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DISSERTATION TITLE: ASSESSING THE ROLE PLAYED BY REGIONAL ORGANISATIONS

IN CONFLICT RESOLUTION IN AFRICA.

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Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for Masters in International Law in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of programme of courses.

I hereby declare that I read and understood the regulations governing the submission of the Masters in International law dissertations including those relation to length and plagiarism, as contained in the rules of this University and that this dissertation conforms to those regulations.

Signed by..... on.....

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This document was compiled from earlier documents to which the following staff members contributed: Amanda Barratt, Prof Tom Bennett, Samantha Cook, Prof Francois du Bois, Douglas Molepo, Anne Pope, Saskia Price, Lee-Ann Tong and Linda van de Vijver. The guide was consolidated and reviewed by Dr Jaco Barnard with the assistance of Prof Christina Murray and Prof Anton Fagan who reviewed the consolidated document and provided helpful comments.



SECTION 1: THE RESEARCH AND WRITING PROCESS

INTRODUCTION

All law courses require the writing of assignments and essays. In the Law Faculty assignments are usually shorter papers, while essays are longer. The format of either may be 'essay-type' or 'problem-type'. You may also be asked to summarise cases.

The topics are usually available about three weeks before the due date, in the Course Materials Room. This means that you will have sufficient time to plan, research, write a draft and then produce your paper.

Sometimes the topic will include a reading list, but sometimes it will not, which means that you will have to do research on the topic yourself. Make full use of the library resources, the Internet and any other relevant sources.

GENERAL REQUIREMENTS

An assignment or essay in the Law Faculty should have the following characteristics:

- (1) It must posit a point of view and provide the arguments and evidence necessary to support or defend that position.
- (2) It must have an introduction and a conclusion.
- (3) It should demonstrate accurate knowledge of the relevant area(s) of law and pertinent secondary literature.
- (4) It should have a well-organised and logical argument or discussion.
- (5) It should demonstrate the ability to organise an answer, ie it should be a coherent piece of writing, set out in full sentences.
- (6) It should demonstrate the ability to analyse the concepts concerned together with the facts presented.
- (7) It is essential that the writing communicates clearly, ie grammar and spelling must be correct and language must be concise.
- (8) It must have full references in footnotes - you must acknowledge your sources fully by means of footnotes. (Please note that other methods of referencing, eg the Harvard method, are not acceptable for legal writing.) *See section 2 for further details.*
- (9) It must have a bibliography.

There are different types or 'genres' of legal writing. On the one hand, writing about law may take the form of general descriptions and/or evaluations of aspects or areas of law. This type of legal writing differs little from academic writing in other disciplines in the Humanities and Social Sciences (eg History, Philosophy, Politics, Psychology). Although it is important to remember that each discipline may have its own conventional sources of evidence and style of 'correct' writing and referencing, legal writing of this type follows the normal academic practice of stating and defending a thesis.

On the other hand, legal writing may take a form that is specific to the work of lawyers: the provision of written advice about the legal solution to a particular problem. This type of legal writing is characterised by its specific and disciplined focus on the precise problem and the legal principles and sources that are relevant to its solution. The principle is that a lawyer is not free to digress and to pursue knowledge for its own sake, but must confine herself only to what is relevant - anything more would waste the client's money and/or the lawyer's time (and income). Legal writing of this kind takes the form of an attempt to identify the legal issues raised by the problem and to resolve these by finding and then applying relevant legal rules. The style of this type of legal



writing therefore takes the form of a search for a solution rather than the defence of a proposed thesis, but it should be obvious that both forms of legal writing require the formulation and defence of a point of view, and require logical arguments based on credible evidence (in other words, *not* mere emotional reactions or political ideologies or slogans) drawn from critical reading of the researched material.

Finally, legal writing may sometimes amount to a combination of these two types, as where one is required to assess or evaluate the manner in which the law resolves a particular type of problem.

STEPS IN THE RESEARCH AND WRITING PROCESS

It is strongly recommended that you adopt the following six-stage approach to reading for and writing your assignments or essays.

- Prepare a preliminary plan*
- Gather research material*
- Plan the essay structure*
- Write a first draft*
- Revise the draft and produce a final version*
- Check the final version*

Prepare a preliminary plan

- (1) Consider and analyse the topic. Pay special attention to the genre or type of legal research and writing that this topic requires of you - see above. Analysis of the topic includes looking for the instruction word(s), as well as identifying the keyword(s) or central concept of the topic.

Action word	What it requires
account for	Provide reasons for something or show causes.
analyse	Find and describe the main ideas, show how they are related and why they are important.
compare	Show both the similarities and differences, emphasising similarities.
contrast	Show differences by setting differing points in opposition to each other.
criticise	Give your judgement or opinion about something, supporting it with a reasoned argument. Remember that criticise in the academic sense does not necessarily mean to find fault.
demonstrate	Show by reasoned argument why a particular opinion, judgment or assertion is true.
discuss	This action word <i>is</i> vague, but it is actually an opportunity for you to respond creatively to the question. Generally, what is required is a thorough exploration of the area/topic through argument and reflection, showing your understanding of the subject matter.
evaluate	Discuss the advantages and disadvantages of a position, or the merits of an argument. Your own point of view is an essential part of this process.
identify	List and describe.



You must follow instructions carefully and answer the question (ie do not stray off the topic or deal with only part thereof).

- (2) It is important that you start with at least a basic understanding of the topic. The written work required of you will to a certain extent require of you to draw upon knowledge which you have already gained through study of the subject. But you will also be required to broaden and deepen your knowledge, and to increase your understanding. This is an ongoing process - the topic should become clearer as you read and think about it and write the several drafts of your essay - but you need to form some understanding of your topic right at the outset in order to know where to start your research.
- (3) A preliminary plan, based on your present knowledge and research, should be prepared. This plan will be a provisional outline of the work in which its constituent parts are set out in a coherent and logical way.
- (4) The plan should also assist you with identifying the particular questions that you may not be able to answer until you conduct more research, reading and thinking.
- (5) Ask yourself the following questions: Who are my readers and what do they need to know? What position am I going to argue in favour of? What arguments am I going to use to support my position?
- (6) Allocate your time to thinking, planning, research, writing, revising and rewriting.
- (7) Prepare a preliminary outline of the structure of your argument(s).

Gather research material

- (1) Start by reading about your topic in a general way. The leading textbooks on the subject (if available) will provide a good description of the current state of the law, as well as references to primary and secondary literature. Remember that the type or genre of legal writing your essay or assignment requires will affect the focus of your research and the nature of the sources you will consult.
- (2) Compile your own list of sources, particularly if there is no textbook on the subject.
Primary sources: legislation; case law (these are authoritative).
Secondary sources: Compile a wide bibliography of secondary sources – books, periodical literature (these also have authority, but cannot override legislation and case law).
Reference books: Be prepared to consult reference books – bibliographical texts, dictionaries, encyclopaedias (these have no authority, but serve to assist the research process).

South African as well as foreign resources may be used. Remember the latter may have a different status in South Africa.

- (3) Hard copy or electronic versions of sources?

UCT has extensive collections of both electronic and hard copy primary and secondary sources, and either may be consulted. Efficient use of both versions of legal research sources will result in better research: each has its distinctive advantages and disadvantages. Beware, however, of general internet searches. There are some very useful internet sites (usually official government sites or semi-official sites maintained by universities or professional associations) containing primary legal materials, but there is also a great deal of quasi-information of dubious authenticity on the internet.

Except when material has not been published in hard copy your reference to a source must always cite the hard copy source, ie the book, printed journal or law report or collection of statutes containing the source you used. Official and commercial electronic versions of these



materials (eg Jutastat, LexisNexis Butterworths and Westlaw) always provide this information. (See Section 2.)

(4) Make notes of relevant information and ideas:

Devise a methodical note-taking system for yourself. For example, you could start by making short notes that summarise the content of what you are reading; later you can go back to photocopy or transcribe longer passages.

The aim is to record your *understanding* of the source material, not only to produce a summary. Make notes that are based on understanding, summarising, extracting and reinterpreting key ideas and concepts in the material with a view to finding a use for them within the structure of your preliminary plan.

Make notes in such a way that you can distinguish between those sections that are direct quotations and those sections that you are paraphrasing. Remember to note the relevant publication details of *everything* you read: author, title, edition, place and date of publication, page and volume numbers. Ensure that these details are accurate from the start, otherwise you will waste time redoing research and re-checking sources.

Photocopy or download material *selectively*. Store the information you collect – cards/loose sheets/note-book.

Your own notes, plans, etc are very important to ensure that:

- you do not ‘drown’ in a mass of facts
- you can focus on important points
- you can construct and present a clear argument
- you avoid plagiarism (using the words of another writer as if they were your own without acknowledging them) because you do not have the exact words in front of you, or in your mind. (See the note on plagiarism hereinafter.)

Plan the essay structure

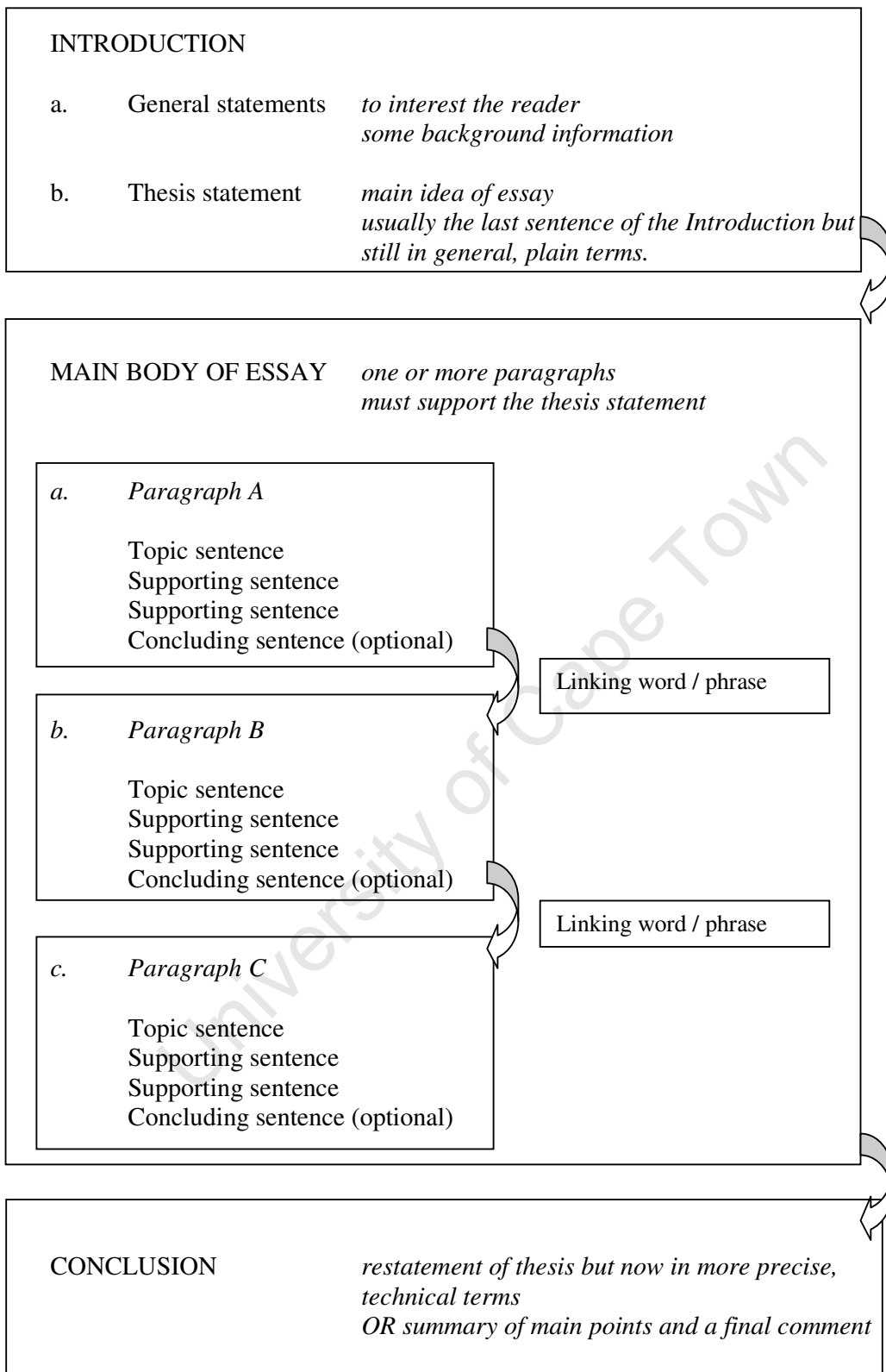
Planning what you will say and where you will say it are probably the most important parts of producing an assignment or essay. It is essential that you develop a line of argument - this transforms your writing from a jumbled mass of information into a clear, logical and coherent paper. Assignments or essays that are not properly planned will never be more than mediocre.

(1) You must now decide how you are going to present your thesis and supporting argument and/or your solution to the legal problem. You will almost always want to revise and alter your preliminary plan, since it more than likely that your understanding of the issue evolved while you did your research. Even if you decide to adhere to your preliminary plan you will still have to decide which information or evidence belongs with which issue or argument.

(2) Draw up an outline of the main parts of your essay (see below) and assign every point you intend to make, and all evidence or information you intend to use, to one of these elements.



OVERVIEW OF ESSAY STRUCTURE



Prepare a first draft

Many students choose to leave out this stage of the process, claiming lack of time. If you are organised and plan properly, there is always time for a draft version, an essential part of the process.

Your aim here is to fill in the outline provided by your plan, bearing in mind what is said below about each part of your essay or assignment. Remember that writing is evolutionary – get your ideas, thoughts and understanding onto paper under the general headings of your plan. Using your outline as a guide, start writing. Do not postpone this until everything you want to say is clear in your mind, otherwise you run the risk of contracting ‘writer’s block’. You can refine your writing later.

Aim to express your ideas as clearly and simply as possible. Use plain language and simple sentence structures. Good legal writing is concise and to the point. Long, rambling sentences are confusing and usually obscure the arguments contained in them.

Order your information and arguments logically. Do this in every sentence, paragraph, chapter, whole essay or assignment. Everything must fit together coherently so that it is clear to the reader what you think and why you think so.

Substantiate every assertion and argument you make. When you claim that a particular fact exists (eg that a particular legal rule or principle exists) you *must* provide evidence of its existence (eg by citing a case or statute that created that rule or principle); when you put forward an argument, you *must* show why your argument should be accepted (eg by showing that it is more logical or has better consequences than its rival). Remember that legal writing is not poetry; it is meant to convince the reader of your point of view, not merely express what you feel or think. Therefore, unsubstantiated assertions and arguments are *worthless* in legal writing.

- Leave space for additions and corrections.
- Comply with style and presentation requirements. (*See Section 2.*)
- Ensure that all statements you make and all the arguments you advance are clearly expressed and supported by correctly cited authorities.
- At the end of the first draft, you should start to draw tentative conclusions. If you have difficulty doing so, this may indicate a need for further research.
- Your essay or assignment must have a *structure* that consists of the following elements:

Essay-type assignments

Generally, an essay-type assignment should have three main parts: an introduction, a body and a conclusion.

Introduction

The introduction should identify the main topic to be discussed and indicate how the argument will progress. It should prepare the reader for the body of the essay. In an academic essay, the writer defines a problem or states a thesis and indicates how it will be treated in the essay. Exactly what is included in an introduction will vary according to the writer’s purpose and the topic.

Common weaknesses of introductions include:



- The introduction is vague and unconnected to the topic or to the following paragraphs, giving no indication of what the reader is to expect in the body of the essay.
- The introduction is banal (ie commonplace, trivial or flat) and states the obvious.
- The introduction fails to state a thesis.

Since the introduction is meant to introduce the argument of the writer, it is difficult to finalise before writing the essay. The introduction, therefore, should almost always be rewritten as part of the final revision of the essay.

Body of the Assignment or Essay

The body should contain the arguments you put forward in support of your answer to the question posed in the topic. It should be set out in a series of linked paragraphs. Each paragraph should deal with a single concept or idea and should follow logically from the preceding paragraph. Use information in a structured way to support your arguments, rather than haphazardly writing down information from a variety of sources, which is what will happen if you have not planned your essay.

Normally the main body of your essay should be organised under a few major headings, with sub-headings if necessary. These sections must follow a logical order. Headings and sub-headings are a desirable aid to a well-ordered piece of writing, provided that they are an indicator of the structure of the underlying argument. Do not over-use them. The length of the essay and the type of the essay should also determine the extent to which you use headings and sub-headings.

Conclusion

The conclusion should draw together the main points made and concisely state your viewpoint in answer to the topic. Obviously your final viewpoint should follow logically from the arguments made in the body of the assignment or essay. In the same way, if you state in the introduction that you are going to write about x, y and z, then make sure that you actually have addressed all three. Above all, be explicit - do not expect the reader to read between the lines.

The purpose of the conclusion is to draw together the threads of the argument and make a final concluding statement on the topic. There is usually a link between the introduction and the conclusion: the former introduces the topic to be discussed or outlines the argument, and the latter indicates that it has been done. The conclusion should not contain new information, ie information that has not been discussed in the body of the essay. Sometimes the conclusion is a restatement of the introduction, in different words. The conclusion is, in many ways, a more precise restatement of the argument in terms that have been elucidated in the body of the essay. The essay then has a feeling of unity and completeness. In an essay that involves discussion, the proposition or thesis stated in the introduction is accepted or rejected in the conclusion.

