and also the fact that many countries have pledged their participation but eventually did not contribute with their troops may be another point in favour to the danger brought by false expectations. The fact that talks to create an integrated and multilateral mission have continued until 2010, without any possibility of realisation, has probably increased this sentiment and this delaying effect.

Another controversial point of the mandate was the lack of the possibility to engage in open attacks against the threats of UIC and Al-Shabab in the early stages of the mission, but rather the only possibility was to respond when attacked. This would have been possible if the Somali forces had the capabilities to undertake offensive actions while leaving AMISOM troops to defend positions and undertake the protection of VIPs and key infrastructures; however, the TFG army was poorly equipped, with low integrity and with major infiltrations of the mission's enemies, jeopardising the ability of the mission to retake ground and forcing a defensive posture until the mandate was expanded in early 2012. The fact that the Kenyan and Ethiopian unilateral interventions have had an immediate result in reconquering territory gives the evidence that the mandate of AMISOM could be expanded earlier, so that the Ugandan and Burundian contingent could already reconquer large portions of Mogadishu when they reached an acceptable size around 2010.

A last critique that has been waived to AMISOM is the lack of any provision concerning the protection of the civilian population on the different mandates over the years. The contingents have been responsible for many collateral damages to the civil population, but this has not stimulated the creation of an explicit mandate to undertake this task. AMISOM has done a set of guidelines on the protection of civilians just in 2013, and no UNSC Resolution or PSC Communique has posed the issue as a requirement for AMISOM, if we exclude the protection of VIPs involved in the peace process[443]. This is a major issue that has caused opposition and uproar among the civilian population. A justification may be that the contingent do not need a provision to protect civilians, since they are already under the obligations of International Humanitarian Law. Nevertheless, the protection of civilians also involves a change in the support to the mission, with an increase in the capabilities of the civilian and police components and better investments in logistics and communications[444]. If such a task is not on the mandate, one cannot expect that these disbursements are made, making it impossible to meet the requirements of civilian protection. In the end, it may be said that AMISOM did not do much in this sense, either for the many tasks that it had or for the impossibility of avoiding civilian fatalities in some circumstances. This however leaves the mission at the mercy of any criticism.

A last remark should be done on exit strategies. The exit strategies of AMISOM have been unclear in the early stages, because the situation was unsettled and it was difficult to foresee which positive effect the mission would have brought. Nevertheless, it was clear that the lack of support of other countries in terms of troops was considered in the 2007-2010 period, so that at the UN and AU level many plans of exit were made if no further support would have arrived or if the two contingents would have withdrawn. The exit plans were conditional to the results of the mission, and many times the mandate was extended in order to accomplish some objectives, like the conduction of elections, or the accomplishment of some operations. However, the end of the mission was delayed many times, and from a tentative date in 2016 it was always prolonged, always finding different reasons. Probably the fear of having a Somali counterpart that was weaker than expected was present, and this caused the mission to stay more and more. The 2021 elections were held in the end, and so no better occasion for leaving could exist. This led to the setting of new exit strategies for ATMIS, that however seem to be easier to respect, and whose planning is better structured, with phases of the mission and deadlines. Such work is possible only in predictable circumstances, thus making it impossible to make an effective forecast for the end of a mission when the conditions on the ground mutate rapidly and surprisingly.

Nevertheless, most of the tasks deriving from the various mandates have been important for the defeat of the Al-Shabab potential and the empowerment of the Somali institutions. If we have to consider the tasks that were mandated mostly after 2012 we can see that most of those objectives have been met partially or in total, and following the mandate has brought an evident improvement to the country, manifesting the fact that the objectives were really functional to the political and security improvement of Somalia.

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[443] WILLIAMS (2018: 271-277).
[444] *Ibid*.

<u>3.4.2 International response</u>

Once the problems related to mandates have been discussed, this part will go on and consider the support that the mission has had, first from MSs of the African Union and then by third States, regional organisations and the UN. Since most of these elements have been already discussed, this section will rather compare the extent of international support for AMISOM with the general patterns encountered in previous AU involvements.

a) Response by Member States and coordination with the AU

The response by MSs to the mission has been low, as it has been evident also in previous involvements of the AU. Many countries have pledged an involvement in the mission, but just a few countries have eventually decided to join. Moreover, at the critical time of the mission, coinciding with its first three years of deployment, just two States have participated. This highlights the difficulties in solidarity actions of the African countries towards other ones, or the lack of possibilities to be helpful. However, this may seem only an excuse, since many countries, as seen, are increasing their military expenditures and many times use interventions as a platform for their own interests.

Many of the countries involved in AMISOM have acted in this way. It comes without any doubt that three contingents of AMISOM are neighbouring countries of Somalia. Moreover, none of the three has joined AMISOM willingly since the beginning, but all of them have done so once their unilateral projects became impossible to maintain. Ethiopia has been partially continuing with its unilateral project, further strengthening this idea of a lack of support from regional stakeholders. These influential States have understood that it was easier to make a role in the political process of Somalia if they were integrated into AMISOM, but such a measure has been done to try to manipulate the agenda and reduce the counter effects of the conflict in their countries. It is understandable that a country reacts to threats in their region of proximity, but trying to pull the agenda on their side may be detrimental to the unity and the reputation of a mission, as evident in many cases where the Somali government has protested against the divisive activities of some of its neighbours.

In addition, another fact that must be noted is that all the countries have provided troops in order to gain domestic benefits, either for an increased reputation of their troops and for collection of rents, allowances and equipment during the mission. The cases of smugglers and access to illicit markets by many contingents is a further confirmation of this. If a country wants to quickly increase the capabilities of their army, while leaving their pay to external contributors, joining an international peace operation is the easiest way. Many of these armies have benefitted of special training just for their condition as members of AMISOM, but the effects would be an overall improvement of all their security sector at home. Unfortunately, like the case of Burundi has exemplified, this may be done at the detriment of the civilian population.

Surely a true appeal to the instances of multilateralism or the will to contribute to the AU role in peace and security has been present, mostly by TCCs like Uganda and Burundi that have suffered huge losses of their soldiers but have always remained loyal to the mission. However, it would

be incomplete to think that this was the only interest that guided these countries in the decision to deploy their troops.

Other countries probably may have participated had the mission re-hatted to an UN one. Even though the equipment support was already provided mostly by the UN, the complementarity of different contributors may have complicated things, and the difficulties on the terrain and the certainty of sending own troops to a warzone where they would have suffered big threats for their security may have served as a counterbalancing effect that only a UN support package would have overcome. This involves mostly the wages that for AMISOM have been far below the level of UN missions.

In the end, AMISOM confirms the trend of the other AU missions, where the MSs are reluctant to provide troops unless a domestic security threat is present or in the case in which an UN takeover is forecasted, with the following economic benefits for the troops and economic relief for the sending countries.

b) Response by third States, regional organisations and the UN

The support by external actors has been varying during the period of the mission. If we do not consider direct contributions, that in some ways have been present in every AU intervention, the support of internationally relevant countries to the cause of AMISOM has been quite good. A big amount of funding has been provided, and mostly bilateral agreements have been signed for the sustainment and training of many of the contingents, denoting a more interested attitude than in the other missions, if we exclude cases like the Mali ones where countries like France saw the mission important for the French sphere of influence. Moreover, it is important to remark on the role that organisations like the EU have had in the mission, with an unprecedented contribution and with the important payment of wages for the troops and training. In the end, the international community has been willing to financially support the effort, unlike other involvements.

On the other hand, it may be said that the contributions have been necessary for the obstructionism of the international community to the expansion of AMISOM to an UN mission. The UN cannot mandate a mission to substitute AMISOM without the consent of the members of the Security Council, and the P-5 holding veto powers are the most important to convince. None of these countries have expressed interest in entering directly into the Somali scenario, also due to the high risk of political unsuccess and the difficult conditions on the ground. The many violations of human rights, sometimes committed by AMISOM troops, may have brought criticism against these States if committed under the premises of an UN mission. This lack of support has forced the AU to take its responsibilities, but at least it has learned lessons and empowered its peace operations ability, making a gain out of a negative situation.

A special mention is due to the UN. We have already mentioned that the UN was not fully contributing to the early stages of AMISOM, but later it has been involved in some support methods that have been unprecedented in other AU efforts. AMISOM is the only AU intervention of a relative size to not have transitioned to an UN mission, and this may have been felt at the UN level, leading to the decision of supporting the mission through exceptional ways, mostly to the UNSOA/UNSOS. It is difficult to say if these measures were made because of the necessity of avoiding accusation of

obstructing or leaving alone the AU in Somalia, but a side effect may have been the creation of a modal that may be applicable in future missions, mostly on the side of supporting, as it will be pointed out in the last section about the funding of AMISOM.

3.4.3 Relationship with the Somali government and people

The relationship of a mission contingent with both the local population and the Host-State are important for the success of a mission, as it has been evident in previous cases. In Somalia both the host-State and the local population have had a difficult relationship with the interveners, but both relationships have evolved and improved with time, but in different ways.

The relationship of AMISOM with the Somali institutions, mostly the TFG, has been opposite in some sense from the relationship between AMISOM and the local population. In the former case, it was the Somali government that had to acquire the trust of the mission and its troops, while in the latter case it was AMISOM that had to increase the trust and support of the civilians to its effort. For this reason, the two links have evolved with different dynamics.

The TFG has been an actor with low legitimacy and capabilities since the beginning of the mission. It must be recalled that the TFG has managed to enter Mogadishu just through the Ethiopian intervention, and its low level of independence has created problems for AMISOM, which has been accused of serving external interests when partnering with the TFG. However, the relationship of the two has been one of almost subordination, since the TFG could not do much alone and had to insist on having the constant help of AMISOM and external partners. However, as it has been noted, the TFG was perceived as corrupt by AMISOM and beyond, causing difficulties from local and external actors in trusting this actor, and moreover the low level of loyalty among the troops of the TFG has created suspicion among the AMISOM TCCs, that have been reluctant to side with the SNA in the first stages for fears of infiltrations. The mass defections in 2009 after the Ethiopian withdrawal confirmed this position. The corrupted nature of the TFG and the federal government after it have continued also to the present day, but the relationship of AMISOM troops with the Somali ones have improved. Mostly the Burundian and Ugandan contingents have recognised the utility of the Somalians in the knowledge of the territory, and their relationship and partnership has been increased after some fatalities among the AMISOM contingents that could have been avoided with better communication and field support from local troops.

The integrity of the troops has increased over time, and this has created an ever-improving environment in which the AMISOM and Somali forces could start cooperating on an equal level. The increased legitimation of the SNA *vis-à-vis* the local population had positive effects also for AMISOM, since in the early stages indiscriminate bombings by the Somali troops have caused civilian deaths and brought the local support to its minimum, but later the relationship has risen as the Somali forces have become more experienced and trained. On the other hand, AMISOM's relationship with the federal institutions was not so important, mostly because a sort of subordination of the government to AMISOM has always been present since the Somalians could not do much without this involvement. For this reason, the federal institutions have never caused problems like in the Darfuri case, where limitations to the AMISOM capabilities have been put. An exception

has been the critiques of the federal institutions to the unilateral projects of Kenya and Ethiopia, that have been addressed by AMISOM with minor changes. In sum, most of the problems of the government relied on its weakness and corruption, forcing AMISOM to increase the relationship with other sectors of Somali society.

In this vein, the relationship between AMISOM and clans and elders has been important. AMISOM has realised the importance of strengthening the relationship with those influential clans that had an interest in peace and fighting Al-Shabab, and this has brought further stability to the country. Some wrongdoings of AMISOM troops have worsened such relationship with clans, like in 2016 where a partial increase of Al-Shabab capabilities was connected with the momentaneous lack of support of the elders of clans with AMISOM actions[445]. This has led to a further strengthening with these agents, whose dynamics affect both the federal government and the regional administrations, making them important and worthy of recognition and partnership, if it serves for the success of the mandate.

Finally, the relationship of AMISOM with the local population has been difficult but improving. Somalia is a country where the population experiences difficult socio-economic conditions, and this causes it to be easy for groups like Al-Shabab to radicalise or recruit them for their scopes. This forced AMISOM to consider more its relationship with the people, since otherwise it would have benefitted the recruitment basis of Al-Shabab, mostly counting on the most suffering parts of the society. This relationship has been very bad at the beginning because AMISOM was not perceived as a powerful actor; the role of Ethiopia has increased the perception of the mission to be an instrument of Ethiopian interests, and the widespread incautious actions affecting the security of the population has been a stimulating factor.

The relationship has improved when AMISOM became stronger and could give an impression of keeping foreign interests of countries like Kenya and Ethiopia under control. Moreover the defeat of Al-Shabab in many territories and the consequent increase of terrorist attacks affecting the population has eroded the support base of this group, affected its recruitment power and shifted the support from the terrorist group to AMISOM. Important in this sense has been also an increase interest on humanitarian services, easier in the later times, and some help on schooling, food distribution and respect of the population, that have been appreciated and fostered a good relationship[446]. However, some decisions like the lack of provisions for the protection of the civilian population have caused some disagreement, and many portions of the Somali people still remain contrary to the AMISOM/ATMIS involvement, according to some polls done over the years.

A last point to consider is the relationship of AMISOM with the Puntland and Somaliland administrations. This relationship has been almost non-existent, since AMISOM never deployed in these territories, but since both entities were fighting against the same enemies, administering the security sector in a similar way to AMISOM legitimised the unnecessity of dialogue between the two, leaving the strengthening of relationship, mostly with Puntland, to the federal institutions[447].

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[445] COCODIA (2018: 113).
[446] *Ibid.*
[447] *Ivi,* p. 117.

To conclude, the relationship between a weak State and a mission is often good, because of the subordination of the former to the latter. However this may affect the support of the local population, and the best way to avoid this is to show both power and the will to be better than the enemies of the mission, in order to erode their support and make it shift to push the pacification effort.

3.4.4 Problems related to practice and ideals

This last section will enquire about all the other residual problems that have been encountered by AMISOM. These problems are mostly related to ideals and the practice of conducting peace interventions, and for this reason in this section they have been divided into three main categories. The first one entails the problems related to the excessive importance of the State centric ideals of the UN, founded on Westphalian principles but probably not fit for the challenges of a State that is highly fragmented like Somalia. Secondly, the role of the UNSC in the conduction of peace operations will be briefly considered, highlighting the fact that the reluctance of the Security Council to give support to a mission is an obstacle that is almost impossible to overcome for organisations like the AU. Thirdly, the problem of the direct control on troops by the AU will be considered; this is a common problem for all interventions mandated by international organisations, and we will see in that last section if some departures from this condition are possible.

a) The State-centric vision of the UN against the reality on the ground

Many criticisms have been done to the strong will of keeping Somalia as a unitary State and pushing to bring it back to its condition of unity in the pre-1991 period. As pointed out by scholars like Abou Jeng, the AU and UN rationale revolving around the importance of territorial integrity and border continuity clashes with the reality on the ground. The African case shows evidently this gap between ideals and reality, and the fact that many times the borders of African countries do not reflect ethnic and religious compositions increase this gap. The requirement of the inviolability of national borders was a major principle of the OAU that passed to the AU, in order to avoid the eruption of intra-State conflicts in Africa.