Problem-type assignments

This type of assignment takes a slightly different format, but still has the three main parts mentioned above.

In the *introduction* you should identify the area of law involved and what the specific legal issue is.

The *body* of the writing contains a full discussion of the relevant legal rules and principles, which is carefully constructed in a logical and coherent manner. If case law is relevant, use it intelligently. Do not provide a shopping list of cases with short summaries of the facts, and then



state ‘Therefore ...’ Use the relevant point from the case(s) to ‘tell the story’ and to show how the case(s) support(s) (or reject) the existence of a particular rule or principle relevant to the issues raised by the problem. Remember that it is only the *ratio* that binds, but that the relevance and scope of the *ratio* can only be determined by noting the context in which it was formulated.

At the same time, or following the discussion of the law, apply the law carefully and properly to the facts before you, arguing where appropriate for a particular point of view, and taking care to be able to justify your argument in light of the authority from cases or statutes. Be sure to indicate clearly whether the law on a particular question is clear and settled or is in need of interpretation and development. Clearly distinguish between opinions (your own or others’) about how the law should be interpreted and settled rules and principles, as well as between views about what the law should be and statements concerning what the law is.

In the *conclusion* you should state the appropriate advice for the client or the appropriate solution to the problem under consideration. Note that there is very seldom only one right answer to a problem question. This is because much depends on how the argument is constructed and on how the law is interpreted. In real life situations, like in a court, each matter has two sides to it and the outcome of the case depends on which side can convince the court that its version is the better version. In a problem-type essay, the conclusion should summarise your conclusions regarding the legal rights and duties of the parties.

Revise the draft and produce a final version

- (1) Revision is vital for effective writing. You may be very tempted to submit the first draft, but this is *very* unwise. Re-read the text of your assignment actively and critically. Revision improves quality and quality improves marks. Sometimes several drafts are needed.
- (2) Ensure that you give yourself sufficient time to revise your written work. You may find it useful to do this after a few days’ break.
- (3) Ask yourself whether the essay adequately responds to the problem posed. Has the research material been critically evaluated? Are the reasons for preferring one line of argument to another adequately articulated? Have the components of your argument been organised in a coherent manner? Is the logic of your thinking clear?
- (4) Check style, spelling, grammar and punctuation. (*See Section 2.*)
- (5) Check for consistency in spelling, capitalisation, hyphenation of words, abbreviations, contractions, method of citation, numbering of headings and sub-headings. (*See Section 2.*)
- (6) Check presentation and layout. (*See Section 2.*)
- (7) It is always useful to ask someone else to read and comment on your work.
- (8) Check that you have not exceeded the word limit. Learning to work within limitations is part of the legal skills you are expected to acquire. Assignments or essays that exceed the word limit may not be marked, and will almost always earn lower marks. On the other hand, an assignment that is well below the word allowance probably does not address all aspects of the topic adequately and thus cannot earn a good mark.

Check the final version - proofread

- (1) Read the final version, carefully checking for errors, omissions and inconsistencies. Check that footnotes are correctly numbered, that pages are numbered and in the correct order, that words or lines have not been omitted or repeated, that punctuation or footnote numbers are not missing, etc.
- (2) Remember to keep all your original notes and earlier drafts of your assignment. These may prove invaluable if information seems to be missing from your final version, or if material is deleted from your computer.



- (3) Remember that you can be severely penalised for failing to acknowledge your sources, and that technical errors, such as incorrect or incomplete references, missing pages or words etc will all cost you marks. You are expected to produce technically *flawless* work.

SUMMARISING A CASE

Being able to summarise a case is an important skill that you will rely on throughout your legal career. It is especially valuable while you are studying. Summaries are essential when you revise for tests and exams, since you will NEVER have enough time to read through the law report again during exam preparation, and also provide you with a way to force yourself to analyse, and therefore to understand, the cases you have to read. These guidelines are intended to provide a framework to help you develop this skill. The guidelines are merely *guidelines*; as you develop your legal skills, you may wish to adapt them to suit your own style.

Some tips before you start

- (1) Cases will figure prominently in your reading for two main reasons. Firstly, under the doctrine of precedent they are a source of law: depending on the status of the courts involved, a subsequent court either *must* follow the earlier court's determination of the rule that must be applied to a particular issue ('binding precedent'), or *may* do so (eg where the subsequent court has a higher status than the prior court, or where the two cases concern different, though related, issues – 'persuasive precedent'.) Secondly, careful study of the sources and methods of reasoning employed by judges should show you what is expected of you when it comes to answering the typical 'problem-type' question in exams where, in essence, you are expected to emulate the reasoning process of judges. More generally, you should see what is involved in determining the appropriate law, and in applying legal rules.
- (2) Your reading and summary of a case must therefore be directed at isolating the legal *issue* decided in a case, identifying the *rule* applied by the court to resolve that issue, grasping the *reasoning* that led the court to that formulation (ie the identification and use of sources of law), and understanding how the court *applied* the rule to the facts - how it resolved the legal issue.
- (3) Before you start to read the case, ensure that you are familiar with the area of law with which the case is dealing. This will give you an idea of what you should be looking for when you are reading. Many cases deal with multiple issues, of which only one might be relevant to your course. It may be necessary to point out briefly which issues were dealt with, and then to note the issue covered in your summary. Read your class notes or a textbook so you have some background before you start to read the case.
- (4) Read the case through once before starting to summarise. This will make it easier for you to pick out the relevant areas of the case. It may be useful to underline or highlight as you go.
- (5) The headnote of the case is also useful, as it will give you a brief outline of the issues. However, do not rely on the headnote alone for your summary. Headnotes are prepared by the editors of the law reports and may contain errors. Also, reading the whole case will help you to understand the issues in context and how the judge reached the final decision.
- (6) Be as *brief* as possible. Remember that the purpose of a case summary is to enable you to remind yourself quickly of what was decided in a particular case.
- (7) Identify the court that decided the case, and note whether it was a full bench decision or one by a single judge. Where there is more than one judgment, note the names of the judges who wrote



them, and how many other judges concurred with them. Note whether a particular judgment is a majority or a minority judgment. This is important because of the way in which South Africa's system of precedent works, and can be very helpful when you are writing an essay or studying for an exam.

(8) Use a Legal dictionary or Latin dictionary to look up any terms you do not understand.

(9) Any case can be broken down into the following components:

- (1) The facts.
- (2) The question of law and answer thereto.
- (3) The reasoning leading to this answer.
- (4) The outcome: the application of the law to the facts and the court's order.

This is also the most sensible framework to use for structuring your summary.

The facts

Many disputes that reach the courts involve both disagreements between the parties about 'what really happened' - the facts, and about the legal rights and duties that flow from these events - the law. The case you have to summarise may therefore contain both the court's resolution of factual disputes, and its decision regarding a legal dispute. Your summary should concentrate on the latter.

From the point of view of a reader aiming to establish what a case tells us about the law - ie from your perspective - the facts of the case are important only because they give rise to the legal question that the court seeks to answer, and in this way determine the occasion and scope of the future application of the rule formulated by the court. This indicates the extent to which your summary should delve into the facts: limit yourself to mentioning those facts that are essential to showing what the legal issue in that case is and how it arose. In writing your summary always bear in mind that, from a lawyer's perspective: 'Decided cases ... are of value not for the facts but for the principles that they lay down.' (Centlivres JA in *R v Wells* 1949 (3) SA 83 (AD) at 87-8.)

The course of events that lead up to a case being heard in court can often be complex and stretch over a long period of time. Make sure you identify the parties to the dispute and that you are aware of the basic set of facts that gave rise to the dispute. It is often useful to draw a diagram laying out a complex set of facts and then summarise from this. It is important to try to keep the summary of the facts as short as possible. You should aim to state the facts in a few sentences. There is no need to give all the personal details of the parties or the whole history of events leading up to the court proceedings – only give what is relevant to the legal question at hand. You will often have to read the whole case before you know which facts are relevant. The value of exercising discipline by extracting *only the relevant* facts, and not writing down everything you come across, is that this enables you to determine precisely to which issues the legal rule or principle formulated in this case applies to, and thus to know what the scope of the relevant legal rule or principle is. In other words, you must establish for which fact-pattern this case constitutes a precedent.

It should be useful to ask yourself questions such as:

- (1) Would the presence or absence of this fact make a difference to either party's success in this case?
- (2) Does this fact matter with regard to the point of law in question?
- (3) Why do these facts present a problem?
- (4) Did the judge bring the facts into her reasoning?
- (5) What happened that led one party to institute legal proceedings against the other?



The court may be asked to decide factual disputes between the parties on questions such as ‘What happened here?’ or ‘Did X occur before Y?’ Your summary can usually ignore this. What is relevant from your point of view are the facts as established by the court, since it is these that determine the question of law identified and answered by the court. However, it is important to notice (and note) when a court decides the dispute between the parties on the basis of its determination of such a factual dispute, rather than on the basis of its answer to the legal question. When this happens the answer to the legal question is a merely an obiter dictum (see below). For these reasons you must always determine whether a particular issue in dispute between the parties raises a question of fact or a question of law. This is basically a distinction between questions regarding what happened (questions of fact) and questions regarding what legal consequences follow from what happened: what the parties are legally obliged and entitled to (questions of law).

The question of law

Under the doctrine of precedent, the aspect of a judgment that is capable of binding subsequent courts faced with the same issue is the court’s decision on the principle or rule of law that must be employed to resolve the issue between the parties. The most important aim of a case summary is therefore to identify the legal question that the court sought to answer and the answer it gave thereto. The answer that the court gives to this question of law is termed the ratio decidendi. As it is the *ratio* of the case that will form the rule or principle for which the case is a precedent, it is important that your summary is clear on what constitutes the legal question in the case and the *ratio*.

- (1) Black’s Law Dictionary defines a ratio decidendi as ‘the principle or rule of law on which a court’s decision is founded.’
- (2) The ratio should be distinguished from obiter dictum which Black’s defines as ‘a comment made in the course of delivering a judicial opinion but one that is unnecessary to the decision in the case and therefore not precedential.’ However, do take note of obiter dicta, especially in judgments of the CC and SCA, since these often indicate the likely direction of the future development of the law.
- (3) The basic test for identifying the ratio of a case is the following:
[T]he reasons given in the judgment, properly interpreted, do constitute the ratio decidendi, originating or following a legal rule, provided (a) that they do not appear from the judgment itself to have been merely subsidiary reasons for following the main principle... (b) that they were not merely a course of reasoning on the facts... and (c) (which may cover (a)) that they were necessary for the decision, not in the sense that it could not have been reached along other lines, but in the sense that along the lines actually followed in the judgment the result would have been different but for the reasons.-- Schreiner JA in *Pretoria City Council v Levinson* 1949 (3) SA 305 (AD) at 317

Although the question of law will often relate to or be based on the facts of the case, it can be distinguished from a purely factual enquiry (see the example given in the last paragraph of the previous section), in that this question focuses on what the consequences the law attaches to the events that brought the parties to court - on what legal rights, duties and remedies flow from the facts found by the court. Always bear in mind the statement of Centlivres JA quoted in the previous section. Although it may be difficult to do so, it is essential to separate out the legal and factual questions. In addition to following the steps suggested by Schreiner JA above, it may be useful to ask yourself questions such as:

- (1) What is the concise rule of law to applied here to decide which party 'wins'?
- (2) Which question of law must be decided in order to reach an outcome on the facts as found by the court?



Here are three further important points to bear in mind, especially, but not only, because you will encounter cases in which judges disagree with each other:

'[T]he *ratio decidendi* of a case, as opposed to the actual decision in the narrow sense, is binding. It is its abstract *ratio* which is added to the body of law which a Judge must apply.'¹ That is, although the outcome of a particular case - which party won and what remedy was awarded - is important, this must be distinguished from the legal question and ratio, which concern not the outcome, but the (abstract) rule or principle that leads to that outcome. It is crucial to bear this in mind, since there are cases in which judges may agree on the outcome, but disagree as to the *ratio* for that outcome, and vice versa. In such cases, your summary should indicate these differences, as it is agreement or disagreement on the ratio that counts under the doctrine of precedent.

Where there is disagreement among judges deciding a particular case as to the ratio, it is the view of the majority that constitutes the precedent. However, be sure to include the findings of both the minority and majority in your summary: it is essential to note such disagreement, as well as (briefly) the approach adopted in dissenting minority judgments: the latter may sometimes be preferred in later cases, especially where issues arise that are analogous rather than identical to the earlier case. It is also important for further reasons:

Different judges may interpret the same set of facts, or the same question, differently, and where this is so, each approach may influence future legal development with regard to the specific issue or question it addresses. This is particularly true of CC and SCA judgments, where individual judges may deliberately seek to deal with a particular legal issue or argument they consider to be of general importance to the law's development.

There is not always one 'right answer' to a particular legal problem. Many of the cases you will read are prescribed precisely because they concern controversial and unclear legal issues, and areas in which the law is still developing. Different judges may reach the same decision but through different reasoning.

The ratio of a case - the rule or principle applied by the court - must also be distinguished from the reasoning employed by the judges to arrive at that principle. Although the legal reasoning of the judges is, as explained below, important, it does not form part of the ratio, as individual judges can, and sometimes do, come to the same conclusion as to the answer that must be given to the legal question in a case despite following different paths to arrive at that answer. That is, judges may concur in the *ratio*, but for different reasons. Where this happens, concentrate on the concurring judgment that was supported by the largest number of judges, but also note the reasoning employed by those who gave separate concurring judgments. The latter may well specifically deal with matters raised in later cases, and so exert a strong influence on the future of the law. It may, of course also deal with exactly the questions you may be asked in a test or exam.

The reasoning

This refers to the reasons given in the judgment for the ratio, ie for the answer given to the legal question. It consists of the identification, interpretation, evaluation and discussion of sources of law, mainly legislation and previous cases, in order to answer that question. It is important to understand the reasoning of the court as you may be asked to comment on, discuss or criticise it in an essay or exam. Also, later cases may build on or dispute the court's reasoning, or apply it by analogy to a different legal issue. In addition, an understanding of the reasoning of a case is likely to aid your understanding of the point of law in question. The reasons for the judgment (majority

¹ Coetzee J in *Trade Fairs and Promotions (Pty) Ltd v Thomson and Another* 1984 (4) SA 177 (W) at 185.



and minority or dissenting) may be useful in mounting arguments in similar fact -situations that you may be required to discuss or resolve in essays and examinations.

Understanding the reasoning of the court is therefore crucial. In your summary do not note only the ratio and outcome of the case, but be sure to include a brief account of the reasoning used by the court (or a particular judge, where there is more than one judgment) to reach the decision on the question of law. In this section of your summary you need to look at the reasons why the court came to the conclusion on the law that it used to answer this question, and how it reached this conclusion. Where there is disagreement among the judges, you should make a point of trying to identify how and why the reasoning in the majority and dissenting judgments differs.

It may be useful to work through the case section by section. As you work through each section of the case ask yourself how the judge moved from one point to the next. This will help you to understand the overall reasoning of the court. Once you have worked through a section, try to establish how the judge created the link to the next section. Once you understand each section it will be easier to summarise the logic of the case in its entirety.

It may be necessary to understand the court's use of authorities (eg cases, statutes, Roman Dutch and contemporary writers) and persuasive sources of law, and how these impacted on the outcome. In each section note the authorities relied upon and try to summarise the reason the court looked at these sources, what importance it attached to them and the conclusion drawn from them. There is no need to quote the actual sources.

Here, too, you must be selective and disciplined - note only the most important aspects of the judges' reasoning - ie that which led them to adopt the particular ratio rather than another. Look in particular at how they deal with precedents (do they choose one over another / distinguish a particular precedent / refuse to follow it or overrule it?), with the views of academic commentators and with Roman and Roman Dutch authorities. Note what type of source is used and whether it is preferred over another. Especially important is the stand the court takes on matters that are controversial or still unsettled. Obviously, all this can only be done if you have some idea of the issues and debates that are prominent in respect of the question the court is trying to resolve, so you should first familiarise yourself with this through reviewing lecture notes, articles and textbooks.

The outcome

Here you must explain how the court applied the answer to the question of law - the ratio - to the precise issue between the parties: in whose favour did the court rule? What remedy was granted? Keep this section brief, but note specifically whether the court regarded its answer to the legal question as decisive for the order it made, or whether it would have made this order anyway if it had given a different answer to that question. In the latter event, the decision was 'based on the facts', ie the court disposed of the dispute not on the basis of its answer to the legal question, but rather on the basis of its resolution of the factual disputes between the parties. The answer to the legal question is then, strictly speaking, an obiter dictum rather than a ratio decidendi and thus has persuasive rather than binding authority. The answer given to the legal question only forms the *ratio* of the case if this answer was decisive to the outcome of the case.

Conclusion

Finally, since your summary is meant to improve your own study and understanding of the law, it is not sufficient to copy someone else's or to quickly read the headnote. Take time to understand the case and to make a careful summary, as this will make revision for exams more efficient and less stressful. Developing your case summary skills will enable you to approach even the most difficult cases with ease, and to acquire the ability to solve legal problems in a 'lawyerly' fashion.