However, it is difficult to contend that this model should continue to apply to failed States like Somalia. It is evident that bringing back the Somali institutions to the level of the Siad Barré's times has needed more than thirty years of military interventions and political processes, and the country is still divided in different *quasi*-State bodies and highly fragmented, with the federal nature of the State only serving the purpose of keeping some regions under a weak federation. This ideal also underrated the importance of clan society in the stabilisation of the country, as it has been evident mostly in the 90's where the relationship between clans and warlords were not considered and the approach of creating a national government without any involvement of the local clans have caused the fragmentation of the society[448]. Jeng gives the example of Somaliland as a successful alternative to the State-centric model. Somaliland now is a *de facto* State that can be considered far more united and stable than Somalia, even though most of the features of the two

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[448] Jeng (2012: 254-257).

societies are common. However, State-building in Somaliland has followed a local and indigenous oriented approach recognising the specific features of the society and thus creating a society where the clans and the administration of the State cooperate and keep the social dimension strong and united[449]. The inclusion of elders and spiritual leaders in the State process would be a move towards the principles of "African solutions for African problems", but this is a difficult move to endorse for the AU, that would make enemies among the elites of the African countries.

The example of Somaliland, that is not a fully recognised State just for the international will of having an united Somalia, even possessing all the requisites for statehood, gives the evidence that following westphalian State-centric measures is not convenient in all scenarios, and in some African countries like Somalia it is necessary to cooperate with local actors that are outside the traditional stakeholders that are considered the correct ones by western practice; if there is no will to empower this side of the society and unite it for the peace process of the country, then it is correct to accept the dissolution in different and maybe more efficient States; a third way is difficult and unlikely, or at least would be long, violent and destabilising, as the recent history of Somalia has confirmed.

The empowerment of the clan and local societies has been too delayed, thus contributing to the present situation where Somalia is still a fragmented country, in a situation likely to endure. Different approaches to State-building may have been better, but it is difficult to say how much AMISOM could be able to change the course of action, since the AU has no will in making such change and the UN has always been following the previously mentioned principles. At least, a better involvement of the local society through a recognition of its unique features has started with AMISOM, denoting an acknowledgement of these ideals. This will be important for future approaches of the AU to conflicting countries.

b) The UNSC as a potential source of disturbance for the mission

Another point that must be noted remains the subordination of the regional arrangements to the decisions of the UN Security Council, an institution dominated by few influential States that many times refuse to get involved in areas of low strategic interests for them like Africa. The obstructionism brought by the UNSC has been so evident that the issue of re-hatting the mission to a UN one was not even voted before the council since it was clear that none of the P-5 had a clear interest in pushing for its realisation. The fact that the involvement of the AU on missions that concern its area of competence have to depend largely on the decisions of countries that most of the time have no interest in being involved creates big problems to the autonomy of regional arrangements like the AU. The main issue is that the AU is somehow forced to increase its own capabilities, since in cases like the Somali one it was the only actor that could or wanted to act. This creates a sense of abandonment since the AU is still an incomplete institution with many problems in the relations with its MSs. If the major players of the international community are not involved in conflicts of concern like the one in Somalia, that have consequences also outside Africa, at least it is important to institutionalise an improved framework for regional interventions, for example activating the UN support package for every intervention with similar characteristics.

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[449] *Ivi*, pp. 268-274.

The AU does not have the power to employ in operations that do not have the explicit authorisation of the UNSC, like for example NATO did on some occasions, because it is incapable of acting without at least the financial support of the UN. In this context, a change in the framework of authorisations of African involvement may be required, or at least Africa must be given a more prominent role within the Security Council, like with the expansion of the number of permanent members, which is something that has been asked in many cases.

The problem of dependence of the AU from UNSC decisions may be overcome in different ways, either with a change in the UN posture, that seems unlikely, or with an increase in the capabilities of the AU, that makes possible that the AU missions only need an authorisation but can be financed autonomously by the AU without relying on the practical support of the United Nations, that may bring limitations to the decisions to be taken on the ground, on the way equipment may be conceded or may impose some requirements in the political process that in some case the AU may handle better.

c) Lack of legal means of enforcement by the AU towards the TCC and MS

A last point worth noting is the lack of means of enforcement of the AU towards its own MSs in the conduction of peace interventions. This involves both the relationship with TCCs and the relationship with MSs before the deployment of a mission.

Departing from the first element, the AU like all international organisations implied in peace and security operations does not have its own troops, and this makes them to depend on their MSs for the deployment. The AU has tried to increase its role in the creation of an African force with the creation of the African Standby Force, that however is too dependent on the REC level, that ultimately depends on MSs themselves, mostly the influential ones within the REC. Solutions for these problems are difficult to find, because organisations with increased capabilities struggle with this issue, lacking complete control over the troops.

The matter of control is of the utmost importance, since the AU creates a loose control on the troops, that are operating under the directives of their commanders, and the only directions that the AU may give them is in the sectors they have to deploy to and in the general guidance conducted by the mission's force commanders. This many times causes the contingents to have to undertake independent actions, and sometimes even the contingent cannot control all their soldiers; eventually, troops may be responsible for some wrongdoings, and this may create a bad effect for the AU. In Somalia most of the times the contingents had their own means of judging the wrongdoings of their soldiers, causing a lack of impartiality and also a different kind of judgement for soldiers implied in the same crimes[450]. This is possible because the AU does not exercise control on the troops, but neither has systems of due diligence or tribunals for the missions, leaving the responsibility to the MSs. The AU should at least, if it cannot control their MSs due to the institutional framework of the Union, establish a good system of training and due diligence, so that even if operational control remains on the hands of national contingents, the soldiers can recognise what is right and what is wrong and avoid causing wrongdoings.

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[450] SEMPIJJA and EYITA-OKON (2019: 71).

On the other hand, a different dimension involves the ability of the AU to push its MSs to participate in a peace intervention. This kind of issue is difficult to solve, since the MSs cannot be forced to employ interventions in which they do not want to get involved, and so no coercive means can be imagined in this sense. An exemption could be collective self-defence against an external aggressor, but conflicts in Africa are mostly intra-State ones, so it would be a useless provision. Conversely, what the AU should implement is making the AU interventions convenient for the MSs, so that their participation would be higher in order to collect the benefits over time. Again, this issue can be resolved only with an increase in the power of the AU in creating effective ways of contributing to peace missions, but since it is difficult to see ways out of the contribution of the same MSs, the AU will continue to be less attractive compared to the UN model, because of the egoistic way of taking decisions of the MSs.

3.5 FUNDING AND RESPONSIBILITY IN THE CASE OF AMISOM

The last section of this dissertation will deal with the two main problems that involve AU peace operations, namely responsibility for internationally wrongful acts and the problem of funding. It has been evident that the AMISOM case follows similar patterns compared to the other interventions of the African Union, but also some differences have been found. The first section will involve the element of responsibility during the AMISOM involvement, considering how much the AU troops have respected international obligations and human rights, and which measures have been done to respond to alleged violations of these norms. The second part will consist of a general assessment of the funding scheme of AMISOM, seeing which problems have been encountered and whether the model of funding AMISOM should be exported to other missions.

3.5.1 Legal responsibility for wrongful acts in Somalia

The issue of responsibility for internationally wrongful acts has created many dilemmas, and as mentioned many complications arise when discussing the possibility of addressing responsibility to an IO in the context of peace interventions. The mission in Somalia has been full of allegations of violations of international norms, mostly human rights, by the AMISOM troops, also considering the long-time span in which the mission has been present in the country. The respect of human rights and the accountability of the perpetrators has been low, as it will be seen, even though some new measures have been implemented, as it will be explained.