CHECKLIST FOR WRITTEN ASSIGNMENTS AND ESSAYS

<i>Content</i>
* have you identified all the main facts and/or issues?
* have you made relevant points?
* have you shown that you understand the key concepts?
* have you made appropriate use of case law/statutes/concepts?
* have you made adequate use of case law/statutes/concepts?
* have you included your own ideas/opinions and substantiated them?
<i>Structure</i>
* does your introduction set out the key facts and issues?
* have you developed a clear argument/discussion?
* does each paragraph express a separate idea?
* are sentences and paragraphs clearly linked?
* does your conclusion summarise the argument/give a final answer?
<i>Expression and use of language</i>
* are your ideas clearly expressed?
* are your sentences of an appropriate length ie not too long?
* is your grammar correct?
* is your spelling correct?
* is your use of language precise?
<i>Research</i>
* have you used the recommended source material effectively?
* have you used additional relevant research material?
* is your referencing adequate and appropriate?
* is your bibliography correct?
<i>Presentation</i>
* is your work neat and legible?
* have you proof-read your essay?
* have you included a word count and is it appropriate?
* have you included a cover page with the required information?
* have you included the plagiarism declaration?



NOTE ON PLAGIARISM

The Law Faculty has a zero tolerance policy in respect of plagiarism. Plagiarised work is penalised heavily and will in most cases result in a mark of zero awarded for the particular piece. Plagiarism can, in addition, lead to expulsion from the university.

Every assignment, essay, dissertation and thesis in the Law Faculty must be accompanied by a plagiarism declaration which states that the author/s of the relevant piece understand that plagiarism is not tolerated in the Law Faculty. The declaration must contain a warranty that the piece is the student/s own work and that all reasonable endeavours were employed to provide the necessary references. The standard plagiarism declaration is attached to this guide and marked Annexure B.

There are at least three reasons why you should acknowledge your sources. The first is that if you can support what you say by showing that statute or common law or academic opinion reflects your statement, then your statement will be more authoritative than otherwise. It is thus essential to give the authority for your statements.

The second reason is that it is completely unacceptable in academic writing to pass off someone else's ideas as your own. It amounts to theft and also constitutes an attempt to obtain a qualification under false pretences. For this reason, plagiarism can lead to expulsion.

The third reason is that marks awarded to you are intended to indicate the quality of *your* work. Because work taken from others give no indication of your own abilities no marks can be awarded to you when you do so.

You *must*, therefore, every time you use another person's ideas or words in a quote, or paraphrase the words of another or even just use his or her idea(s), acknowledge this use by providing a footnote reference. Needless to say, you must always enclose another person's words in quotation marks.

In order to avoid charges of plagiarism, students sometimes write an assignment that is little more than a series of referenced quotations and/or paraphrased renditions of the ideas of others. While not amounting to plagiarism, this is also not acceptable. The object of the exercise of writing assignments is for you to learn to express yourself and your understanding of the law on paper and to demonstrate your abilities. Hence your thoughts, opinions and arguments in writing must appear on the pages, not a string of quotes of what others have said or thought. Essays or assignments of this type frequently receive '0' as a mark and typically fail - you can only get marks for your own work.

Note:

- (1) Some ideas are common property (eg 'the sky is blue') and thus need no reference.
- (2) Some points of law are 'trite law' (ie well trodden or well established), eg a minor is a person under the age of 21 years. Such a statement of the law needs no reference.
- (3) Do not quote from unpublished lecture notes. In other words, if you want to state a point made during lectures, it is not necessary to include a footnote that says 'Things lecture notes 1998'. The notes you have taken during lectures are your notes, not the lecturer's and thus need no reference. At any rate, this is usually not an acceptable source: statements of law must be substantiated by citation of the pertinent case and/or statute and opinions must be substantiated by your own arguments.

If you follow the recommended approach to researching and writing papers, then acknowledging your sources should be a simple matter of copying the reference from the note you made while reading, and putting it in a footnote.



Your reference must be in a *footnote* and must be accurate. (See *Section 2*.) It must be possible for the reader to check that you have stated the law accurately. In other words, you need to give sufficient information in your footnote to enable another person to find the exact place from whence you have drawn your information. When you use case law as your authority, the connection between the case(s) you cite and what you are stating in your writing must be clear to the reader. A particular case may be authority for many different points of law. Do not just insert a case name after a statement and hope that the reader will divine why you are using it as authority. In addition, you must in a footnote give the full citation of the case, ie give the full reference for the particular case, including the paragraph and/or page numbers to which you are referring. (For details, see *Section 2*.)

Example

The following is a direct quotation from an article published in the *South African Law Journal*. We will illustrate some of the different ways in which you could use the passage, or the ideas contained in the passage, in a research report. After every example we provide an explanation as to how plagiarism could be avoided in the particular instance.

‘The war between competition-law policy and intellectual-property objectives has been raging in Europe for close on two decades. In mediating between these two bodies of law the European Court of Justice gave birth to the ‘exceptional circumstances’ requirements. These requirements have matured over time through their evolution in the case law of the European courts. However, because of the balancing exercise involved, there has been a marked reluctance to reduce the analysis to a checklist. As a result, these ‘exceptional circumstances’ will no doubt continue to evolve in future cases.’²

Now suppose you were to write:

Example 1:

For **close on two decades**, a war has been raging in Europe between **competition-law policy and intellectual property objectives**. **The European Court of Justice gave birth to the ‘exceptional circumstances’ requirements** to mediate **these two bodies of law**. **Through their evolution in the case law of the European courts**, the requirements of ‘exceptional circumstances’ eventually matured. **Because of the balancing exercise involved, there has, however, been a marked reluctance to reduce the analysis to a checklist**. As a result, these ‘exceptional circumstances’ **will continue to evolve in future cases**.

In the above example, to avoid being accused of plagiarism, you would need to place quotation marks around the words in bold, and include a citation stating your source by inserting a footnote/number after closing the quotation marks. Where you quoted or copied words directly from someone else's work, as a rule you **MUST** use quotation marks and give a citation.

² James Brand ‘Intellectual property and the abuse of dominant position in South African competition law’ (2005) 122(4) *SALJ* 907 at 927.



Example 2:

Competition law policy and the objectives of intellectual property have been at odds in Europe for almost two decades. The European Court of Justice introduced the ‘exceptional circumstances’ requirements to mediate clashes in this part of the law. The requirements have become more sophisticated because of their development in the European cases. However, courts have been reluctant to reduce the requirements to a checklist, precisely because a balancing exercise is always involved. This holds that the requirements of ‘exceptional circumstances will continue to develop in the future.

In this example what has happened is that, as opposed to copying parts of the passage as in example 1, the passage has been paraphrased. In this instance, to avoid being accused of plagiarising, you would need to cite the source of the information used, albeit that the words used would be your own. Again, insert a footnote/endnote after the two sentences.

Example 3:

In Europe the increasing realization over the last twenty years has been that competition and intellectual property often pursue different ends. The European Court of Justice introduced the doctrine of ‘exceptional circumstances’ in an attempt to reconcile such competing objectives. The doctrine has undergone considerable development through the jurisprudence of the European courts, which is reluctant to reduce ‘exceptional circumstances’ to a checklist. This reluctance seems to be founded on the realisation that where competition and intellectual property clash, a balancing exercise is always required.

This example also requires you to cite the source, despite it bearing little resemblance to the original and using different words. Despite the use of different words and expressing the idea differently, the idea expressed is still the same idea as that of the author in the original quotation.

Example 4:

The policies from which competition law is derived often compete with the objectives that intellectual property law pursues. The doctrine of ‘exceptional circumstances’ is a helpful tool in attempting reconciliation between the two. However, adjudication in this context should never be reduced to an enquiry that asks only whether there has been compliance with a pre-determined checklist of ‘exceptional circumstances’ that developed out of earlier cases. A balancing exercise is required in all cases to ensure that the doctrine retains its dynamic nature.

This example, though not quoting from or paraphrasing the original passage, would require you to provide a citation as a way to show that you have arrived at your conclusion by building on the ideas obtained from the original passage.



SECTION 2: STYLE AND REFERENCING

GENERAL PRINCIPLES OF STYLE

- (1) Structurally, the most prominent positions in a unit of writing – a sentence, a paragraph, an entire book – are the beginning and the end. Readers will remember what they read first and what they read last. Concentrate on how you begin and end each sentence, paragraph, essay, etc.
- (2) Remember that a sentence must contain a subject and a verb – otherwise, it is *not* a sentence. Use short and simple sentences – but not in excess, as a succession of short sentences can be as irritating to the reader as one long and rambling sentence. Ensure that there is a ‘link’ between each and every successive sentence:

Examples of linking words:

1. *Addition*: and; also; too; besides; furthermore; in addition
2. *Cause*: because; consequently; seeing that; since
3. *Result*: therefore; thus; hence; consequently; accordingly; as a consequence; as a result
4. *Contrast*: nevertheless; however; but; yet; on the other hand; although
5. *Time sequence*: to begin with; firstly; in the first place; as soon as; subsequently
6. *Similarity*: likewise; similarly; in the same way
7. *Condition*: provided that; if; on condition that; unless
8. *Examples*: for example; for instance; in the case of; with regard to
9. *Summary*: to sum up; to summarise; in short; in brief; briefly
10. *Conclusion*: in conclusion; finally; in closing

Example:

‘The defendant argued in mitigation that he had been under the influence of drugs at the time of the offence. The judge sentenced him to ten years in prison.’

There needs to be a linking word to clarify whether the judge passed sentence because of the mitigating circumstances, or in spite of them.

If the former meaning is intended:

‘The defendant argued in mitigation that he had been under the influence of drugs at the time of the offence. **Therefore**, the judge sentenced him to ten years in prison.’

If the latter meaning is intended:

‘The defendant argued in mitigation that he had been under the influence of drugs at the time of the offence. **Nevertheless**, the judge sentenced him to ten years in prison.’



(3) Constructing paragraphs

A paragraph marks the full development of a single point or idea, and a new paragraph should indicate the introduction of a new point or idea. A paragraph develops a unit of thought. Therefore, build each paragraph around a topic sentence. The first sentence should be supported by the sentences that follow it. If you make two separate points in one paragraph, divide it. If you include something extraneous to the idea you are developing, delete it.

Ensure that paragraphs are linked. That is, make sure that it is clear to the reader how the point made in a paragraph is connected to the point made in the previous and the succeeding paragraphs. Use 'linking words' – see above.

Example:

The defendant argued in mitigation that he had been under the influence of drugs at the time of the offence. Therefore, the judge sentenced him to 10 years in prison. Other reported cases show, **however**, that intoxication by alcohol or drugs may lead to an acquittal. This is not surprising. These cases represent a straightforward application of the trite common law principle that intent is - usually - an element of every crime.

(4) Avoid circumlocution - convey your message as simply and directly as you can:

Write in a direct, positive style, using the active rather than the passive voice. Avoid using phrases such as 'in relation to', 'with regard to', 'as far as the question of...was concerned', 'the fact that' – they can almost always be omitted, or replaced with a single word.

(5) Use plain English - avoid legalese:

Phrases such as 'heretofore referred to' and 'it is submitted that' have no place in general academic writing, including writing about law. They are sometimes used in drafting legal documents or in advocacy, and even then are best avoided. *Always* avoid pompous phrases like the first of these, rather say: 'referred to above' or 'mentioned above/previously'. *Do try* to avoid 'it is submitted that' and 'it is the opinion of the present author that', rather write in the active voice and say: 'in my view' or 'I conclude that'.

Also avoid phrases such as 'the learned judge' and 'the honourable judge'. Judges should be referred to as Chaskalson CJ, Hlophe JP, or Davis J.

(6) Avoid colloquial terms:

Your writing must be fairly formal.

Do not use expressions such as 'iron out problems' ('resolve problems'); 'put together a proposal' ('draft a proposal'); and so on. *Never* use slang.

Do not use contractions such as 'can't' (for 'cannot') or 'won't' (for 'will not').

Avoid using hackneyed expressions like 'stake-holders', 'role-players'.

(7) Take care when using the first person

A fact is a fact whether you know of its existence or not, and the value of an argument is usually quite independent of the fact that *you* made it. For these reasons, you must avoid using the first person when making assertions of fact or stating arguments - the fact that *you* are making the statement or assertion of fact is normally irrelevant. Moreover, it is usually



perfectly obvious that you think/believe etc whatever you write in your essay - it is not necessary to say so.

However, when it is not obvious that you are expressing an opinion or conclusion (eg, when you state that a certain vague or controversial rule has a particular meaning) or when you are required to give your own opinion, it is best to do so frankly and actively. It is then acceptable to use phrases such as: 'in my opinion/view'; 'I conclude' etc.

Example:

'I think that the Labour Relations Act provides that ...' is incorrect.

'I think that the Labour Relations Act fails to promote fairness in the workplace' should be avoided.

Simply make the statement, and provide support for your thoughts / argument: 'The Labour Relations Act provides that ...' (insert footnote number and provide reference) OR 'The Labour Relations Act fails to promote fairness in the workplace, because ...'

(8) Take care when using the names of authors in the main body of the text

As explained immediately above, it does not usually matter who states a fact or puts forward a particular argument. For that reason it is often inappropriate to identify an author in the body of the text. However, sometimes the identity of an author does affect the authority of a statement. It matters, for example, when the author is one of the 'old authorities', or is a particularly influential contemporary writer, or if the focus of the essay falls on the opinions of particular writers. When that is the case, you should use the name of the author in the body of the text.

Example:

'Smith states that ...' is incorrect if you simply used this source to establish a fact or find a rule. Simply make the statement, and cite Smith in the accompanying footnote.

'Smith argues that ...' would seldom be appropriate. Unless it matters that *Smith* said this, write something like 'It has been argued that ...' and refer to Smith's article in the accompanying footnote.

(9) Using Latin phrases

The use of certain phrases is acceptable, and often necessary – for example, *nemo iudex in sua causa, mutatis mutandis*.

Do not use other phrases when there is an English phrase that will do perfectly well – for example, *per diem* for 'a day'.

Latin words and phrases should not be italicised unless they are in a quotation.

When quoting extensive Latin phrases an English translation should be provided.



(10) Avoiding sexist language

This can be done in a number of ways:

Example:

‘If the student begins writing his essay with an unclear idea of where he is going, he may find it easier to write his introduction after completing the main body of the essay.’

Using double pronouns:

‘If the student begins writing the essay with an unclear idea of where she or he is going, it may be easier to write the introduction after completing the main body of the essay.’

Using the plural instead of the singular:

‘If students begin writing their essays with an unclear idea of where they are going, they might find it easier to write their introductions after completing the main body of their essays.’

Substituting ‘a/an’ or ‘the’ for the pronouns:

‘If a student begins writing the essay with an unclear vague idea of where the student is going, it may be easier to write the introduction after completing the main body of the essay.’

Using the passive voice:

‘Where writing of the essay is begun with an unclear vague idea of its direction, the student may find it easier to write the introduction after completing the main body of the essay.’

(11) Paraphrasing

The point of paraphrasing is to show that you actually understand the content of what you have read.

Do not paraphrase by merely replacing all the difficult words with synonyms.

Avoid using too many quotations in your essay by paraphrasing intelligently.

Example: Paraphrase the following sub-section of the Corruption Act 94 of 1992

Section 1(1): Any person -

- (a) who corruptly gives or offers or agrees to give any benefit of whatever nature which is not legally due, to any person upon whom –
 - (i) any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law, or to anyone else, with the intention to influence the person upon whom such power has been conferred or who has been charged with such duty to commit or omit to do any act in relation to such power or duty ... shall be guilty of an offence.

Answer:

Section 1(1)(a)(i) states that it is an offence to bribe a person in a position of authority.

OR

Section 1(1)(a)(i) states that it is an offence to give a benefit to a person in authority with the intention of somehow influencing him or her in relation to that authority.



GRAMMAR

- (1) Be careful with the use of tenses. For example, the past tense is used when referring to legislation (or a common law rule) that has been repealed, while the present tense is used when referring to current statutes and rules, even if enacted long ago.
- (2) Avoid split infinitives whenever possible.

Example:

'He began to slowly read' should be: 'He began to read slowly'

- (3) Final prepositions – try never to end a sentence with a preposition (although there are exceptions).

Example:

'There is the person that I will not speak to' should be: 'There is the person to whom I will not speak.'

An exception:

'The matter was referred to the committee to be dealt with.'

Here it is difficult to avoid the final preposition, unless you rewrite the statement:

'The matter was referred to the committee to be resolved.'

- (4) A singular subject takes a singular verb, and a plural subject takes a plural verb.

Example:

'The volume of statutes is missing' NOT: 'The volume of statutes are missing' ('volume' is the subject and is singular)

- (5) Collective nouns are treated as singular if regarded as a whole.

Example:

'The jury is deciding', 'the army is based in'.

Collective nouns are treated as plural if composed of a number of units.

Example:

'The Zulu live mainly in KwaZulu-Natal', 'the Irish are fond of cabbage'.



(6) Participial phrases:

- A participial phrase is often placed at the beginning of a sentence to provide information about the subject.
- The participial phrase must always agree with the subject of the sentence – if this rule is broken, absurdity can result.

Example:

‘At the age of 12, he told his son about his past.’

Strictly speaking, this means that the father was 12 years old.

Therefore: ‘When his son was 12 years old, he told him about his past.’

SPELLING

Be consistent, and when in doubt, consult a dictionary.

Some common errors:

- -able or -ible?
- Compound words: letter head / letter-head / letterhead
- Use of hyphens: co-operation / cooperation
- *Possessive case:*

Possessive of a singular noun is formed by adding ‘s’, except in the case of biblical or classical names ending in ‘s’ (Jesus’ teachings, Socrates’ death, but the business’s interests).

Possessive of a plural noun is formed by adding an apostrophe (the Smiths’ house).

There is no apostrophe in the pronouns ‘hers’, ‘ours’, ‘theirs’, ‘yours’, ‘its’ (‘it’s’ is a contraction of ‘it is’, and therefore the phrase ‘it’s flavour’ is meaningless).

Do not rely exclusively on your PC’s spellchecker. It is NOT always reliable.

PRESENTATION OF ASSIGNMENTS

General points

Your cover page must include a word count and should also provide the following information:

Course code:
Course name:
Tutorial group number:
Tutor’s name:
Assignment number:
Assignment topic:
Due date:
Student’s name:
Contact telephone number:



The text of your essay should be double-spaced, footnotes should be single-spaced and in a smaller font (usually 10 point Times New Roman).

12 point Times New Roman font is recommended for the body text. The font you decide to use for the body text should be easily readable and professional in appearance. Avoid 'aesthetic' fonts such as Comic Sans, Broadway, Jokermann etc.

Indent the first line of every new paragraph, as well as starting on a new line, but do not indent the first line that appears after a heading.

Words in a foreign language are not printed in italics but in roman print; but if they are in italics in a quotation, they must be left so.

Quotations

Use single quotation marks.

Quotes within quotes should appear within double quotation marks.

Quotations that are four or more lines in length should be indented, and single-spaced, and quotation marks should not be used.

Where you quote from a quote you should acknowledge this in a footnote. For instance where you quote Derrida exactly as he is quoted in an article you are reading by Van der Walt, this should be acknowledged. It is important to note that reading an authority through secondary sources is not encouraged.

Example:

The UN Rapporteur constantly refers to this perceived danger:

[T]here are the modern private security companies which provide many different kinds of services, economic advice and sophisticated military training but which are covers for former professional soldiers and mercenaries who, in exchange for large sums of money, offer themselves as a solution to countries experiencing instability and armed conflicts and the consequent impossibility of developing their enormous natural resources.⁹

Ellipsis:

- Ellipsis points are used when you omit certain words from a quotation.
- Use three points to indicate the omission of part of a sentence.
- Use four points to indicate that the sentence ends with the quoted passage or that the ellipsis extends into a new sentence.

Example:

'As long as many African states hide behind a façade of sovereignty ... there will be a market for private security operations ...'

The first ellipsis indicates that part of the sentence has been omitted.

The second ellipsis indicates that the sentence ends with the quoted passage.



Interpolations:

It is sometimes necessary to alter a quotation slightly to clarify the meaning.

Example:

The original quotation reads: 'The judge stated that his evidence was not credible.'
It is not clear to whom the word 'his' refers. Therefore, you would interpolate a word or phrase to clarify this:

'The judge stated that [the defendant's] evidence was not credible.'

Square brackets are also used to indicate that you are inserting a lower-case letter instead of the capital letter that appeared in the original: It has been noted that '[h]e was not telling the truth.' The sentence in the original read: 'He was not telling the truth.'

Abbreviations

Try to avoid making excessive use of abbreviations, and never use an abbreviation at the beginning of a sentence.

The general rule is that full stops are omitted in all abbreviations: ie (in other words), eg (for example), etc (et cetera), viz (namely)

But at the beginning of a sentence or footnote, all words should be written out in full: 'For example, in *R v Bowen* ...'

The following abbreviations are permissible before a number:

- (1) s for 'section' as in s 23.
- (2) para for 'paragraph' as in para 4.
- (3) reg for 'regulation' as in reg 45.
- (4) GN for 'Government Notice' as in GN 344.
- (5) GG for 'Government Gazette' as in GG 18523.
- (6) sch for 'schedule' as in sch 5.
- (7) art 'article' as in art 6.
- (8) Chap for 'Chapter' as in Chap VII

These words are not otherwise abbreviated eg 'the paragraph in question ...'

Do not use full stops when citing abbreviations for law reports, journals, statutes, treaties or codes:

All ER

WLR

SE 2d

DLR (4th)

Harvard LR

THRHR

Dates, times, numbers, fractions and decimals

Dates:

28 November 2000

Avoid using 'from/between 1950-1969'. Write 'from 1950 to 1969' or 'between 1950 and 1969'.



Times:

Unless 'am' or 'pm' is used, the time of day should be spelled out: 'At five o'clock the jury retired. At 6.16 pm the jury returned.'

Numbers:

Sums of money: R20 000
 R125,59

Ages are always given in figures: The boy is 8 years old.

Numbers from one to nine are written in words, except in references to pages, and in percentages.

Numbers 10 and greater are given in figures; also use figures for numbers that include a decimal point or fraction (4.25, 4½)

'Per cent' is written as two words (not 'percent' or '%').

Fractions and decimals:

Fractions should be hyphenated (two-thirds, four-fifths)

Fractions should be spelled out in words, unless attached to whole numbers.

Use fractions for approximate figures; use decimals for more exact figures.

Punctuation

- Do not use full stops for authors' initials or abbreviations denoting judicial office:
JM Burchell 'Wilful blindness and the criminal law' (1985) 9 *SACJ* 261.
Madala J; Roper and Clayden JJ; Mthiyane JA; Mthiyane and Farlam JJA; and Chaskalson CJ.
- Each footnote should end with a full stop.
- Names of countries and organisations should be spelled out in full (thus United States not US; United Nations, not UN).
- Titles of books, journals articles, and other secondary sources: only proper nouns and the first word of the title should be capitalised:
 Procedural aspects of marriage dissolution in Japan
 Commentary on the Criminal Procedure Act

Page references

When citing more than one page or paragraph:

at 1-5, at 11-13, at 112-19 (not 112-9), at 220-1, at 567-71, at 599-601, at 132F-H, at 16A-17C.

FOOTNOTES

General rules

The aim of footnotes is to ensure that the reader obtains a full citation to your source, and knows the precise place in the source to which you refer.

References must *always* be in the form of footnotes. See the note on plagiarism supra. Attached to this guide as Annexure A is a document that provides an example of proper referencing in legal academic work.



While styles vary, the main rule is to be consistent. Below you will find examples that comply with the house style of the *South African Law Journal*. This is generally endorsed in the UCT Law Faculty. Some permissible variants are also indicated, however.

Footnotes of an article should be numbered consecutively in Arabic numerals in superscript after any punctuation mark, and without any surrounding bracket or full stop. Thus: ‘*Regal’s* case²¹ left the position unclear. This was in conflict with the view of Jones J,²² but it was correct.’

Numbers of footnotes appear outside final punctuation marks.

Example:

‘Amnesty is a heavy price to pay. It is, however, the price that the negotiators believed our country had to pay to avoid an “alternative too ghastly to contemplate”.’¹⁶

Footnotes can also be used to provide further information that is of interest, but is not directly relevant to your main argument. However, do **not** be tempted to use them to provide either useless or important information/arguments - the former should be avoided and the latter should appear in the text itself. Avoid unnecessary repetition of information already referred to either in the body text or in earlier footnotes. See Annexure A.

Example:

Both African States and dissident forces have employed mercenaries to fight in numerous conflicts.¹⁵

^{15.} Thomas op cit note 1 at 14-16. It has been suggested that the following factors led to the appearance of mercenaries in post-colonial Africa in the 1960s: the withdrawal or absence of traditional regional powers from direct military involvement when conflicts arose; the fact that the internal military forces were generally ineffective; and the uncertain legitimacy or recognition of ruling regimes.

Cross-referencing; repeat references; footnoting to names in text

As a general rule, only the first citation of a source need be given in the full form. Subsequent citations of this source can then refer back to the first reference.

The following abbreviations are used for cross-referencing, but sometimes incorrectly:

ibid = in the same place;

idem = the same;

op cit = in the work cited;

loc cit = in the place cited; and

supra = above.

The use of these frequently confusing phrases can easily be avoided – see the examples below.

Example:

^{1.} HC Burmester ‘The recruitment and use of mercenaries in armed conflicts’ (1978) 72 *American Journal of International Law* 37.

^{2.} *Cape Law Society v Parker* 2000 (1) SA 582 (C) at 590.

^{3.} Burmester (note 1) at 41. [OR: Burmester (n 1) at 41]

^{4.} *Cape Law Society v Parker* (note 3) at 591-2. [OR: *Cape Law Society v Parker* supra note 3 at 591-2.



Further examples:

- Books, essays or journal articles: Fish (note 23) at 367 (or: Fish op cit note 23 at 367). In such cases, only the author's surname is required.
- Where an author is mentioned in the text: 'Samuelson argues ...'⁸ it is not necessary to repeat the author's name in the footnote, unless this is the first time the work is cited. The first citation of a work requires the full name of the author, in this case, Pamela Samuelson.
- Repeat citations of a case: *Van Rooyen v Van Rooyen* supra note 166 at 438F-H. [It is only necessary to repeat the litigants' name(s) if other sources have been cited since the first citation of this case.]
- If a case is cited repeatedly: *Mkangeli* case (note 29) at 288A.
- Where the name of an act or the name of a case is mentioned in the text, it is not necessary to repeat this information in the footnote, even if this is the first citation. For example, if the text reads: 'In *S v Martin*² the court held ...'. Footnote 2 will read: 1996 (2) SACR 378 (W) or: supra note 1.

If it is clear from the context of the text that the discussion refers to a particular act or case, it is not necessary to refer back to the full citation every time a particular section or paragraph is cited. For example, if the entire page text is devoted to a discussion of the *Martin* case (cited in full above), the footnotes in the continuing discussion need only contain the pinpoint references: at 382A.

Books

Whenever a particular book is cited for the first time, you must provide the following:

- the name of the author(s) or editor(s). [First name(s) or initial(s) precede the surname. Do not use full stops].
- Where there is two authors give the details of both. Use '&' only where it is given by the authors as such. In all other cases, use the word 'and'.
- Where there is three or more authors, provide only the details of the first author, followed by the Latin abbreviation 'et al'. The same applies for the citation of journal articles that has more than one author.
- the name of the book (in italics) [Use capital letters for the first word of the title and proper nouns only]
- the edition (if applicable)
- the date of publication (in brackets)
- if you cite a particular page, provide the page reference

Example:

¹. William Twining and David Miers *How to do things with rules: a primer of interpretation* 4ed (1999) 125.

². Ellison Kahn *Contract and mercantile law: a source book* vol 1, 2ed (1988) 704-5.

The Old Authorities:

Citation is in the normal manner except that standard, well-known works may be shortened thus:

Grotius *Inleiding* 6.1.3

Voet *Commentary on the Pandects* 2.19.4



Journal articles

Standard citation format:

Author	Title of article	Date	Vol	Issue no	Name of journal	Page on which the article begins	Page you are citing
Mario Gomez	'The modern benchmarks of Sri Lankan public law'	(2001)	118	2	<i>SALJ</i>	581	at 598

- Where there is more than one author, see the rule above under the citation for books.
- The title of the article appears in single quotation marks Use capital letters for the first word of the title and proper nouns only.
- The name of the journal appears in italics.
- If the journal does not have a volume number, the date does not appear in brackets.
- Put the date in brackets if the journal has a volume number. Include issue number if available, specifically where no page numbers are apparent.
- The names of well-known journals (such as *SALJ*) should be abbreviated. Otherwise, *LJ*, *LR* and other abbreviations may be used.

Example:

¹¹ WE Harvey and D Husak 'The meaning of "identity documents" in case law' (1965) 82 *SALJ* 224 at 227.

² Alfred Cockrell 'Second-guessing the exercise of contractual power on rationality grounds' 1997 *Acta Juridica* 26 at 42.

³ Hugh Collins cited in Cockrell (note 2) at 40.

[When you quote from a publication that you yourself have not consulted.]

Electronic journals (with no print equivalent):

Lynn Foster 'Obstacles to citation reform' 2000 (3) *The Journal of Information Law and Technology*. Available at <http://elj.warwick.ac.uk/jilt/00-3/foster.html> [Accessed 2 December 2002].

Essays in collected editions

Where you refer to an essay in an edited book, you must provide:

- the name of the author(s) of the essay First name(s) or initial(s) precede the surname. Do not use full stops.
- the title of the essay in single quotation marks Use capital letters for the first word of the title and proper nouns only



- follow this by the word ‘in’ and then give the full citation of the book as set out in point 4.1 ie:
the editor(s) of the book in which the essay appears
the name of the book in which the essay appears (in italics)
the edition (if applicable)
the date of publication.
- the page of the book on which the essay begins
- the particular page you are citing (preceded by the word ‘at’)

Example:

¹. Anthony Seeger ‘Ethnomusicology and music law’ in Bruce Ziff and Pratima V. Rao (eds) *Borrowed power: essays on cultural appropriation* (1997) 52 at 64.

The Internet

Provide internet address and the date on which you visited the website.

Example:

¹. Pamela Samuelson ‘Tightening the copyright noose: why you should be worried about the White Paper on Intellectual Property Rights.’ Available at http://www.eff.org/pub/Intellectual_property/tightening-copyright-noose.article [Accessed 2 January 2002].

Cases (South African)

Standard citation format:

Case name	Year	Volume	Law Report Series	Page case begins	Court	Pinpoint reference (page and paragraph)
<i>Administrator, Transvaal v Traub</i>	1989	4	SA	731	A	at 761F-G.

- The names of the parties must be in italics.
- If you cite a particular page or paragraph, supply the page and paragraph number, preceded by the word ‘at’:
Boesak v Minister of Home Affairs 1987 (3) SA 665 (C) at 684 H.
- Where the court numbers the paragraphs of its judgment (as the Constitutional Court tends to do) you may also cite the court’s paragraph number:
Mohlomi v Minister of Defence 1997 (1) SA 124 (CC) para 19 at 133 H.

Recent South African law reports series:

Tip: The publisher of the law report series usually prints the case citation in the required form at the top of each page.



South African Law Reports (1947 -)	<i>Boesak v Minister of Home Affairs</i> 1987 (3) SA 665 (C).
All South African Law Reports (1996 -)	<i>Ex parte Stoter</i> [1996] 4 All SA 329 (E).
Constitutional Law Reports (Butterworths) (1994 -)	<i>Harris v Minister of Education</i> 2001 (8) BCLR 796 (T).
Industrial Law Reports (1980-)	<i>Franks v University of the North</i> (2002) 22 ILJ 1158 (LC).
Juta's Tax Law Reports (1997-)	<i>Tiger Oats Ltd v Commissioner, South African Revenue Services</i> 2001 (11) JTLR 385.
Juta's Tax Law Reports (1997-)	<i>Tiger Oats Ltd v Commissioner, South African Revenue Services</i> 2001 (11) JTLR 385.
Labour Law Reports (Butterworths) (1994 -)	<i>TGWU & Others v Coin Security Group (Pty) Ltd</i> [2001] 4 BLLR 458 (LC).
Prentice-Hall Weekly Legal Service (1923 - 1995)	<i>S v Louw</i> 1994 (2) PH H73 (T).
South African Criminal Law Reports (1990-)	<i>S v Martin</i> 1996 (2) SACR 378 (W).
South African Tax Cases (if not reported in SA Law Reports) (1926-)	<i>Muller v CIR</i> (1953) 18 SATC 17 (T). If before the Income Tax Special Court: ITC 1033 (1964) 26 SATC 73.

Southern African courts

Important judgements from outside of South Africa are sometimes published in South African series of law reports such as The South African Law Reports and Butterworths Constitutional Law Reports. The court is identified as follows:

Botswana (or BAC) = Appeal Court, Botswana LesA = Lesotho Court of Appeal NmH (or Nm) = Namibia High Court NmS (or Nm) = Namibia Supreme Court RAD = Rhodesia Appellate Division SBAC = Swaziland, Basutoland and Bechuanaland Appeal Court. SR = High Court of Southern Rhodesia. SWA = South West African Division of the Supreme Court of South Africa. Z (or ZS, ZSC) = Zimbabwe Supreme Court.	Examples <i>Government of the Republic of Namibia v Cultura</i> 1994 (1) SA 407 (Nm). <i>Attorney-General v Dow</i> 1996 (6) BCLR 1 (Botswana) at 7. <i>Kauesa v Minister of Home Affairs</i> 1994 (3) BCLR 1 (NmH) at 13.
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1910-1947

The Supreme Court of South Africa was established in 1910. From 1910 to 1947 the decisions of each Division of the Supreme Court were reported in a separate series, one for each Division of the Court:	
Appellate Division (1910-1946)	<i>Zeeman v Botha's Trustee</i> 1923 AD 167.
Cape Provisional Division (1910-1946)	<i>McMillan v Locomotive Drivers' and Firemen's Mutual Aid Society</i> 1922 CPD 578.
Eastern Districts Local Division Reports (1910-1946)	<i>Miller v West</i> 1914 EDL 563.



Griqualand West Local Division Reports (1910-1946)	<i>Snyder v Steyn</i> 1912 GWL 67.
Natal Law Reports (New Series) (1879-1932)	<i>Ntsele v Ntuli</i> (1927) 48 NLR 3.
Natal Provisional Division Reports (1933-1946)	<i>Stender v Stender</i> 1938 NPD 125.
Orange Free State Provincial Division Reports (1910-1946)	<i>Nel v Minister of Justice</i> 1923 OPD 14.
Transvaal Provincial Division Reports (1910-1946)	<i>R v Paizes</i> 1941 TPD 118.
Witwatersrand Local Division Reports (1910-1946)	<i>Ferreira v Grant</i> 1941 WLD 187.