As a starting point, it is important to analyse first the most recurrent cases of international wrongdoings by AMISOM troops. The first example may be the violations committed by Ethiopian troops in the early stages of AMISOM deployment, the period from 2007 to 2009. It has been reported that the Ethiopians have been involved in a wide range of violations, of which the worst have been the indiscriminate bombings from helicopters or from static positions against Al-Shabab, that however have brought hundreds of collateral deaths; to these violations, other instances of wrongdoings should also be added, like raping, torturing and even the allegations of the use of weapons of mass destruction like white phosphorus[451], whose use is prohibited by the Geneva Convention on International Humanitarian Law.

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[451] WILLIAMS (2018: 4).

The main problems in the settling of these violations is that no mechanisms of dispute settlement were activated at that time in Somalia, and the Ethiopians were acting side-by-side with the TFG forces, avoiding any international claim by the host State. The most important fact for the issue of responsibility for AMISOM is, however, the fact that the wrongdoings of Ethiopian forces could not have any consequence on AMISOM, since they were not part of the mission and so no link of control or guidance can be attributed to the Union. The same applies to those collateral wrongdoings committed by the Kenyan forces during their unilateral operation in 2011[452].

The case of the Kenyan forces is important since it has been a source of many wrongdoings. We can recall the case of the violations of the embargoes on charcoal by the Kenyan forces, or other violations committed during their stationing in Kismayo. The first example creates a violation of a UNSC requirement, but since the ban of charcoal trafficking was not mandated under Chapter VII provisions, this could not give rise to sanctions of the MS before the ICJ. However no other measures have been taken by the UN, and AMISOM has not been involved in similar cases committed by its MSs.

 The second case of wrongdoings, on the other hand, encompasses a broader category of wrongful acts, probably constituting the most frequent practical example of internationally wrongful acts committed during peace interventions. The event in which troops put at the disposal of an IO commit violations of international norms has been discussed previously, and in Somalia many of these events have occurred. We have mentioned the violations committed by Kenyan troops in Kismayo, but that has been only one example, and many others can be provided. For example, some troops under AMISOM have been responsible of shootings against the civilian population, among which the most prominent example is the shooting of seven civilians in a market by Ugandan troops in 2015[453], and also the collateral damage coming from the incautious fire directives can be provided as an example. Moreover, not only killings but also sexual exploitation abuses have been committed by AMISOM troops: almost thirty cases of these abuses against the civilian populations have been reported, with many others considered to have remained undenounced[454].

All these wrongdoings constitute violations of international customary law and international humanitarian law. However, it is difficult to claim that the AU should be considered responsible for these violations, since it has already been clarified that if we apply the doctrine of direct control it is quite unlikely that any of the perpetrators of the said violations should be found to be under the direct control of the AU, considered that the control remains on their sending States' military authorities. No claims of responsibility, in fact, have been waived against the AU. For what concerns domestic courts, the issue is more complicated because it is unsettled whether an agent committing crimes like sexual abuses may be considered as being in official capacity, and so can enjoy immunity before national courts. Some scholars contend that crime of sexual exploitation cannot be committed under official capacity[455]. Moreover, the Status of the Mission Agreement signed between AMISOM and the TFG explains that the AMISOM troops violating Somali

[452] ABASS (2017: 618).
[453] WILLIAMS (2018: 283).
[454] *Ivi*, pp. 276-279.
[455] WILSON and HURVITZ (2014: 6).

law should be prosecuted by the home State[456], creating a condition of possible impunity or at least of different standards of judgement.

This overview has confirmed, like in previous cases, that the loose control of the African Union on its troops most of the time saves it from international responsibility for international wrongdoings. However, the AU is still subject to reputational damage, and under the circumstances of AMISOM some measures have been taken, but they have not been highly successful. The first one was the AU decision in 2011 to create new guidelines for fire of the troops, giving notions for avoiding indiscriminate fire that may cause civilian collateral victims, clarifying the conditions and the countermeasures that the troops should take. Moreover, new requirements of accountability of the troops for any violations have been given to force commanders and officials, in order to increase the reporting of any violation, and also boards of inquiry have been created.[457] With Resolution 2036 the UNSC authorised the Civilian Casualty Tracking, Analysis and Response Cell ('CCTARC'), a specific civilian component that would have investigated on violence of AMISOM troops against the civilian population. These measures may be considered an improvement, but none changed the system of international responsibility that remains quite unsolved and leaves room for different interpretations.

It must be said that it is still a positive thing that the AU has shown to be willing to create measures for the solution of problems of wrongdoings, at least to bring a reputational improvement. Other improvements have been made thanks to external actors. Since 2011 most of the pre-deployment training of AMISOM troops has also included training on the respect of human rights and gender issues[458]. The UN has contributed to extending the Human Rights Due Diligence Policy to the UNSOA; this brought the UN Office to do a previous screening policy to see if some equipment may constitute a risk for the perpetration of violations of human rights, and avoid the concession if this was the case.

AMISOM does not create any important change in the doctrine of responsibility for international wrongdoings, nor influential cases have come from this involvement. However, some of the measures of prevention of violations should be remarked upon and it could be useful to consider their use in other involvements, even if they do not constitute a hundred percent certainty of curtailing wrongful acts, like the shootings of 2015 when all the said measures were present exemplified.

3.5.2 The problems of AMISOM funding from a normative point of view

The funding of AMISOM will be the last matter of discussion of this chapter and dissertation, and it must be said that the model provided for this mission is interesting and may be worthy of becoming a model for future regional missions.

The financing of AMISOM has seen three different models of funding: the bilateral support model, the trust fund model and the support package model. Bilateral contributions have been given mostly by external actors, usually by States, and have already been mentioned; they include ammunition, vehicles,

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[456] Status of Mission Agreement between the Transitional Federal Government of the Somali Republic and the African Union on the African Union Mission in Somalia, Addis Ababa, 6 March 2007, para 54-55.
[457] WILLIAMS (2018: 280-281).
[458] *Ivi*, pp. 282-283.

lifting, logistic and communication equipment, medical supplies and other equipment that is given by a State to the mission on the basis of an agreement. It has been seen that many times the bilateral support involved the relationship between a donor on one side and one of the TCCs on the other.

The trust fund created for AMISOM was administered by both the UN and the AU, but the UNSOA/UNSOS provided for the disbursement of these resources. The fund provided for the collection of contributions of a wide range of actors, and was used for establishing the CCTARC, or for projects like infrastructural and logistical supplies for the newly conquered positions, among the others. However, the most important measure coming from AMISOM has been the UNSOA and the UNSOS after it. This UN body has been fundamental to the conduction of operations, with a yearly expenditure of almost 500 million USD[459]. Some problems related to UNSOA have been that sometimes not much cooperation for the purchase of equipment has been done, causing the delivery of equipment that would not have been useful for the mission, but still the mission benefited a lot from this mechanism. Moreover, the mission in Somalia has been the one with the highest quality of the equipment, including aircraft, helicopters, a wide range of tanks and armoured vehicles. The logistical and communication sides have been deficient in early times, but thanks to UNSOA also these dimensions of the mission have been improved. Another involvement that is remarkable is the one from the European Union, that provided for the payment of the AMISOM troops allowance; it is difficult to foresee such a support for next missions, unless a real strategic interest or commitment from institutions like the EU materialises.

From this picture it has been evident that AMISOM has been giving less problems than both previous and following interventions concerning funding, and this may be explained through many reasons. AMISOM at a given point was doomed to not being re-hatted, so the UN contributed much more for its funding; with the other missions of the AU, the duration has been quite short and then the mission has transitioned after some years, making it probably pointless to set a mechanism that would have been used just for few years. Moreover, the threat and the international implication of the Somali conflict have been much higher, and no external lead State like in the case of Mali was present in order to save all the local stakeholders. These reasons may explain why the following interventions, namely AFISMA and MISCA, did not receive similar support, even if the AU expected similar establishments and the UNSOA model was already established and its use outside Somalia was possible.