Before 1910:

Some more common examples of pre-1910 law reports series:

NOTE: where a series consists of numbered volumes (eg SC, numbered 1 – 26), the date of the case appears in brackets. Brackets are not used when the series consists of annual volumes denoted by year rather than volume number.	
Buchanan’s Appeal Court Reports (1880-1910)	<i>Harsant v Olssen</i> 1885 Buch AC 108.
Buchanan’s Supreme Court Reports (1868-1879)	<i>Peacock v Hodges</i> 1876 Buch 65.
Cape Supreme Court Reports (1880-1910)	<i>R v Maphaga</i> (1908) 25 SC 230. (Note: the volumes of SC reports are numbered consecutively from 1 – 26. The date thus appears in brackets.
Cape Times Law Reports (1891-1910)	<i>Skibble v Kolbe</i> (1906) 16 CTR 292.
Eastern Districts Court Reports EDC (1880-1887; 1891-1909)	<i>Mba v Elliott</i> (1898) 13 EDC 35.
Griqualand West High Court Reports (1882-1910)	<i>Anderson v Lindquist</i> (1886) 4 HCG 39.
High Court Reports [South African Republic] (1881-1892)	<i>Scorgie v Smit</i> (1882) 1 SAR 21.
Juta’s Supreme Court Reports (1880-1894)	<i>Wheeler v Van Reenen</i> (1883) 2 Juta 269.
Menzies’ Supreme Court Reports (1928-1849)	<i>Wood v Gilmour</i> (1840) 3 Menz 159.
Official Reports of the South African Republic (1894-1899)	<i>S v Tom</i> (1895) 2 OR 27.
Orange River Colony Law Reports (1903-1909)	<i>Bothma v Lace Diamond Co Ltd</i> 1903 ORC 13.
Roscoe’s Supreme Court Reports (1861-1867; 1871-1872)	<i>Jones v Stewart</i> (1878) 3 Roscoe 17.
Searle’s Supreme Court Reports (1850-1867)	<i>Slabber v Bell</i> (1861) 4 Searle 37.
Transvaal Supreme Court Reports (1902-1909)	<i>Blower v Van Noorden</i> 1909 TS 890.
Witwatersrand High Court Reports (1902 – 1910)	<i>Doucet v Piaggio</i> 1905 TH 267.

‘Black Appeal Courts’ reports

During the period of their existence, these courts were named Native Appeal Courts, then Bantu Appeal Courts, Black Appeal Courts, and finally merely Appeal Courts.
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Examples

Bobotyane v Jack 1944 NAC (C&O) 9.

[Native Appeal Court: C&O = Cape and Orange Free State Division; N&T = Natal and Transvaal Division]

Mwanzi v Zulu 1954 NAC 143 (S).

[New Series following the new division of the Native Appeal Court into Southern (S); Central (C) and North-Eastern (NE)]

Sibiya v Xala 1978 (1) AC 22 (NE).

Unreported Cases

Example

S v Snyders (C) Case no 1756/02 25 September 2002, unreported.

In addition, you may supply a reference for the electronic version of the case, as found using Butterworths Judgments Online, Jutastat Daily Law Reports, or from the official court web pages of the Constitutional Court or the Supreme Court of Appeal.

Example

Geuking v President of the Republic of South Africa and others (CC) Case No CCT35/02 12 December 2002, unreported. Available at <http://www.concourt.gov.za/judgments/2002/geuking.doc> [Accessed 10 February 2003].

Cases (foreign)

Standard citation format for British and Irish cases:

Case name	Year	Vol number if applicable	Reporter	Page case begins	Specific page and paragraph citation	Court if CA, HL or PC
<i>Donaghue v Stevenson</i>	1932		AC	562	at 564A	HL

Unlike South African court citations, where the court is routinely cited (eg CC, T, C, etc), an English court should only be cited if the judgment is delivered by the Court of Appeal (CA), the House of Lords (HL) or the Privy Council (PC).

If a case is reported in The Law Reports (the official series), use this citation. If not reported in The Law Reports, use the All ER citation (example below) in preference to any other series.

All England Reports (1936-). Cited as All ER	<i>R v Bryce</i> [1992] 4 All ER 567 (CA). <i>Wakeham v Mackenzie</i> [1968] 2 All ER 783.
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Germany

Where the case was heard in the BVerfG (Bundesverfassungsgericht – Federal Constitutional Court) cite to the BVerfGE (Entscheidungen des Bundesverfassungsgericht) as follows:

Name of law reports series	Vol	Page case begins	Page cited	Optional: a name by which the case has become known
BVerfGE	34	269	at 272	<i>Princess Soraya</i>

Examples:

BVerfGE 54, 148 (154).
BVerfGE 30, 173 (197) (*Mephisto*).

Reichsgericht (RG)) cite to the:

- BGHZ (Entscheidungen des Bundesgerichtshof in Zivilsachen) (Civil matters) (1951-)
- RGZ (Entscheidungen des Reichsgericht in Zivilsachen) (Civil matters) (1880-1945)
- BGHSt (Entscheidungen des Bundesgerichtshof in Strafsachen) (Criminal matters) (1951-)
- RGSt (Entscheidungen des Reichsgericht in Strafsachen) (Civil matters) (1880-1945)

As follows:

Name of law report series	Vol	Page case begins	Page cited	Optional: a name by which the case has become known
BGHZ	26	349	at 352	<i>Herrenreiter</i>

Examples:

BGHZ 35, 363 (369) (*Gisengwurzeln*).
BGHZ 66, 388 (390).
RGZ 54, 255 (259).

US Supreme Court

United States Reports (1754 -) (official series) cited as US	<i>United States v Nixon</i> , 418 US 683, 689 (1974).
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International Law Reports

Examples

<p>International Court of Justice: Reports cited as ICJ Rep. Year appears as on the spine of ICJ reports. Provide page on which case begins and page cited if necessary. If an advisory opinion, do not list the names of the parties.</p>	<p><i>Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US) (Merits)</i> [1986] ICJ Rep 14 at 92. <i>Corfu Channel (UK v Albania) (Merits)</i> [1949] ICJ Rep 4.</p>
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	<i>Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Advisory Opinion)</i> [1950] ICJ Rep 65 at 68.
Publications of the Permanent Court of International Justice: Cited as PCIJ. These were published in six series (A to F). Cite by number of the case, not the page number on which case begins.	<i>Chorzow Factory (Germany v Poland) (Jurisdiction)</i> [1928] PCIJ (ser A), No 17 at 8. <i>Diversion of Water from the Meuse (Netherlands v Belgium)</i> [1937] PCIJ (ser A/B) No 70 at 7.
United Nations Reports of International Arbitral Awards	<i>Trail Smelter Arbitration (US v Canada)</i> (1938 and 1941) 3 RIAA 1905.

Legislation

Statutes

The Restitution of Land Rights Act 22 of 1994.

Sections are cited as follows:

Income Tax Act 58 of 1962 s 9.

Income Tax Act 58 of 1962 ss 9 and 10.

In s 6(2)(d) priority is given to claims which affect a substantial number of persons.

Subsections

Income Tax Act 58 of 1962 subsec 9(1)(d)(bis).

Chapters:

Restitution of Land Rights Act 22 of 1994, Chapter III, ss 22-38.

Parts:

Labour Relations Act 66 of 1995, Chapter VII, Part D, s 151.

Schedule:

Short-term Insurance Act 53 of 1998, sch 2.

NB. Where the word section, subsection, chapter, part or schedule is the first word in a sentence, it should be given in full: Section 6(2)(d) provides that priority is given to claims that affect a substantial number of persons.

Subordinate Legislation:

Provide the government assigned regulation or proclamation number, and the number and publication date of the Government Gazette in which it appeared. The abbreviations GNR, GN and GG are permissible before a number, except if at the beginning of a sentence or footnote.

Examples:

Code of Good Practice: Key Aspects on the Employment of People with Disabilities GNR 1345 GG 25789 of 19 August 2002.

Department of Transport Notice 1957 GG 18541 of 12 December 1997.



Treaties and Conventions

Provide the *ILM* reference if available. Alternatively, provide the UNTS reference or the full UN or OAU or EU reference.

Examples:

Vienna Convention on the Law of Treaties, 1969 (1969) 8 *ILM* 679.

OAU Convention for the Elimination of Mercenaries in Africa, 1972 OAU Doc. CM/433/Rev.L, Annex 1 (1972).

International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989 United Nations General Assembly Resolution 44/34 (1989).

BIBLIOGRAPHIES

- (1) A bibliography is a detailed list of sources referred to in your essay, or consulted during the course of its preparation. It contains more detail than footnote references; in particular, it indicates the publisher and place of publication of books. (Publishing details of journals and law reports are never provided)
- (2) Secondary sources are ordered alphabetically by authors' surnames. It is usually not necessary to distinguish between books and journals, but it may be, depending on the number of sources consulted. In a doctoral thesis there should be separate sections on books and journals.
- (3) Official publications and publications produced by organisations, for which there is no named author, should be listed by reference to the body responsible for the publication thereof eg Commission for Gender Equality; Department of Justice; Organisation of African Unity.
- (4) Primary sources of law should be listed in separate tables of statutes and cases. When primary sources from more than one jurisdiction are used, these tables should be sub-divided by jurisdiction, or at least so as to distinguish between South African and foreign/international sources.

Example

BIBLIOGRAPHY

Primary Sources

Cases

Boesak v Minister of Home Affairs 1987 (3) SA 665 (C).

Mohlomi v Minister of Defence 1997 (1) SA 124 (CC).

Statutes

Income Tax Act 58 of 1962.

Labour Relations Act 66 of 1995.

Restitution of Land Rights Act 22 of 1994.

Secondary Sources

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Blackman, MS 'Companies' (1997) 4(1) *LAWSA* Butterworths, Durban,.

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Twining, William and Miers, David *How to do things with rules: a primer of interpretation* 4ed (1999) Butterworths, London.

CE Scollo-Lavizzari *Restitution of land rights in an administrative law environment -- the German and South African procedures compared* (1996) Unpublished LLM Dissertation, University of Cape Town, Cape Town.

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Barrass, R *Students must write: a guide to better writing in course work and examinations* (1982) London and New York, Methuen & Co.

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Garner, BA (ed) *Black's law dictionary* 7ed (1999)

Hofman, Julien *Guide for producing written assignments in the law faculty* 5ed (1999) Cape Town, Department of legal history and method, Faculty of law, University of Cape Town, Cape Town.

O'Malley, T *The round hall guide to the sources of law: an introduction to legal research and writing* (1993) Dublin, The Round Hall Press.

Miller, S *Legal skills handout* (2000/2001) Edinburgh Law School, Edinburgh.



ANNEXURE A EXAMPLE OF PROPER REFERENCING IN LAW

In *United Democratic Movement v President of the RSA and Others (1)*³ it was contended that 'the right to vote and proportional representation are part of the basic structure of the South African Constitution, and... not subject to amendment at all'.⁴ The basis of this argument is to be found in *Premier of Kwazulu-Natal and Others v President of the Republic of South Africa and Others*⁵ where the Court suggested that an amendment that 'radically and fundamentally' changed the structure of the Constitution⁶ might not be classed as an amendment.⁷ The Court suggested that there may be a limit to what can be amended.⁸ This doctrine has its roots in Indian jurisprudence, as Devenish notes.⁹ Indian courts have however restrained their use of the doctrine to amendments touching the rule of law and separation of powers.¹⁰ Ultimately, whether the doctrine is part of our law is unclear.¹¹ It appears that the anti-defection provisions of our Constitution are not a part of its basic structure.¹² A further argument raised in the *United Democratic Movement* case was that the legislation in issue conflicted with the 'founding values' of the Constitution.¹³ Devenish's view is that the Court's reasoning on this point is the 'Achilles heel of the judgement'.¹⁴ Smith disagrees arguing that the only founding value of the Constitution is its protection of the salaries of civil servants.¹⁵

Section 2 of the National Environmental Management Act¹⁶ recognises a set of principles to guide the behaviour of organs of state in actions that may impact on the environment.¹⁷ Key among these is the s2(3) principle that development must be environmentally sustainable. This requirement is further elaborated to involve the avoidance of disturbance to ecosystems,¹⁸ of pollution¹⁹ and of disturbance of landscapes.²⁰

³ 2002 (11) BCLR 1179 (CC). [NOTE: NOT *United Democratic Movement v President of the RSA and Others* 2002 (11) BCLR 1179 (CC).]

⁴ At para 14.

⁵ 1996 (1) SA 769 (CC).

⁶ Constitution of South Africa, 1996.

⁷ At para 47. [NOTE: NOT *United Democratic Movement v President of the RSA and Others* 2002 (11) BCLR 1179 (CC) at para 47]

⁸ At para 49.

⁹ GE Devenish 'Political musical chairs – the saga of floor-crossing and the Constitution' (2004) 1 *Stell LR* 52 at 55.

¹⁰ *Ibid.*

¹¹ *Ibid.* 56.

¹² *United Democratic Movement* (note 1) para 16.

¹³ At para 17.

¹⁴ Devenish (note 7) 57.

¹⁵ GE Smith *The New Constitution* (2003) 642.

¹⁶ Act 107 of 1998.

¹⁷ These principles were derived from F Kaganas 'The State and the Environment' in GE Luthuli *Our New Environmental Regime* (2001) 612.

¹⁸ Section 2(4)(a)(i).

¹⁹ Section 2(4)(a)(ii).

²⁰ Section 2(4)(a)(iii). See also s 33(4).



ANNEXURE B

UNIVERSITY OF CAPE TOWN

FACULTY OF LAW

PLAGIARISM: DECLARATION TO BE MADE BY STUDENTS

The following declaration is to be completed and included each time an essay is submitted for assessment. The principles contained in the declaration apply also when submitting other forms of written work, but you may be instructed that a declaration is not necessary. In other words, plagiarism in any form is always not allowed, but you may not have to submit a declaration with each piece of written work handed in for assessment in this faculty.

DECLARATION

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the footnote* convention for citation and referencing. Each contribution to, and quotation in, this essay/report/project/.....from the work(s) of other people has been attributed, and has been cited and referenced.
3. This essay/report/project/..... is my own work.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
5. I acknowledge that copying someone else's assignment or essay, or part of it, is wrong, and declare that this is my own work.

Signature:..... Student No.....

* NB No other convention of referencing is permitted in the Law Faculty.



ACRONYMS AND ABBREVIATIONS

1. AEC: African Economic Community
2. AHSI: African Initiative
3. AMU: Arab Maghreb Union
4. AU: African Union
5. CEN-SAD: Community of Sahel-Saharan States
6. COMESA: Common Market for Eastern and Southern Africa
7. EAC: East African Community
8. EASBRIG: East African Standby Brigade
9. ECCAS: Economic Community of Central African States
10. ECOWAS: Economic Community of West African States
11. ECOMOG: ECOWAS Ceasefire Monitoring Group
12. IGAD: Intergovernmental Authority for Development
13. ISDSC: Inter-state Defence and Security Council
14. NGO: Non-governmental Organisation
15. OPDS: Organ on Politics, Defence and Security Cooperation
16. OAU: the Organisation of African Unity
17. RECs: Regional Economic Communities
18. SADC: Southern African Development Community
19. UDI: Unilateral Declarations of Individuals
20. UN: United Nations

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CHAPTER ONE

1.1 INTRODUCTION

'In the hearts of people today there is a deep longing for peace. When the true spirit of peace is thoroughly dominant, it becomes an inner experience with unlimited possibilities. Only when this really happens ... when the spirit of peace awakens and takes possession of men's hearts, can humanity be saved from perishing.' by Albert Schweitzer*

The collapse of the Berlin wall signified the end of the cold war which had involved differences in ideologies between the West (USA) and the East (USSR). Out of this emerged a new regionalism that was no longer dominated by states but of which non-state actors were included. The objectives of this paradigm were broadened to encompass aspects with regard to environment, security as well as need for development.¹ As the ideologies, paradigms and theories transformed, so did the notion of conflict; that is to say there was a shift from inter-state (one state waging war against the other) to intra- state conflict (conflicts within the boundaries of one state).² Most of which can be attributed to the differences in ethnic backgrounds, disputes over resource sharing, failure in the administration of justice and inability of states to guarantee security for the masses and also issues relating to religious cleavages and religious fundamentalism.³

The end of the cold war established the fact that mitigating interstate conflicts was the responsibility of the state themselves. Africa has taken that responsibility by creating the Organisation of African Unity (OAU) and its successor the African Union (AU). Since 1960, 19 full fledged wars have been fought in Africa and 11 genocides and politicides occurred

* (14 January 1875 – 4 September 1965) was a German-French theologian, musician, philosopher, and physician. He was born in Kaysersberg in the province of Elsass-Lothringen (Alsace-Lorraine), at the time in the German Empire. He received the 1952 Nobel Peace Prize in 1953 for his philosophy of "Reverence for Life",^[1] expressed in many ways, but most famously in founding and sustaining the Albert Schweitzer Hospital in Lambaréné, now in Gabon, west central Africa (then French Equatorial Africa).

¹Mr Ayodele Aderinwale The Conference on Security, Stability and Cooperation in Africa Framework and the Role of Regional Institutions in Moufida Goucha and Jakkie Cilliers Peace (eds) *Human Security and Conflict Prevention in Africa* (2001) pg 59.

²Abiodun Alao 'The role of regional and sub regional organisations in conflict prevention and resolution' in Alfred Nhema, Paul Tiyambe Zeleza (eds) *The Resolution of African Conflicts; the management of conflict resolution and post-conflict resolution* (2008) 9 at 12.

³idem

between 1960 and the late 1980. UNICEF reported 850,000 children dead between 1980 and 1988 as a result of only two Africa major wars in Angola and Mozambique.⁴ The causes of conflict have been surrounding regime formations, economic crisis, tribal or ethnic factors and external factors. These conflicts manifest both overtly as armed conflict and covertly as ideological struggles.

The idea of forming an African Economic community as an integral part of the OAU was entrenched in the Abuja treaty that came into force on 12 May 1994.⁵ The establishment of the Community was based on a number of key integrating sectors such as transport and communication, industry, agriculture, energy education among others.⁶ A deadline of 30 to 39 years was broken down into six stages for achieving the continent's economic integration objectives.⁷ Five years were set aside for the strengthening of existing regional economic communities and creation of new communities where necessary⁸. The treaty divides the continent into five regions; North, West, East, And South and Central Africa and the regional economic communities encompassing these continental regions are expected to be federative poles of the future continental common market.⁹ During that time, the pan-African security and defence structures were absent. They were created in 1993 with the OAU's adoption of the Cairo Declaration that provided for the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution.¹⁰

1.2 Statement of the Problem

Over the past years Africa has been ravaged by conflicts both inter-state and intra-state. The governments of the affected countries were unable to curb the violence hence they turned to

⁴ UNDP: The Challenge of Ethnicity and Conflicts in Africa, Emergency Response Division, UN Geneva, January (1997) 2

⁵ Economic Commission for Africa and African Union *Assessing Regional Integration in Africa II : Rationalizing Regional Economic Communities* A document of the Economic Commission for Africa and the African Union (2006) at 45

⁶ Ibid

⁷ Rene N'Guettia Kouassi 'The itinerary of the African Integration Progress': *An Overview of the Historical Landmarks*, (2007) volume 1 No 2 African Integration Review at 5.

⁸ Ibid

⁹ Ibid

¹⁰ William Breytenbach 'Peace keeping and regional integration in Africa' in Anton Bosl, Trudy Katzenberg, Colin McCarthy and Klaus Schade (eds) *Monitoring Regional Integration in Southern Africa* (2008) volume 8 at 249

international organisations like the UN for assistance. Since the situation with regard to the intra-conflicts on the continent was rampant, there was need for regional organisations to assist the states in ensuring peace and security. It should be noted that these organisations were originally created as a platform through which Africa would integrate economically.¹¹

Furthermore the end of the Cold War exposed the leadership and administrative inadequacies of African states.¹² African leaders and citizens felt a discernible loss of confidence in the various institutions of governance there fore; they questioned both the fundamental nature of their states and the rationale for their existence. ¹³ Africa is no stranger to these intra- state conflicts for during this period of uncertainty there occurred numerous crises, such as genocides, crimes against humanity, war crimes which were witnessed in certain countries like Rwanda, Sierra Leone, Sudan, Liberia among others. Conflict in Africa is both complicated and indeterminate. There is no single theory that explains every thing and no single approach that can address all aspects of the problem.¹⁴ The causes and nature of conflict are multiple and the mechanisms needed for building peace, resolving conflict and ensuring that peace lasts are also very complex.¹⁵

Therefore, for a continent that has remained volatile and vulnerable to external factors and factions, there is a need to develop and implement paradigms, concepts and new attitudes to increase institutional capacity and make progress towards the goals of stability and prosperity.¹⁶ Henceforth the sub-regional organisations and other regional organisations are essential in aiding certain countries in conflict which falls under their regional bracket. Despite the fact that the main role of these organisations was to create a platform through which Africa could integrate economically,¹⁷ these organisations do have a role to play with regard to the peace and security aspect in Africa. It is only logical that total integration that is yearned for will be attained if there is no anarchy among and within states.

¹¹ Economic Commission for Africa (note 5) at 45.

¹²Mr Ayodele Aderinwale: The Conference on Security, Stability and Cooperation in Africa Framework and the Role of Regional Institutions in Moufida Goucha and Jakkie Cilliers Peace (eds) *Human Security and Conflict Prevention in Africa* (2001) 59.

¹³Ibid.

¹⁴ Alex de Waal Demilitarizing the mind African Agendas for peace and security (2002) 1.

¹⁵ Ibid.

¹⁶ Mr Ayodele Aderinwale (note 1) at 60.

¹⁷ Idem (note 5).

1.3 Proposed structure:

The approach that I will be using is the positivist approach that is to say, I will apply the applicable law to any situation pertaining to conflict resolution and see how it creates measures that protect the victims involved in these conflicts. The methodology applied to this dissertation is a combination of desk research. Desk research requires the delving into information concerning the relevant topic with reference to books, journal articles, and case law among other sources.

1.4 Research Questions

The reason for assessing the role of these organisations is to gauge:

- To what extent are they allowed to participate in conflict resolution that is to say, should their actions have to be initially accepted by the United Nations and African Union?
- What peace mechanisms have they established to ensure the peace and stability?
- What challenges and achievements have they met in instigating peace on the continent?
- How are the organisations influenced by the presence of other international organisations such as Non-governmental Organisations (NGOs)?
- How do the norms of international law such as protection of human rights impact on the organisations in conflict resolution?

1.5 Objective of this paper

The aim of this thesis is to analyse the role of regional organisations in conflict resolution and to what extent and with which legal authority are they allowed to participate in these resolutions taking into the consideration the norms of international law that is to say, the treaties and protocols relating to conflict resolution of the organisations shall also be focused upon. It will also determine if the role played by these organisations has led to increased peace and stability on the continent. This thesis will also deal with the influence that international non-state actors have on these organisations as well as the international norms that are to be respected and protected during conflict resolution. For this thesis, emphasis will be placed on

the following regional organisations and the role they play in conflict resolution; these include: ECOWAS: Economic Community of West African States, EAC: East African Community, ECCAS: Economic Community for Central African States, COMESA: Common Market for East and Southern Africa, IGAD: Intergovernmental Authority on Development, SADC: Southern African Development Community.

1.6 Scope of study

The research will cover the protocols and treaties enacted by the organisations as well as the international laws such as the UN Charter.

1.7 Structure

1. Introduction

The introduction will deal with a brief history of the creation of the organisations, the extent of the conflict situation on the continent. It will also encompass the statement of the problem at hand and the methodology to be applied. It will also indicate in broad the structure of what is to follow.

2. The legal instruments and workable frameworks of regional organisations in conflict resolution

This chapter will generally focus on the statutory provisions that led to the formation of the organisations as well as other documents that have been enacted for the promotion of peace and security on the continent such as the Constitutive Act of the African Union, the charter of the Organisation of African Union among others.

3. The role played by regional organisations in conflict resolution in Africa

This chapter will look at the role played by regional organisations, the challenges they face and their achievements. These organisations include ECOWAS, EAC, ECCAS, COMESA, IGAD and SADC.

4. The influence of international non-state actors such as the UN, NGOs on the regional organisations in conflict resolution

This part will deal with the influence international non- state actors have on these regional organisations in conflict resolutions and to what extent are they are advantageous or disadvantageous to the organisations

5. Recommendations and conclusions

This final chapter offers recommendations to the African Union and regional organisations. It centres on how they can try to improve the mechanisms in place that are created for conflict resolution.

CHAPTER TWO

2.1 The legal instruments and workable frame works to promote peace and security.

This chapter will examine the legal instruments and workable frame works that justify the formation of the regional organisations and accord legal authority. Regional organisations are endowed with legal personality and are usually observed as independent organisations. However this is usually limited by the functions and objectives that are defined by the Constitutive Act of the African Union. The legal authority of these organisations can be ascertained by referring to the constitutive documents, treaties and protocols which will be examined below;

2.1.1 The Organisation of African Unity (OAU)

The issue of African economic integration surfaced at the commencement of independence as a cry of African leaders driven by the desire to promote Pan Africanism, to establish some fortification against the damage which the people of European origin¹⁸ made on their lives such as slavery, colonialism, apartheid and racism among the African states. This later led to the formation of the Organisation of African Unity (herein after OAU) in 1963 by thirty two independent states in Addis Ababa Ethiopia. The main objectives of the OAU was to promote unity and solidarity among African states, to safeguard sovereignty, territorial integrity and independence among member states, to eradicate all forms of colonialism from the continent, to coordinate and intensify cooperation for development and international cooperation within the framework of the United Nations.¹⁹

The OAU charter does recognise the need for peace and security for in its preamble. In order to translate this determination into a dynamic force in the cause of human progress, conditions for peace and security must be established and maintained.²⁰ Further more, one of its purposes in Article II is the cooperation for defence and security. However, when assessing

¹⁸ Thompson Africa and Unity: *The evolution of Pan Africanism* (1969) 18.

¹⁹ The African Union Available at <http://www.africa-union.org> [Accessed on 9/3/2009].

²⁰ The Organisation of African Unity Charter Available at <http://www.uneca.org> [Accessed 19th May 2009].

some of the principles of this charter,²¹ the need to protect sovereignty of states and the non interference by other states was emphasised leading to the non assistance of states in times of conflict by other neighbouring states.

The institutional weakness of the OAU Charter curtailed the number of options the organisation had for dealing with conflicts. An examination of the principles enshrined in the Charter helps to explain the limitations that the OAU faced in handling conflict resolution. It also provides insight into the normative preferences of its members. .²² Article III deals with the principles of the Charter and the two most binding principles to which member states were committed are those of sovereign equality of all Member States and non-interference in the internal affairs of States. Following the above, it can be noted that African states sought to prevent any unwanted interference by neighbouring states in their domestic affairs. These principles although intended to promote state security did not necessarily promote peace in the region.²³

The OAU was only allowed to intervene at the infrequent request of the member state concerned or in case of an inter-state conflict. Even when floods of refugees and the emergence of rebel groups in other states threatened regional stability, the OAU did not use these mitigating factors to justify uninvited intervention. ²⁴ For example the conflict in Sudan displaced thousand of refugees and resulted in instability within the region and hostile relations with neighbouring states. ²⁵ The OAU was only able to get around the sovereignty principle when all order had broken down within the state and there was no longer any 'government 'from which permission to intervene (as in the case of Somalia in 1992). ²⁶

The principle of territorial integrity is also another principle that limited the conflict resolution options of the OAU. This principle was aimed to uphold the boundaries of all member states

²¹ Ibid

²² Alfred Nhema and Paul Tiyambe Zeleza the resolution of African Conflicts (eds): the management of conflict resolution and Post-conflict reconstruction 2008 pg 23.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Supra (note 22) at 23.

particularly as they were established at independence.²⁷ The OAU was thus restricted in the types of negotiated settlements it could propose and support in other words new boundary lines were not an option.²⁸ This automatic support for current boundaries often resulted in distrust of the OAU by the rebel groups thus preventing serious dialogue from occurring at all.

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The OAU declared support for the principle of self determination that was used to support anti-colonial movements in the 1960s and 1970s and the organisation's maintenance of territorial boundaries amounts to a contradiction.³⁰ The borders established by the colonial groups split up numerous nationalities and in other cases diverse groups were combined as seen in Chad and Sudan.³¹ All in all the OAU chose to uphold the territorial boundaries to avoid anarchy from arising in the continent.

Apart from the institutional weakness of the OAU charter, an examination into the structure of the organisation is relevant in order to determine its weak performance. The supreme decision-making body of the organisation was the Assembly of the Heads of State and Government, which met at least once a year.³² The Council of Ministers was responsible to the Assembly and implemented its decisions. The Secretariat headed by the Secretary General merely supervised the implementation of the Assembly and Council decision. The Secretary General had very little authority and a relatively small staff to work with and was constrained to handle those issues that the Assembly passed on to him.³³ He occasionally assumed the key role in negotiations to resolve conflicts but the role was frequently taken by state leaders on an ad hoc basis hence weakening the influence of the Secretary General. The structure placed all power in the hands of state leaders and removed much of the authority of the Secretary General tended to support the status quo rather than give the OAU an active role to resolve conflicts on the continent.³⁴ Each Head of State was potentially threatened

²⁷ Ibid.

²⁸ Alfred Nhema supra (note 22) at 23.

²⁹ Ibid.

³⁰ Alfred Nhema (note 22) at 25.

³¹ Idem.

³² Supra (note 28) at 26.

³³ Ibid.

³⁴ Ibid.

when intervention precedents were established and few decisions were therefore made to actively intervene.³⁵

Moreover the weakness of the OAU stemmed from its dependence on the member states which was further aggravated by the internal weaknesses of the member states themselves, that is to say when member states were struggling economically, they had insufficient funds to contribute to the OAU.³⁶ Further more when the member states were involved in conflict they had little time of effort to devote to broader regional issues.³⁷

Despite the above stated weakness of the OAU, the organisation did have some strengths and achievements that is to say since the organisation was familiar with the circumstances surrounding conflicts and the political culture and motivations of various leaders it could draw upon more readily than the UN in times of conflict.³⁸ Another of its strength was that it was the only pan-African organisation that included all the African states hence it provided a platform for its members to voice their concerns, complaints and disputes. In this regard, the fact that the OAU was composed of members that were part of the region meant that the members had a direct interest in any conflict in that region.³⁹

Further more the creation of the OAU's Liberation Committee (ALC) can be viewed as an achievement by the organisation because the committee was determined to end the last trace of colonialism in the continent.⁴⁰ The OAU undertook to coordinate policy in this area and it also maintained support for those liberation movements it recognised. For example the ALC played a role in the anti-Portuguese liberation movement it also supported the Zimbabwe Patriotic Front as well as SWAPO in Namibia.⁴¹ During the formation of the Lagos Plan of Action the OAU acknowledged poor performance of most African economies in the 1970s and

³⁵ Ibid.

³⁶ Alfred Nhema (note 22) at 27.

³⁷ Idem.

³⁸ Alfred Nhema (note 22) at 29.

³⁹ Ibid.

⁴⁰ Dr. Nandini Patel conflict resolution through regional organisations in Africa (2000) pg 4.

⁴¹ Ibid.

it realised the need for self reliance and self sufficiency in a range of products such as food, energy, growth and development.⁴²

2.1.2 OAU'S Mechanism for Conflict Prevention, Management and Resolution

The mechanism was adopted at the 1993 Summit held in Cairo which focused on conflict prevention rather than conflict management and resolution. In the declaration adopting the mechanism, the Heads of State and Government averred that in circumstances where conflicts have occurred, the mechanism was to be responsible to undertake peacemaking and peace building functions so as to facilitate resolution of these conflicts.

The Mechanism was built around a Central organ, composed of the states which are members of the Bureau of the Assembly of Heads of state and government who are elected annually. It also consists of the Secretary General and the Secretariat as its operational arm.⁴³ The Central Organ, the Secretary General in consultation with the parties involved in the conflict is mandated to focus on conflict prevention, peace-making and peace building.⁴⁴ To accomplish this task, the Secretary General would rely heavily on the authorities of the countries of origin and their experience and knowledge of African history, society and economy.⁴⁵

Some of the obligations of the mechanism are that it requires the OAU to coordinate its activities closely with African regional and sub-regional organisations and to cooperate with the neighbouring countries with respect to conflicts arising from different parts of the continent.

⁴⁶ The mechanism has also been mandated to cooperate and work more closely with the United Nations regarding peace-making and more particularly regarding peace keeping.⁴⁷

⁴² Supra note 41.

⁴³ Dr. Nandini Patel (note 40) at 13.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Supra note 43.

The mechanism had the following functions that it had to fulfil and these were; to anticipate and prevent situations of potential conflict from developing into full-blown wars, to undertake peace making and peace building efforts if full-blown conflicts should arise and to carry out peace making and peace building activities in post-conflict situations.⁴⁸

The OAU's conflict resolution mechanisms were rendered ineffective due to the fact that the organisation was committed to the principles of sovereignty and non-interference and respect for established borders and territorial integrity.⁴⁹ The OAU was not legally or operationally equipped to intervene in either inter- or intra- state conflicts. The creation of the mechanism in 1993 was an attempt to provide the OAU with the capacity for conflict management and resolution including interference in the internal affairs of member states.⁵⁰

Therefore, in respect of the above, promoting peace, security and stability on the continent was one of the goals and aims of the OAU and it managed to achieve that to a certain extent. It should also be noted that the organisation was bound by the principles in the OAU Charter hence this created shortfalls with regard to right of the organisation to intervene and curb the conflicts.

2.1.3 The African Union

The African union was established in 2002 as a predecessor of the Organisation of African Unity. The arrival of the African Union (AU) can be described as an event of great magnitude in the institutional evolution of the continent.⁵¹ One of its visions is for the promotion of accelerated social economic integration of the continent which will lead to greater unity and solidarity between African countries and peoples.⁵² In 1999, the Sirte Declaration held in Libya, was signed by Heads of State and Government which called for the establishment of an African Union, with a view, to accelerate the process of integration in the continent. The Declaration also emphasised the ability of the AU play its rightful role in the global economy

⁴⁸ Kristiana Powell *The African Union's Emerging Peace and Security Regime: Opportunities and challenges for delivering on the responsibility to protect* (2005) pg 8.

⁴⁹ Kristiana Powell (note 48) at 10.

⁵⁰ *Ibid.*

⁵¹ The African Union Available at <http://www.africa-union.org> [Accessed on 9/3/2009].