In the end, a lesson that the funding of AMISOM provides is that the best way of funding an AU mission is not through relying on just one model of funding, but using a mix of them AMISOM has been the mission with the highest variety of support models implemented, and this explains probably its success. However, the mission would have received better legitimacy and relevance if the AU had financed it through its own budget (*i.e.* the AU Peace Fund), like the AU has done after during the deployment of AFISMA. This gives us a further ideal model that may be implemented, that is the coexistence of trust funds, bilateral support, a support package from the UN and a self-contribution from the AU. Only in this case it could be said that the mission has been financed by all dimensions of actors, and this would even imply the widest and best possible support model for an AU peace

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[459] LÖTZE (2016: 81).

support mission. However, this ideal method is dependent on a wide range of commitment from both African and international actors, something that has not been present so far in all the operations of the African Union.

Conclusion

The future of the AU framework for peace interventions. Legal, political and institutional requirements for future successful peace operations.

The present dissertation has dig into the domain of peace operations conducted by the African Union, and at the end of the discussion many open questions remain. Through these concluding remarks, lessons provided by any section will be exposed, in order to find a complete set of weaknesses in which the AU and the international community should focus.

The main conclusion that comes from the analysis of the African Union as an International Organisation, in the first chapter, is that both the Constitutive Act of the AU and the AU institutions are ambitious instruments for a development of the multilateralism in Africa in order to affect all the African countries and avoid all the problems that have occurred with the previous multilateral efforts, many times condoning grave violations of human rights and democratic principles. However, it has been evident that the AU has remarkable objectives but the structures to reach them are still incomplete, and a further involvement of the MSs is necessary to empower all those institutions that may have a real effect on people's lives, like the financial ones or the Pan-African Parliament.

The powers of the AU to undertake peace and security support missions have been mentioned at the end of the chapter. It has been explained that the provisions of the Constitutive Act, most importantly Article 4 (h) and (j), can be considered courageous, constituting a real departure from the immobilism of the OAU. However, the relationship of the AU with Regional Economic Communities and with the United Nations limits the potential of the AU to act independently, due to the fact that the RECs control the African Standby Force and the UNSC authorisation is needed for enforcement action. Empowering the ASF and creating a stronger leverage on the RECs is required, and the UN in this sense is already contributing limiting the possibilities of RECs efforts that are not coordinated with the AU: this is an encouraging point. An additional measure that may be necessary is creating legal provisions subordinating more the RECs to the AU and strengthening the existing ones, like the empowerment and accomplishment of the African Economic Community, expanding it to every sector and dimension in which the AU is involved.

The second chapter has described the main AU involvements, excluding AMISOM. The objective has been to find if some recurrent trends have occurred, and to try to give explanations and solutions for those bringing disadvantages to the peace interventions. The missions have been divided in more or less successful ones, and different kinds of results have been found. An assessment of the securitization brought mixed effects, and in some cases violence has restarted in a country after the end of a mission; it has also been found that in the interventions with negative results the effect on casualties and security has been only evident in the short term. The same applies with the political and institutional results. In the missions considered successful the quality of democracy and the stability of institutions has improved, while in quasi-successful and unsuccessful ones the institutional setting was not

changed or minor contributions have been brought. On the other hand, the direct relationship between the respect of exit strategies and the success of a mission is not confirmed by reality, since in some cases exit strategies have been delayed and disattended in order to follow a more result-directed approach. Some missions have respected exit strategies and still obtained good results, while others have been disasters, even if in the respect of predetermined plans.

The chapter continued in the analysis of the five missions with an assessment of the main recurring problems affecting systematically the interventions. Three main categories have been found: funding, problems in the political and strategic conduction of the mission and, finally, relationship with the host-State. Funding is the first and probably the most relevant and systematic problem encountered for all the missions conducted by the AU, and can be divided into many dimensions.

First, it is evident that the AU has not provided with almost any self-contribution to its own missions, and this with time has become a problem and started to create controversies, mostly at the UN level. Since the AFISMA involvement a small change has occurred, with the AU MSs contributing to a small portion of the mission's budget with some 50 million USD. This is a small improvement, but many steps have to be made in order to improve the involvement of the AU, that is fundamental to give legitimacy to its missions. The objective of having 25% of the mission budget funded by the AU is remarkable, and this purpose has to be pursued.

The second issue related to funding concerns the role of the UN. The AU has always pushed for a financial involvement of the UN in the AU missions, claiming that the AU contributes with its troops on behalf of the international community, so the UN should at least provide the funding for the mission. The AU has often asked the activation of support packages like UNSOA for the other missions established later. The UN however seems unwilling to totally support an institution that does not provide any kind of support to its own involvements, but if the result has to be a very poor level of funding, perhaps activating the structured support of the UN also for these regional interventions may be a good move in the short term. This should not relieve the AU from the implementation of better measures of self-contribution, and a mixed support both by the AU and by the UN may be a good solution, as it has been also envisaged by the AU.

The third point about funding has highlighted the role of external contributors out of the AU and the UN on peace operations. The AU, relying on direct contributions as the only way to support the peace operations, accepts to operate in a condition of unpredictability and uncertainty concerning the disbursement of funds and equipment, eventually causing huge problems to the missions' planning and their final results. The solution would not be to not rely on these contributions, but to create a diversified model in which the direct contributions are just a portion of the total, making possible to not suffer from excessive drawbacks if they are to diminish.

Among the strategic and political problems, the analysis of mandates has underlined that the setting up of mandates is very important, as it gives a full range of the objectives and powers of a mission. In the African context mandates are often disillusioned. In this context it is important that the AU

sets mandates that are the most coherent with the conditions on the ground, the capabilities of the contingents and the obstacles posed by the host-government. Another source of this set of problems, the credibility before the local population and impartiality, has been considered a contributing effect to the success of a mission. It has been said that the issue of credibility is relevant when it adds to a mission that is already failing, further adding to the list of problems, while this problem may be overcome with the progress of the mission. The problem of the relationship with the local population is highly intertwined with disciplinary issues, and it has been evident that the AU should increase its level of control on their troops to avoid misconducts that have been sadly constant in all interventions.

The last recurring problem has been identified in the relationship with the host-State, often source of failure like in the Darfur case. Multiple solutions may be found, first implementing more the use of Article 4 (h) of the Constitutive Act, in order to bypass the necessity of host-State consent, and this would imply a responsibility of the MSs composing the AU, or an increased will by the UN to break the dogma of State consent in those situations that are evidently causing direct harm to civilians. In this sense, either a more active role of the permanent members of the UNSC or an increased delegation to regional organisations to conduct a full range of activities with authorisation from above may be an uncomfortable but correct solution.

The main legal issues that have been encountered in the context of AU peace support are responsibility for wrongful acts and funding. In the first case, it has been noted that so far the AU has escaped any issue of responsibility due to its weak control over the troops; this should not end efforts on this matter, and the fact that the AU aims to strengthen its control through an empowered ASF and relationship with the RECs should increase awareness to the issue of the prevention of wrongdoings. A way to do it may be an increase in pre-deployment training encompassing all the matters of international law that may cause violations, and further increase monitoring, due diligence policies and compensations for the victims, in order to avoid the reputational damage that may turn in legal problems would the AU increase its control over the contingents.

The last problem of the chapter is evidently the most relevant. The internal sources of funding for the AU are almost non-existent, and the UN has not been a willing contributor for the missions, causing the African Union to rely on external contributors whose contributions are unpredictable. The solution that has been proposed in the dissertation is the empowerment of the system of self-contribution, in order to be less reliant on external donors and also improve the power to influence them, since the AU would not only be a net beneficiary of the supports but does its part in providing for the financing.