⁵² *Ibid.*

while addressing multifaceted social, economic and political problems compounded as they are by certain negative aspects of globalization.⁵³ The current status of the regional economic communities within the AU is also based on the Lusaka Summit Decision in July 2001 by which the OAU assembly recalls the Protocol on Relations between the African Economic Community and Regional Economic Communities. It reaffirms the status of regional economic communities as building blocs of the African Union. It also considers need for their close involvement in the formation and implementation of all programmes of the union⁵⁴

The AU thereafter established a Post-Conflict and Reconstruction Framework which emerged from the African Post-Conflict Reconstruction Policy Framework designed by NEPAD in 2005.⁵⁵ Its goal is to 'improve timeliness, effectiveness and coordination of activities in post conflict countries and to lay the foundation for social justice and sustainable peace, in line with Africa's vision of renewal and growth'.⁵⁶ It contains various principles and directs various interventions for peace-building purposes to achieve the goals found in the framework.⁵⁷

2.1.4 The Constitutive Act of the African Union

The Constitutive Act of the AU focuses on the problem of lack of security and peace on the continent. Its preamble affirms the organisation's conscious of scourge of conflict in Africa that constitutes a major impediment to the socio-economic development of the continent. It acknowledges the requirement to promote peace, security and stability as a prerequisite for the implementation of the development and integration agenda.⁵⁸ Article 3(f) of the Act states the objectives of the Union are to promote peace, security and stability on the continent⁵⁹ and

⁵³ Ibid.

⁵⁴ T Maluwa: *From the Organisation of African Unity to the African Union: Rethinking the framework for inter-state cooperation in Africa in the era of globalisation* at 30.

⁵⁵ Jeremy Sarkin 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect' (2009) volume 53 No 1 *Journal of African Law* 1 at 32.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ The Constitutive Act of the African Union Available at <<http://www.au.org>> [Accessed on 22nd May 2009]

⁵⁹ Article 3(f) states that the objectives of the Union shall be to promote peace, security and stability on the continent.

Article 3(l)⁶⁰ relates to the coordination and harmonization policies between existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union. Hence forth the Act does portray the need for effective peace and security on the continent but also with the cooperation of the regional economic communities in order to achieve the goals of the African Union.

With regard to the principles contained in Article 4, the principle of sovereign equality and interdependence among member states of the union is still emphasised. However, Article 4(h)⁶¹ empowers the Union to intervene in a member state in respect of grave circumstances relating to war crimes, genocide and crimes against humanity pursuant to a decision of the Assembly. Article 4(j) also gives member states the right to request intervention from the Union in order to restore peace and security.⁶² When compared with Article II of the OAU charter, it is ascertained that the principle of sovereignty and the principle of non interference were given an exception so as to effectively execute peace and security measures in member states only where the grave circumstances such as war crimes existed. The Constitutive Act also affirms the establishment of a common defence policy of the African Charter,⁶³ as well as peaceful resolution of conflicts among member states of the union through such appropriate means as may be decided upon by the assembly.⁶⁴

2.1.5 Protocol Relating to the Establishment of the Peace and Security Council of the African Union

The preamble of this protocol recalls the Declaration on the establishment, within the OAU, of a Mechanism for Conflict Prevention, Management and Resolution, adopted by the 29th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in

⁶⁰ Article 3(l) states that the objective of the Union shall be to coordinate and harmonize policies existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union.

⁶¹ Article 4(h) provides for 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, genocides and crimes against humanity.

⁶² Article 4(j) provides for the right of Member States to request intervention from the Union in order to restore peace and security.

⁶³ Article 4(d) of the Constitutive Act states that the Union shall function in accordance with the following principles; establishment of a common defence policy for the African continent.

⁶⁴ Article 4(e): peaceful resolution of conflicts among Members States of the Union through such appropriate means as may be decided upon by the Assembly.

Cairo, Egypt, from 28 to 30 June 1993.⁶⁵ It also recalls the Decision AHG/Dec.160 (XXXVII) adopted by the 37th Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lusaka, Zambia, from 9 to 11 July 2000. It was within the Session that the Assembly decided to incorporate the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution as one of the organs of the Union, in accordance with Article 5(2) of the Constitutive Act of the African Union.⁶⁶

The preamble further acknowledges the contribution of African Regional Mechanisms for Conflict Prevention, Management and Resolution in the maintenance and promotion of peace, security and stability on the Continent.⁶⁷ It also recognises the need to develop formal coordination and cooperation arrangements between these Regional Mechanisms and the African Union. It is determined to enhance the capacity to address the scourge of conflicts on the continent and to ensure that Africa, through the African Union, plays a central role in bringing about peace, security and stability on the continent.⁶⁸ It has ambitions of establishing an operational structure for the effective implementation of the decisions taken in the areas of conflict prevention, peace-making, peace support operations and intervention, peace-building and post-conflict reconstruction, in accordance with the authority conferred in that regard by Article 5(2)⁶⁹ of the Constitutive Act of the African Union.⁷⁰

Article 2(1) of the Protocol provides that the Peace and Security Council shall be a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa⁷¹. Article 3 deals with the objectives of the Protocol from which Article 3(a) relates to Peace and Security council promoting peace security and stability in Africa, in order to guarantee the protection and preservation of life and property, the well-being

⁶⁵ Protocol relating to the Establishment of Peace and Security of the African Union (PEPSAU) of (2002) 1.

⁶⁶ *Ibid.*

⁶⁷ PEPSAU (note 65) at 1.

⁶⁸ *Ibid.*

⁶⁹ Article 5(2) of the Constitutive Act provides that the Assembly may establish other organs.

⁷⁰ Rene (note 7) at 2.

⁷¹ Article 2(1) of the PEPSAU provides that hereby established, pursuant to Article 5(2) of the Constitutive Act, a Peace and Security Council within the Union, as a standing decision-making organ for the prevention, management and resolution of conflicts and the Peace and Security Council shall be a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.

of the African people and their environment, as well as the creation of conditions conducive to sustainable development⁷²

Article 3(b) stipulates that one of the objectives of the Peace and Security Council will be to anticipate and prevent conflicts. In circumstances where conflicts have occurred, the Peace and Security Council will be responsible to undertake peace-making and peace building functions for the resolution of these conflicts.⁷³ Article 3 (e) maintains that the peace and security council will develop a common defence policy for the Union, in accordance with Article 4(d) of the Constitutive Act.⁷⁴

Article 4⁷⁵ relates to the functions of the protocol whereby Article 4 (a) and (b) provide that the Peace and Security Council shall ensure peaceful settlement of disputes and conflicts and will adhere to early responses to contain crisis situations so as to prevent them from developing into full-blown conflicts.⁷⁶ Article 4(d) relates to the Interdependence between socio-economic development and the security of peoples and States where as Article 4(j) recognises the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with Article 4(h) of the Constitutive Act. Furthermore, Article 4(k) deals with the right of Member States to request intervention from the Union in order to restore peace and security, in accordance with Article 4(j) of the Constitutive Act.⁷⁷

Article 7 deals with the powers the Peace and Security Council have in conjunction with the chairman of the commission. Article 7(e) avers on recommend to the Assembly, pursuant to Article 4(h) intervention, on behalf of the Union, in a Member State in respect of grave

⁷² Article 3(a) provides that the Peace and Security council promoting peace security and stability in Africa, in order to guarantee the protection and preservation of life and property, the well-being of the African people and their environment , as well as the creation of conditions conducive to sustainable development.

⁷³ Article 3(b) states that the Peace and Security Council shall anticipate and prevent conflicts; In circumstances where conflicts have occurred, the Peace and Security Council shall have the responsibility to undertake peace-making and peace building functions for the resolution of these conflicts.

⁷⁴ Article 3(e) maintains that the peace and Security Council shall develop a common defence policy for the Union, in accordance with article 4(d) of the Constitutive Act.

⁷⁵ PEPSAU (note 65) at 8.

⁷⁶ Ibid.

⁷⁷ Ibid.

circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments.⁷⁸ Article 7(f) approves the modalities for intervention by the Union in a member state, following a decision by the Assembly, pursuant to Article 4(j) of the Constitutive Act.⁷⁹ Article 7(j) promotes close harmonization, co-ordination and co-operation between regional mechanisms and the Union in the promotion and maintenance of peace, security and stability in Africa.

Article 16⁸⁰ deals with the relationship with regional mechanisms for conflict prevention, management and resolution. It provides that the regional mechanisms are part of the overall security architecture of the Union, which has the primary responsibility for promoting peace, security and stability in Africa. In this respect, the Peace and Security Council and the Chairperson of the Commission, obligation is to harmonize and coordinate the activities of regional mechanisms in the field of peace, security and stability to ensure that these activities are consistent with the objectives and principles of the Union.⁸¹ It further states that the Peace and Security Council will work closely with Regional Mechanisms, to ensure effective partnership between them in the promotion and maintenance of peace, security and stability. The modalities of such partnership shall be determined by the comparative advantage of each and the prevailing circumstances.⁸²

Article 16(2) states that the Council shall, in consultation with Regional Mechanisms, promote initiatives aimed at anticipating and preventing conflicts and, in circumstances where conflicts have occurred, peacemaking and peace-building functions.⁸³

⁷⁸ Article 7(e) of the Protocol states that on recommend to the Assembly, pursuant to Article 4(h) of the Constitutive Act, intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely war crimes, genocides and crimes against humanity as defined in the relevant international conventions and instruments.

⁷⁹ *ibid*

⁸⁰ Article 16(1) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union relates to relationship with regional mechanisms for conflict prevention management and resolution.

⁸¹ Article 16(1)(a) of the PREPSC.

⁸² Article 16(1)(b) of the PREPSC.

⁸³ Article 16(2) asserts that the Peace and Security Council shall in consultation with Regional Mechanisms promote initiatives aimed at anticipating and preventing conflicts and, in circumstances where conflicts have occurred, peacemaking and peace-building functions.

Article 16(4) provides that in order to ensure close harmonization and coordination and facilitate regular exchange of information, the Chairperson of the Commission will be responsible for convening periodic meetings, least once a year, with the Chief Executives and or the officials in charge of peace and security within the Regional Mechanisms.⁸⁴

2.1.6 Protocol on Relations between the African Union and the Regional Economic Communities

Article 30 of the protocol deals with the harmonization of mechanisms for the promotion of peace, security and stability; It states that for the purposes of the implementation of the provisions of Article 3(a) of the protocol and Article 7(j) and 16(4) of the Protocol Establishing the Peace and Security Council of the African Union, the parties agree to harmonize and coordinate their activities in the field of peace, security and stability to ensure that these activities are consistent with the objectives and principles of the Union and those of the RECs.⁸⁵ The parties agree work closely to ensure effective partnership between them in the promotion and maintenance of peace, security and stability. They also have to determine the modalities of the relationship in the promotion of peace, security and stability through a Memorandum of Understanding between the Union and the RECs.⁸⁶

Apart from the normative frameworks discussed above it is imperative to look at the institutional structures that have been established for the purpose of peace keeping and peace building on the continent such as the African standby force (herein after ASF). In order to implement the elements of peace and security agenda, together with the Protocol Relating to the Establishment of the Peace and Security Council, the African Union called for rapid reaction capacity that the African Standby Force (ASF) be developed in two phases by 2010. The ASF would comprise of standby brigades in each of the five regions, and incorporate a police and civilian expert capacity.

⁸⁴ Article 16(2) in order to ensure close harmonization and coordination and facilitate regular exchange of information, the Chairperson of the Commission shall convene periodic meetings, but at least once a year, with the Chief Executives and or the officials in charge of peace and security within Regional Mechanisms.

⁸⁵ Article 30 of the Protocol on Relations between the African Union and the Regional Economic Communities (2007) at 16.

⁸⁶ Ibid.

The African Union envisions creating a standby system that will build on the military capabilities of African regional organisations.⁸⁷ According to the AU'S policy Framework for the Establishment of the African Standby Force, the African Standby Force will consist of a system of five regionally managed multidisciplinary contingents comprising 3,000 to 4,000 troops between 300 and 500 military observers, police units and civilian specialists on standby in their countries on origin. These regional mandates will be deployed under the AU mandates and placed under AU or UN operational control as applicable.⁸⁸

The African Standby Force will undertake observation and monitoring, preventative deployment, peace keeping and multi-dimensional peacekeeping, intervention in grave circumstances like genocide and engagement in peace building tasks including post-conflict disarmament and demobilization.⁸⁹ It will also undertake tasks that fit within the protection mandate that is to say the protection of vulnerable groups such as women, children and the aged in armed conflict.⁹⁰

An example of the African Peace Keeping operation can be seen in Somalia Mogadishu where the Somali government troops were backed by the AU peace keepers and killed 40 Islamist insurgents in northern Mogadishu.⁹¹ The African Union force is dubbed AMISOM (African Union Mission In Somalia) and has 4300 soldiers. This is the first time the peace keepers are involved in battle. The Somali government has been pushing for a stronger mandate for AMISOM to allow its soldiers to help government forces fight opposition groups.⁹² At a conference in Brussels on April 23 2009, donors pledged more than \$200million to support AMISOM and strengthen Somali security forces. The UN then authorized sanctions against groups obstructing the peace process.⁹³

⁸⁷ Kristiana (note 48) at 15.

⁸⁸ *Ibid.*

⁸⁹ Kristina (note 87) at 15.

⁹⁰ Kristiana Powell *supra* note 48 at 16.

⁹¹ The New Vision Uganda's Leading Daily Newspaper. Available at <http://www.newvision.co.ug> [accessed on 13th July 2009].

⁹² *ibid*

⁹³ *ibid*

The relationship between the AU and the regional economic communities is based on cooperation and the fulfilment of binding obligations found in their constitutive documents of which the organisations ratified. Therefore it is important to gauge the relationship between the two and to see what challenges they face and the achievements they gain which are shown below.

The role which the African Union has assigned to the regional economic communities will allow the African Union to build on their comparative advantage, experience and established frameworks and mechanisms for conflict prevention, management and resolution.⁹⁴ This is because the regional organisations' proximity to the conflict provides them with a better understanding of the key players, management and resolution options. It also allows the regional organisations to respond faster to the conflict.⁹⁵ Regional leaders and organisations may also be considered more accountable and legitimate than pan-African and international organisations and they may have a greater stake in finding a peaceful solution to conflict than more distant powers.⁹⁶

The African Union has developed various commissions with corresponding departments to deliver on a broad peace, security and development agenda. For example the African Peer Review Mechanism which is designed to promote structural conflict prevention through good governance. In addition, NEPAD which is a program of the AU that sets out a series of peace and security priorities to respond to different stages of conflict that correspond with the report's prevention-reaction-rebuilding framework.⁹⁷

Accordingly the African Union has left it to the regional economic communities to determine if the regional brigades will map the membership of the communities. There has been some progress made toward the formation of the brigades for example ECOWAS has approved a military vision and strategy⁹⁸. A force structure and a mission planning and management cell has been developed. The East African Chiefs of Defence Staff also adopted a policy

⁹⁴ Kristiana Powell (note 48) at 20

⁹⁵ *ibid*

⁹⁶ Kristiana (note 87) at 20.

⁹⁷ *Ibid*.

⁹⁸ *Ibid*.

framework to establish the East African Brigade (EASBRIG) as part of the African Standby Force.⁹⁹

There are a number of challenges confronting African regional organisations and their efforts to fulfil a peace and security mandate which could have implications for the creation of a continental peace and security architecture including the African Standby Force (ASF) that builds on regional capabilities. While the proximity of regional organisations may be to an advantage on one hand, it may also be to a disadvantage for it generates tension and undermines the spirit of impartiality of neighbours to the extent that the neighbouring countries become part of the problem.¹⁰⁰

Another challenge is the existence of a regional hegemon. For example in West Africa and Southern Africa, Nigeria and South Africa provide the regions with resources, capacity and political legitimacy to execute a regional response to conflict.¹⁰¹ However the dependency of the organisations on these regional hegemon means that their peace and security agendas may be shaped by the domestic problems and national interests of these powerful states.¹⁰²

African regional organisations face enormous resource and capacity constraints that have impacted on the extent to which they are able to commit to conflict prevention through regional and continental initiatives.¹⁰³ The lack of resources and capacity constraints can be attributed to the uneven political and economic development of member states and differing political and security agendas among the states. These factors undermine the consensus required to pursue a collective security mandate and execute effective responses to conflict through regional and continental initiatives.¹⁰⁴

Following the above, the construction of a continental security architecture built on regional capacities may be undermined by the fact that the African Union and these organisations have

⁹⁹ Ibid.

¹⁰⁰ Idem.

¹⁰¹ Idem.

¹⁰² Kristiana Powell (note 48) at 20.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

not been able to establish a clear division of labour and responsibilities for conflict prevention, management and resolution on the continent.¹⁰⁵ This is due to a resistance on the part of member states to confer greater decision-making authority to the African Union in some cases, because regional organisations provide an alternative forum to exercise influence and leverage greater institutional support for specific political agendas than in organisations with larger and more diverse membership.¹⁰⁶

2.2 Frame work for regional peace and security in Africa

This section of the chapter concentrates on the other means through which the notion of peace security and stability on the continent is being upheld. It deals with issues raised and solutions provided at the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA). It also looks at the principles and obligations in the CSSDCA declaration. It is important to have in mind that the conference was held during the time when the OAU existed.