The third chapter has mostly served the purpose of, through the in-depth analysis of the AU Mission in Somalia, recognising some elements of the mission that can become models of the future interventions. For what concerns the mandate and exit strategies, there are no big lessons that come from AMISOM. The mission has seen some problems related to mandates, and when the said mandates have been expanded more results have been reached. This should tell us that in environments where the troops have to fight against unorthodox enemies under grave circumstances they should be

given a set of powers that is as wide as possible. The exit strategies should be extended as much as possible in order to accomplish the widest range of results, and in this vein AMISOM has been positive. For what concerns the response of the MSs and the international community, similar results have been found, confirming the need for the AU to both make its operations convenient for the MSs and to show its reliability to the international community in order to receive an increased support. The AMISOM mission has also showed that the best way to create a positive environment with the local population is to show resolution against the enemies of the mission, in order to appear better than them, mostly when they act against the population when they are at the edge of a defeat.

Some problems have been identified, relative to ideals in the planning of a mission and the practices around its conduction. First, concerning the political support process brought mostly by the UN, it is evident that in future involvements in highly fragmented States it will be important to address the stabilisation and pacification sides involving all ranges of actors, also elements of the tribal or clan society when they constitute an important role in the social context of a country. If there is no willingness to increase the dialogue with every relevant actor of the society interested in the stabilisation of the country, it would be better to accept the division of a State in different States that are maybe more efficient. Middle ground ways are not convenient, as shown, so a choice must be done at the beginning, since AMISOM shows that starting to involve local actors later may not be as quick and easy.

Another point is the presence of a difficulty in convincing the UN Security Council to approve the proposals of the AU concerning African peace operations. Finding a solution may be difficult, and since the reshaping of the UNSC to involve an increased African decision-making seems impossible, the only way is a stronger AU that shows resoluteness towards its MSs and then is recognised as a relevant actor by the international community. In this sense, the lack of means to control the MSs in the conduction of peace operations is a further source of disturbance. A possible solution may be the increase of monitoring policies on troops and a better training to ensure discipline and lawfulness. Second, it has been noted that the AU cannot force its MSs to be involved into peace operations but the AU may still increase the willingness to participate making participation to the operations more convenient: in this sense, the improvement of the system of financing may be again the solution.

The last two elements considered are responsibility and funding in the context of AMISOM. In the context of responsibility, it has been noted that AMISOM did not give real changes in the doctrine of responsibility, but has been useful at least to increase the monitoring and due diligence mechanisms of the AU mission, to address at least the reputational damages brought by wrongdoings of AU troops. This model should be incentivised, with a further strengthening of the civilian component of AU missions that has been highly underfunded previously.

The lessons taught by AMISOM concerning funding are probably the most important. It has been evident that the support package brought by the UN was fundamental in the final result of the mission, and such method should be used also in next involvements; however, the AU should not only count

on such methods, that depend on the UN and that require a reciprocity in the support to create a positive relationship. Thus, the AU should continue benefitting on previous models, including trust funds and direct contribution, and also empowering the system of self-contributions, that may create a relationship of partnership rather than donation further strengthening the financial support.

In the end, finding new prospects for the AU peace interventions requires a multidimensional work. What may be said is that the empowerment of the Union depends on both a change from inside, and a change from outside. Firstly, the AU should increase its power and resoluteness *vis-à-vis* both MSs and RECs, strengthening its supranational character and bringing to completion all the elements that are needed for peace interventions, like a structured budget for the purpose and a full control over the Standby Force, in order to be able to act and deploy without being too dependent on the regional mechanisms. Second, a change in the relationship with the UN should lead to an increased willingness to leave the resolution of African problems to the AU, but still supporting the missions through external support. This depends both on a change in the attitude of the UN and the permanent members, recognising the importance of the African actors, and on an increased reputation from the AU to be considered a reliant partner for these actors, both in terms of funding for which they must contribute more and for the avoidance of misconduct, that may bring a damage also to external contributors. The solutions are many, but this process seems long and full of challenges since the actors involved are many. Nevertheless, many progresses have been done in relatively few years and so it is reasonable to expect further improvements.

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Executive summary

The present dissertation has dig into the domain of peace operations conducted by the African Union. This work has been conducted through a division into three chapters. The main purpose was to describe extensively the African Union, its legal system, and most importantly its framework for the conduction of peace interventions. After this, the analysis of the operations already conducted by the AU has been made, aiming to find general trends common to all the missions, and to address them with possible solutions. It has also been noted that two main legal issue exist among the others: the problem of responsibility for internationally wrongful acts and the funding of the peace operations. The last part has considered the case of AMISOM as the most complex mission of the AU, in order to see if from a mission that has features that are uncommon from the other involvements some models for future operations may be drafted.

In the first chapter the main concern has been to define the international definitions and characteristics of peace operations, before going in dept with the analysis of the AU as an institution, and in particular with the analysis of its peace and security support framework. A prior explanation of the notion of peace operations has been provided, in order to separate it from the notion of peacekeeping that does not contain all the kinds of interventions that may be conducted by an international or a coalition of States. Such difference has been necessary because, as seen in the rest of the dissertation, peace support missions now have gone beyond the traditional definitions of peacekeeping, reaching a different and more complicate reality. Moreover, a particular focus has been provided about the distinction between peace operations conducted by the UN, considering mostly those under Chapter VII of the UN Charter, and the Chapter VIII operation conducted by regional arrangements, that have been expanding and rising and whose important contributor has been the African Union. Regional interventions are becoming more structured and different examples of non-UN missions have been provided. However, a highlight on the problems relative to the authorisations of these mission has been pointed out, and this still constitutes a source of disagreement sometimes between the UN and regional arrangements that aim to act independently.

A brief remark on the history of the African Union has been made, considering the inspiration brought by previous multilateral projects and the concepts of Pan-Africanism that pushed its founders. The problems of the predecessor of the AU, the Organisation of the African Unity, have been considered, also mentioning the gross violations of human right occurred in Africa in the XX century against which the OAU could not do much.

The African Union as an International Organisation has been described, considering all the main elements of an IO, like the statute, the institutions, international legal personality that it possesses and the supranational powers *vis-à-vis* its Member States. The analysis of the statute, the Constitutive Act, has made clear that both innovative elements and elements that came from past experiences, connected to a negative past, are present. The analysis of institutions has shown that the AU through its institution wants to create a complex system that might be involved in many aspects of the life of African countries, even though many of them remain incomplete and the MSs should increase their support to these institutions. The institution has been recognised as having international legal personality and being in the same doctrine of responsibility for wrongful acts as all the other IOs involved in peace and security protection, but for what concerns supranationalism the

AU shows a weak control over its MSs, and no binding effect of the AU Law has been recognised, creating problems to the applicability and the vertical relationship.

The main conclusion that comes from the said analysis is that both the Constitutive Act of the AU and the AU institutions are ambitious instruments for a development of the multilateralism in Africa in order to affect all the African countries and avoid all the problems that have affected the previous multilateral efforts, many times condoning grave violations of human rights and democratic principles. However, it has been evident that the AU has remarkable objectives but the structures to reach them are still incomplete, and a further involvement of the MSs is necessary to empower all those institutions that may have a real effect on people lives, like the financial ones or the Pan-African Parliament. The provisions and objectives that have been mostly highlighted in this part are those of the protection of peace and security, that aim to create a real change in the continent and that are the main focus of this dissertation.

The powers of the AU to undertake peace and security support missions have been mentioned at the end of the chapter. It has been explained that the provisions of the Constitutive Act, most importantly Article 4 (h) and (j), can be considered courageous, constituting a real departure from the immobilism of the OAU. The two mentioned provisions allow the AU to intervene in the territory of their MSs for grave problems of peace and security, with or without the State consent (Article 4h provides this possibility). The Peace and Security Council as an institution has been described, considering the importance of this institution and the positive effects brough by this system, mostly in reducing the number of sources of failure for decisions. The discussion has then shifted on the Regional Economic Communities, subregional bodies that have an important role in African multilateralism. Moreover, the relationship of the AU with the United Nations has been discussed, underlining the problems of their relationship mostly caused by the two legal systems that create some overlaps; however, the important role of practice in overcoming some differences has been also stressed.

The relationship of the AU with Regional Economic Communities and with the United Nations limits the potential of the AU to act independently, due to the fact that RECs control the African Standby Force, causing delays and conflicts with the AU at the moment of their deployment, and also the UN has to be always considered when an operation is mandated, and if the said operation has enforcement powers an authorisation is needed, making the dialogue with the UN mandatory. This, in addition to the lack of a primacy of the AU over the RECs, making impossible to bypass them, creates delays in the capability of the AU to deploy early and in total independence. Empowering the ASF and creating a stronger leverage on the RECs is required, and the UN in this sense is already contributing limiting the possibilities of RECs efforts that are not coordinated with the AU: this is an encouraging point. An additional measure that may be necessary is creating legal provisions subordinating more the RECs to the AU and strengthening the existing ones, like the empowerment and accomplishment of the African Economic Community, expanding it to every sector and dimension in which the AU is involved.

The second chapter has gone beyond the legal aspects and powers of the AU in peace operations and has described the main involvements: AMIB, MAES, AMIS/UNAMID, AFISMA and MISCA. The objective of the chapter, starting from a summary of the events and causes of any

intervention, has been to find if some recurrent trends have occurred, and to try to give explanations and solutions for those bringing disadvantages to the peace interventions. The missions have been divided in more or less successful, and different kinds of results have been found. An assessment of the securitization brought mixed effects, and in some cases violence has restarted in a country after the end of a mission; it has also been found that in the interventions with negative results, MISCA and AMIS/UNAMID, the effect on casualties and security has been only evident in the short term. The same applies with the political and institutional results. In the missions that during this dissertation have been considered successful the quality of democracy and the stability of institutions has improved, while in quasi-successful and unsuccessful ones the institutional setting was not changed or minor contributions have been brought. The AFISMA effort has been, for example, less successful in this indicator compared to the security results. On the other hand, the direct relationship between the respect of exit strategies and the success of a mission is not confirmed by reality, since in some cases exit strategies have been delayed and disattended but in order to follow a more result-directed approach, waiting for the realisation of the mandate even if it would cause a delay to the end of the mission rather than respecting the planned exit but when few results have been accomplished. Some missions have respected exit strategies and still obtained good results, while others have been disasters, even if in the respect of predetermined plans. For this reason, exit strategies were found as not being significant for the result of a mission, but still are to be considered in the whole picture.

The chapter continued in the analysis of the five missions with an assessment of the main recurring problems affecting systematically the interventions. Three main categories have been found: funding, problems in the political and strategic conduction of the mission and, finally, relationship with the host-State. Funding is the first and probably the most relevant and systematic problem encountered for all the missions conducted by the AU; three main dimensions have been considered, the power of self-contributing for its own missions by the AU, the contribution of the UN to AU involvements and the contribution of external actors, like the EU o other IOs or States.

First, it is evident that the AU has not provided with almost any financial contribution to its own missions, and this with time has become a problem and started to create controversies, mostly at the UN level. Many reports, meetings and statements have been done by the AU and the UN to reach an autonomy of the AU to finance its own missions,, or at least to contribute; however, up to date none of these proposals have been done, even though some levies and some requirements to MSs have started to be imposed. Since the AFISMA involvement a small change has occurred, with the AU MSs contributing to a small portion of the mission's budget with some 50 million USD. This is a small improvement, but many steps have to be made in order to improve the involvement of the AU, that is fundamental to give legitimacy to its missions. The objective of having 25% of the mission budget funded by the AU is remarkable, and this purpose has to be pursued.

The second element considered is the role of the UN in relation to the funding of AU missions. The AU has always pushed for a financial involvement of the UN in the AU missions, even though no legal requirement provides for such a help. Nevertheless, the rationale behind it is that since the AU contributes with its troops on behalf of the international community, the UN should at least provide the funding for the mission. However, this has not led to much involvement if we exclude the activation

of trust funds and conferences for finding third contributors. The AU has often asked the activation of support packages like UN Support Office for AMISOM also for the other missions established later, but this has not been accepted by the UN, creating problems in their relationship. It may be said that the UN feels uncomfortable to totally support an institution that does not provide any kind of support to its own involvements, but if the result has to be a very poor level of funding, maybe activating the structured support of the UN also for these regional interventions may be a good move in the short term. This should not relieve the AU from the implementation of better measures of self-contribution, and a mixed support both by the AU and by the UN may be a good solution, as it has been also envisaged at the AU level.

The third point about funding has highlighted the role of external contributors out of the AU and the UN on peace operations, considering for example non-African countries of other International Organisations. The involvement of these actors varies a lot, but the effect brought by the total of such support is the same; the AU, relying on direct contributions as the only way to support the peace operations, and this has occurred many times so far, accepts to live in a condition of unpredictability and uncertainty concerning the disbursement of funds and equipment. If the AU does not have other sources of funding, the risk of having a support that varies with time and may come to an end due to political reasons brings the consequence of downgrading the level of a mission and not being able to conclude what has been started, or at least not being able to plan efficiently on the long-term. The solution would not be to not rely on these contributions, but to create a diversified model in which the direct contributions are just a portion of the total, making possible to not suffer from excessive drawbacks if they are to diminish.

The second set of problems, related to the strategic and political problems in the conduction of a mission, may be summarised in issues related to the mandate, to the impartiality and credibility *vis-à-vis* the local population and to the conduct of the troops. The first analysis has underlined that the setting up of mandates is very important, as it gives a full range of the objectives and powers of a mission. In the African context mandates are often disillusioned; this happens because sometimes the mandates give to the contingents some tasks that they are not capable to undertake mostly because of their equipment and capabilities; since mandates are done before the consolidation of the contingents, this gap often occurs. Other issues may be related to the fact that a mandate is too small or restricted, causing an incomplete mission that cannot solve all the problems causing conflict, or finally the obstacles brought by the host-governments that pose barriers that eventually make mandates impossible, like in the Darfur scenario.

The second subject of analysis, the credibility before the local population and impartiality, has been considered a contributing effect. In all the failed interventions, namely the Darfur and CAR ones, the relationship of the local population with the mission has been bad and this was due to the perceptions of being too close to the government in the Darfur case, that was an enhancing force of the conflict, or for uneven relationship with some factions at stake mostly in the CAR. It has been said that the issue of credibility is relevant when it adds to a mission that is already failing, creating a multiplier effect to the list of problems, while this problem may be overcome with the progress and success of the mission. The problem of the relationship with the local population is highly intertwined with disciplinary issues, and it has been evident that the AU should increase its level of

control on their troops to avoid misconducts that have been sadly constant in all interventions. In the following sections we have provided some possible responses.

The last recurring problem has been identified as the relationship with the host-State. In cases like the Darfur one this relationship has been a major source for failure of the mission, mostly because the host-government could put limitations to the powers of the missions through their Status of Forces Agreements. Multiple solutions may be found, first implementing more the use of Article 4 (h) of the Constitutive Act, in order to bypass the necessity of host-State consent, and this would imply a responsibility of the MSs composing the AU, or an increased will by the UN to break the dogma of State consent in those situations that are evidently causing direct harm to civilians. In this sense, either a more active role of the permanent members of the UNSC or an increased delegation to regional organisations to conduct a full range of activities with authorisation from above may be an uncomfortable but correct solution.

The main legal issues that have been encountered in the context of AU peace support are responsibility for wrongful acts and funding, and they have constituted the subject of analysis for the last two sections of the second chapter. In the first case, it is clear that the regime of responsibility for international wrongdoings affecting the AU and all the IOs is unsettled, and this causes problems mostly in relationship to the many misconducts of AU troops over the years. It has been noted that so far the AU has escaped any issue of responsibility connected to its troops due to its weak control over them; the reason is that the direct control, fundamental test for the allocation of responsibility, in AU missions remain on the sending countries. This should not terminate efforts on this matter, and the fact that the AU aims to strengthen its control to the troops through an empowered ASF and relationship with the RECs should increase awareness about the matter. A way to do has been recognised as an increase in pre-deployment training encompassing all the matters of international law that may cause violations, and further increase monitoring, due diligence policies and compensations for the victims, in order to avoid the reputational damage that may turn in legal problems would the AU increase its control over the contingents.

The last problem of the chapter is evidently the most relevant. The internal sources of funding for the AU are almost non-existent, and the UN has not been a willing contributor for the missions, causing the African Union to rely on external donors whose contributions are unpredictable. The solution that has been proposed in the dissertation is the empowerment of the system of self-contribution, in order to be less reliant on external donors and also improve the power to influence them, since the AU will not be a net beneficiary of the supports but does its part in providing for the financing.

The third chapter has mostly served the purpose of, through the in-depth analysis of the AU Mission in Somalia, recognising some elements of the mission that can become models for the future interventions. The structure of the chapter has resembled the one of the precedent one. First an historical remark of the AMISOM involvement has been provided, and through it many encouraging or problematic elements were collected for the following sections. After this, an analysis of the actors involved in the mission has been brought, departing from the African countries that have participated with troops or other forms of support, or disturbance, also mentioning the reasons that pushed them in their behaviour or support. This has been necessary because common partners may be encountered also in other

missions. In the same way, also external contributors have been mentioned, among which the UN, the European Union and the United States have been the main focus. These actors have both been an important political supporter and financial one, in the case of the UN, or a source of payment for the wages of the troops in the EU case, but also some sources of disturbance. The US cases has been ambiguous both for the support it gave in training and equipment and for the obstacles put to a strengthening of the mission. A last category of actors has been found, mostly concerning the enemies of the mission, that have been found as resembling non-traditional actors that employ in unorthodox warfare, and that may be the enemies of future missions; Al-Shabab is the main actor of this section.

A brief section has analysed the security and institutional results brought by AMISOM, denoting that the mission has done a good job in the reduction of fatalities in the country that have still remained high, and that it is also evident from data the expansion of the mission to other areas of the Somali country. The political results have also been good, considering that the democratic institutions have started working better and electoral process have been somehow successful, even though problems related to the fragmentation of the country and the control of the territory still remain.

The chapter continues in the analysis of sources of problems and trends common to the previous missions. For what concerns the mandate and exit strategies, there are no big lessons that come from AMISOM. The mission has seen some problems related to mandates, and when the said mandates have been expanded more results have been reached. This should tell us that in environments where the troops have to fight against unorthodox enemies under grave circumstances they should be given a set of powers that is as wide as possible. The exit strategies should be extended as much as possible in order to accomplish the widest range of results, and in this vein AMISOM has been positive, also because of a caution on handing off the situation to the weak Somali institutions. For what concerns the response of the MSs and the international community, similar results have been found, confirming the need for the AU to both make its operations convenient for the MSs and to show its reliability to the international community in order to receive an increased support. The AMISOM mission has also showed that the best way to create a positive environment with the local population is to show resolution against the enemies of the mission, in order to appear better than them, mostly when they are radicalised groups that act against the population when they are at the edge of a defeat.

Some problems have been identified, relative to ideals in the planning of a mission and the practices around its conduction. First, concerning the political support process brought mostly by the UN, it is evident that in future involvements in highly fragmented States it will be important to address the stabilisation and pacification sides involving all ranges of actors, also elements of the tribal or clan society when they constitute an important role in the social context of a country. Moreover, the UN and the AU conversely have showed a low interest on local groups, and instead have acted with westphalian State-centric ideals that do not fit in many scenarios in the African continent; if there is no willingness to increase the dialogue with every relevant actor of the society interest in the stabilisation of the country, it would be better to accept the division of a State in different States that are maybe more efficient. Middle ground ways are not convenient, as shown, so a choice must be done at the beginning, since AMISOM shows that starting to involve local actors later may not be as quick and easy. The example of State-building in Somaliland has been provided, as an example

of parallel effort to the Somali one that has been successful due to the mixture of traditional Statal elements and the acceptance of a role for clan society and locally relevant actors, something that has not been done in the wider context of Somalia,

Another point analysed is the presence of a difficulty in convincing the UN Security Council to approve the proposals of the AU concerning African peace operations. Finding a solution may be difficult, and since the reshaping of the UNSC to involve an increased African decision-making seems impossible, the only way is a stronger AU that shows resoluteness towards its MSs and then is recognised as a relevant actor by the international community. In this sense, the lack of means to control the MSs in the conduction of peace operations is a further source of disturbance; first, it has been noted that the AU has not much control on the troops, making them possible sources of wrongdoings. Since the weak control is common to many IOs implied in peace and security protection, a possible solution may be the increase of monitoring policies on troops and a better training to ensure discipline and lawfulness. Second, the relationship of the AU with its MSs has been the subject of another sub-section. It has been noted that the AU cannot force its MSs to be involved into peace operations. Even though this is legitimate and understandable, the AU may still increase the willingness to participate through an operation of making participation to the operations more convenient: in this sense, the improvement of the system of financing may be again the solution.

The last two elements considered are responsibility and funding in the context of AMISOM. In the context of responsibility, it has been noted that AMISOM did not give real changes in the doctrine of responsibility, but has been useful at least to increase the monitoring and due diligence mechanisms of the AU mission, to address at least the reputational damages brought by wrongdoings of AU troops. This model should be incentivised, with a further strengthening of the civilian component of AU missions that has been highly underfunded previously.

The lessons taught by AMISOM concerning funding are probably the most important. It has been evident that the support package brought by the UN was fundamental in the final result of the mission, and such method should be brought also to next involvements; however, the AU should not only resolve on such methods, that depend on the UN and that require e reciprocity in the support to create a positive relationship. Thus, the AU should continue benefitting on previous models, including trust funds and direct contribution, and also empowering the system of self-contributions, that may create a relationship of partnership rather than donation further strengthening the financial support. It has been noted that aids like the one brought by the EU are very important, but it would be difficult to reproduce them in the future, even though the EU is highly committed in the support of peace in Africa.

In the end, a conclusion has been provided in order to find new prospects for the AU peace interventions, a challenge that requires a multidimensional work. What may be said is that the empowerment of the Union depends on both a change from inside, and a change from outside. Firstly, the AU should increase its power and resoluteness *vis-à-vis* both MSs and RECs, strengthening its supranational character and bringing to completion all the elements that are needed for peace interventions, like a structured budget for the purpose and a full control over the Standby Force, in order to be able to act and deploy without being too dependent on the regional mechanisms.

Second, a change in the relationship with the UN should lead to an increased willingness to leave the resolution of African problems to the AU, but still supporting the missions through external support. This depends both on a change in the attitude of the UN and the permanent members, recognising the importance of the African actors, and on an increased reputation from the AU to be considered a reliant partner for these actors, both in terms of funding for which they must contribute more and for the avoidance of misconduct, that may bring a damage also to external contributors. The solutions are many, but this process seems long and full of challenges since the actors involved are many. Nevertheless, many progresses have been done in relatively few years and so it is reasonable to expect further improvements.