2.2.1 Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA)

The impulse of Conference on Security, Stability, Development and Cooperation in Africa was the recognition that Africa needed a new approach with regard to peace and security.¹⁰⁷ It was an inspiration of the initiative of former President Olusegun Obasanjo that resulted in May 1991 Kampala Conference.¹⁰⁸ The complex nature of African crises, especially the way in which political, economic and security crises interact, demanded a much broader approach. The Kampala agreement focuses on the 'calabashes' of security stability, development and cooperation.¹⁰⁹ The stability calabash of the CSSDCA outlines the imperative interaction between state and civil society as a means of achieving enduring political stability.¹¹⁰

¹⁰⁵ *ibid*

¹⁰⁶ *ibid*

¹⁰⁷ Alex de Waal *Demilitarizing the mind African Agendas for peace and security* (2002) 20.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ Mr Ayodele (note 1) at 68.

Subsequently the Kampala document was introduced at the OAU summit in Abuja Nigeria in June 1991.¹¹¹ The decision by the OAU Summit not to adopt the CSSDCA process was a direct consequence of the fears of a few vulnerable African governments, through within the OAU itself there was no concerted opposition.¹¹²

Over the years the CSSDCA proposals won the support of numerous African states, nongovernmental organisations and influential individual and opinion leaders.¹¹³ It failed to gather full acceptance by the OAU.¹¹⁴ The Kampala document remained a widely used resource for policy formulation in some states and also in some regional and sub regional organisations.¹¹⁵ The CSSDCA framework facilitates a constant engagement of African leaders and strengthens the capacity to hold them to their commitments to which they have freely subscribed within their own organisations.¹¹⁶

2.2.2 The CSSDCA Declaration

The declaration stipulates that peace, security and stability are the preconditions and the basis for development and cooperation in Africa. It also emphasises that the security, stability and development of African states are inseparably interlinked.¹¹⁷ It further states that the erosion of security and stability is one of the major causes of crises that continue to plague African states.¹¹⁸

Within its solemn declaration, the Heads of State and Government of member states of the OAU in July 1997, during the Summit in Harare, took a stand against unconstitutional changes of Government.¹¹⁹ This led to the Algiers Summit of July 1999 to adopt a decision on unconstitutional changes of Governments to reinforce respect for democracy, the rule of law,

¹¹¹ Supra (note 110) at 62.

¹¹² Ibid.

¹¹³ Mr Ayodele supra note 1 at 63.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Mr Ayodele supra note 110 at 66.

¹¹⁷ Mr Ayodele supra note 110 at 66.

¹¹⁸ Ibid note 117 at 65.

¹¹⁹ CSSDCA Solemn Declaration AHG/DECL (XXXVI) (2000) pg 1.

good governance and stability.¹²⁰The CSSDCA Declaration posits that the security of a nation must be construed in terms of the security of the individual citizen, not only to live in peace but also to have access to the basic necessities of life, to participate freely in the affairs of society and to enjoy fundamental human rights.¹²¹

Furthermore, the declaration also provides a frame work for collective action and for cooperation at various levels: continental, regional and international.¹²² It provides for cooperation between African states for economic integration of African states in the African Economic Community. The CSSDCA Declaration has thus chartered a framework for Africa's development based on self reliance, effective and responsive governance, regional integration and international cooperation.¹²³

Among the general principles, the Heads of State and Government of member states recognise that the primary responsibility for the maintenance of international peace and security lies with the United Nations Security Council. The OAU, in close cooperation with the United Nations and the Regional Economic Communities, remains the premier organisation for promoting security, stability, development and cooperation in Africa.¹²⁴

Therefore, it should be noted that the instruments and treaties for regional peace security run far ahead of reality. However, there is a continuing tradition of progressive continental legislation in Africa as most African countries have taken the lead in adopting international legal measures against land mines and child soldiers.¹²⁵ Many have also ratified for the international Criminal Court.¹²⁶ Nevertheless, the enforcement of these commitments has been very weak and in some instances there has been little genuine intention to adhere to the agreements for example, Sudan signed up to the International Criminal Court but is very

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ CSSDCA (note 119) at 3.

¹²⁵ Alex de Waal (note 107) at 21.

¹²⁶ Ibid.

unlikely to meet and mobilize commitments.¹²⁷ The challenge is not to draft and negotiate more agreements it is to enforce the ones already in place.¹²⁸

From the above, it can be noted that the normative mechanism in place acknowledges that the promotion of peace and security on the continent is vital to stimulate economic growth. Therefore cooperation with the regional organisations is one of the ways through which the promotion of peace and security can be achieved. The regional organisations do have a role to play so as to ensure the peace and security on the continent therefore in the preceding chapters the role played by aforementioned regional organisations in accordance to the legal instruments will be assessed

¹²⁷ Ibid.

¹²⁸ Ibid.

CHAPTER THREE

3 Role played by regional organisations in conflict resolution in Africa.

This chapter centres on the role played by regional organisations in the conflict resolution in Africa. It presents a brief history of the creation of the organisations, the peace mechanisms that they have established as well as the challenges faced and the achievements attained over the years. Presently there are at least 14 regional economic communities in Africa but only eight are recognised by the African Union and these include: Arab Maghreb Union (AMU), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel-Saharan States (CEN-SAD), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Southern African Development Community (SADC). This chapter will concentrate on only five of these organisations and these are the ECOWAS, EAC, ECCAS, COMESA, IGAD and SADC.

3.1 The Role played by ECOWAS: Economic Community for West African States

The Economic Community of West African States, (here in after ECOWAS) was formed in 1975 to integrate West Africa's economic potentials for sub-regional growth.¹²⁹ It consists of 15 members and is currently involved in peace and security measures.¹³⁰ In April 1976, the organisation signed *Non-Recourse to Aggression*, which commits members to 'refrain from committing, encouraging or condoning the acts of subversion, hostility or aggression against ... other members'. This was followed with the signing of the *Non-Aggression protocol* in 1978 and in 1981 *Protocol on Mutual Assistance on Defence* which stipulates that an act of aggression against a member state constitutes an act of aggression against the entire community,¹³¹

¹²⁹ Abiodun Alao 'The role of regional and sub regional organisations in conflict prevention and resolution' New Issue in Refugee Research; Working Paper No 23 ISSN 1020-7473 (2000) 5 Available at <<http://www.unhcr.ch/refworld/pubs/pubon.htm> [Accessed on May 2009].

¹³⁰ Ibid.

¹³¹ Ibid.

However, these Protocols lacked in-depth provisions for effective prevention, military intervention and management or resolution strategies that might be employed to end conflict.¹³² As a result, ECOWAS had to resort to ad hoc mechanisms such as repeated mediation initiatives by high powered committees.¹³³ These were usually made up of foreign affairs ministers of Member states or their defence chiefs.¹³⁴ These committees were expected to create a forum where representatives of Member States could discuss the causes of the conflict and debate ways to resolve the difference between warring factions within the states.¹³⁵

ECOWAS' involvement in conflict resolution and prevention can be seen from the early 1990's. In Liberia, the rebel insurgence led by Charles Taylor's guerrillas NPFL threatened to destabilize the region as a whole and this led to the creation of ECOMOG (ECOWAS Ceasefire Monitoring Group) that was deployed in Liberia to defend the regime of Samuel Doe. Later on ECOMOG was deployed in Sierra Leone in 1998 after the over throw of the elected president Kabbah. In 1998-99 it was also involved in Guinea Bissau of which it threatened Guinea Bissau with expulsion from the organisation in terms of the ECOWAS Protocol on Good Governance and Democracy.¹³⁶ This led to the holding of general and presidential elections in Guinea-Bissau and the restoration of peace and stability in that country. In 2002, ECOMOG was deployed in Cote d'Ivoire where it then integrated with the UN peace mission in 2004. Most of these missions were successful and their performance satisfactory though it does not tantamount to conflict resolution.¹³⁷

ECOWAS has various institutions and frameworks that are beneficial and effective in carrying out conflict resolution policies such as the formation of an Allied Armed Force of the Community (AAFC) with a joint commander and the establishment of a Defence Council.¹³⁸ It has also taken steps (at the summit meeting in Lomé in 1997) to create an early warning and

¹³² Moufida Goucha and Jakkie Cilliers Peace, Human Security and Conflict Prevention in Africa: Ms Henrietta Didigu Developing a Common Agenda for Sub regional organisations for peace and security and conflict prevention in Africa: A view from ECOWAS (2001) pg 38.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Jeremy Sarkin (note 55) at 25.

¹³⁷ Ibid.

¹³⁸ Bjorn Moller 'The pros and cons of subsidiarity: the role of African Regional and Sub-regional organisations in ensuring Peace and Security' (2005/4) *DIIS Working Paper* at 30.

conflict resolution mechanism, including plans for an early warning centre, to which should be added the establishment of a Mediation and Security Council.¹³⁹

The ECOWAS Mediation and Security Council is composed of representatives of ECOWAS member states, has ultimate authority to decide whether to intervene in a state. The organization may intervene when internal conflict threatens to trigger a humanitarian disaster' or 'poses a serious threat to peace and security in the sub-region.'¹⁴⁰ Intervention is also permitted in instances of 'serious and massive violations of human rights and the rule of law' and if there is 'an overthrow or attempted overthrow of a democratically elected government'.¹⁴¹ The ECOWAS court of justice that has been useful in the enforcement of human rights for example the ECOWAS court of Justice which was established in 1991 and came into existence in 1993 laid charges on Niger based on the on going slave trafficking activities and found it guilty of such a crime with regard to the case of a former slave, Hadijatou Mani.¹⁴²

Following the aforementioned achievements of ECOWAS, it is necessary to look at the legal documents and mechanisms that create the binding obligation to ensure peace, stability and security in the region.

3.1.1 The ECOWAS Treaty of 1993

The revised ECOWAS treaty strengthens the capacity of ECOWAS to forge a strong economic and monetary union to meet the challenges of globalization.¹⁴³ It also reinforces within its provisions a political union between member states.¹⁴⁴ This combination allows the organisation to deal with issues pertaining to security, in recognition of the link between stability and economic development.¹⁴⁵

¹³⁹ Bjorn (note 138) at 30.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ms Henrietta Didigu (note 132) at 38.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

Article 4 of the treaty stipulates the fundamental principles of the treaty. Article 4(e) relates to the maintenance of regional peace, stability and security through the promotion and strengthening of good neighbourliness and Article 4(f) relates to the peaceful settlement of disputes among member states, active co-operation between neighbouring countries and promotion of a peaceful environment as a prerequisite for economic development.¹⁴⁶

In Article 59 of the amended treaty on regional security, asserts that member states should co-operate with the Community in establishment and strengthening appropriate mechanisms for the timely prevention and resolution of intra-State and inter-State conflicts. Particular regard must be conferred to the need to maintain periodic and regular consultations between national border administration authorities. Member states are responsible for the establishment local or national joint commissions to examine any problems encountered in relations between neighbouring states and the establishment a regional peace and security observation system and peace-keeping forces where appropriate.¹⁴⁷

3.1.2 The ECOWAS Mechanism for Conflict Prevention, Management Resolution Peace-keeping and Security

At the summit in Lomé (10 December 1999), a protocol was adopted by the ECOWAS Authority of Heads of States and Government relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security. This body is responsible for ensuring collective security and peace¹⁴⁸ and tasked with the promotion of democracy¹⁴⁹ and the prevention, management and resolution of both internal and international conflicts.¹⁵⁰ It also furthers the cooperation with regard to early warning, peacekeeping, and control of cross-border crime, international terrorism and the proliferation of small arms and anti-

¹⁴⁶ Article 4 of the ECOWAS treaty of 1993.

¹⁴⁷ Bjorn (note 138) at 31.

¹⁴⁸ Article 1 of the Protocol of the Mechanism of Conflict Prevention, Management Resolution Peace-keeping and Security 1999.

¹⁴⁹ Article 2 of the Protocol of the Mechanism of Conflict Prevention, Management Resolution Peace-keeping and Security 1999.

¹⁵⁰ Article 3 of the Protocol of the Mechanism of Conflict Prevention, Management Resolution Peace-keeping and Security 1999.

personnel mines.¹⁵¹ It envisaged the constitution and deployment of 'a civilian and military force to maintain or restore peace within the sub region, whenever the need arises'.¹⁵²

This mechanism provides the organisation with the capacity to operate effectively in the areas of conflict prevention, conflict management and resolution, peace keeping, humanitarian support, peace building and sub regional security.¹⁵³ It also deals with the issue of security in terms of cooperation in the control of all kinds of criminal activity within member states and across their borders.¹⁵⁴

A number of organs were further established such as the Mediation and Security Council which operates at the level of heads of state and government, ministers and ambassadors, taking decisions that impact on peace and security, including deployment of military missions.¹⁵⁵ Other organs include the Defence and Security Commission, comprising the chiefs of staff and other military and civilian personnel, a Council of Elders consisting of 'eminent personalities' who should be available for mediation and similar tasks were also established.¹⁵⁶ ECOMOG is also another organ established by the Mechanism as a multi-purpose standby force ready for immediate deployment.¹⁵⁷ It is charged with military tasks ranging from observation to peacekeeping and even humanitarian intervention as well as what are rightly civilian tasks such as policing.¹⁵⁸ It can also undertake policing activities in order to control fraud and organized crime.¹⁵⁹

The Mechanism is to be applied in cases of external aggression and conflicts between member states as well as in cases of internal conflicts insofar as they either threaten to trigger a humanitarian disasters and pose serious threats sub regional peace and security and in the

¹⁵¹ Ibid.

¹⁵² Article 4 of the Protocol of the Mechanism of Conflict Prevention, Management Resolution Peace-keeping and Security 1999.

¹⁵³ Ms Henrietta (note 132) at 39.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Bjorn (note 138) at 31.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ms Henrietta Didigu (note 132) at 39.

case of successful or attempted coups against democratically elected governments.¹⁶⁰ The protocol further envisages a graduated strategy for building peace including such activities as the supervision of elections and general support the development of democratic institutions,¹⁶¹ disarmament, demobilization and reintegration programmes, also for child soldiers¹⁶² and measures to control the flow of small arms.¹⁶³

3.1.3 Challenges faced by ECOWAS in conflict resolution

Since the creation of ECOMOG there has been rivalry between the francophone countries and the hegemon country Nigeria. The prospect of a sub-regional organisation dominated by Nigeria was viewed with apprehension in several Francophone circles, such that even after the ECOWAS defence pact was adopted, three Francophone countries, Cape Verde, Guinea-Bissau and Mali, refused to sign.¹⁶⁴

Another important issue that is to have a lasting impact on the ECOWAS conflict management strategy is that the security threat facing the sub-region was perceived to be largely external. Little thought was given to the need to prevent internal security threats or the escalation of internal conflicts through a change in the system of governance and the use of accountability, rule of law and respect for citizens' human rights as conflict prevention strategies.¹⁶⁵ ECOWAS also faces the severe constraints of being under funded as well as having inadequate staff to assist in the day to day activities.¹⁶⁶

¹⁶⁰ Article 25 of the Protocol of the Mechanism of Conflict Prevention, Management Resolution Peace-keeping and Security 1999.

¹⁶¹ Article 42 of the Protocol of the Mechanism of Conflict Prevention, Management Resolution Peace-keeping and Security 1999.

¹⁶² Article 44 of the Protocol of the Mechanism of Conflict Prevention, Management Resolution Peace-keeping and Security 1999.

¹⁶³ Article 50-51 of the Protocol of the Mechanism of Conflict Prevention, Management Resolution Peace-keeping and Security 1999.

¹⁶⁴ Abiodun (note 129) at 16.

¹⁶⁵ Abiodun (note 129) at 14.

¹⁶⁶ Jeremy (note 55) at 27.

3.2 Role played by the East African Community (EAC)

The EAC started as an inherited colonial apparatus binding together three newly independent countries formerly under British rule and these are Kenya, Uganda and Tanzania.¹⁶⁷ The Permanent Tripartite Commission for East African Cooperation was first formed in 1967 as the East African Community between the aforementioned countries.¹⁶⁸ In 1977, following disagreements between the member states, the EAC broke down. This is attributed to the fact that Tanzania and Uganda were jealous of the disproportionate benefits that accrued to Kenya which was the most industrialized of the countries and therefore the one best placed to take advantage of free trade.¹⁶⁹ Two years after the break up, two of the member countries, Tanzania and Uganda were at war with one another.

A remnant apparatus allowed for the continuation of negotiation that was used initially to secure an agreed division of the assets in the 1984 Mediation Agreement.¹⁷⁰ The agreement bound the countries to explore opportunities for greater cooperation.¹⁷¹ In 1993 they agreed to establish a permanent Commission for East African Cooperation.¹⁷² A Tripartite Commission was established in Arusha, former headquarters of the East African Community in 1996. In 1999 the Treaty for the Establishment of the East African Community was signed. It envisages economic and political union as the ultimate outcome of the process, with the establishment of joint governmental institutions including an East African Parliament as intermediary measures.¹⁷³

An essential precondition for the moves towards cooperation was peace and security between the member states is specifically outlined in the East African Cooperation Development Strategy (1997-2000).¹⁷⁴ The states committed themselves to maintaining peace and security, principles of good neighbourliness and peaceful resolution of conflict.¹⁷⁵ They are also committed to addressing the root causes of conflict and observing good governance,

¹⁶⁷ Alex de Waal (note 126) at 22.

¹⁶⁸ The Institute for Security studies: East African Community(EAC) 1

¹⁶⁹ Alex de Waal (note 126) at 22.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Alex de Waal (note 126) at 23.

¹⁷⁵ Ibid.

including promoting food security and poverty eradication.¹⁷⁶ The member states are obligated to ensure the preparedness of peace keeping and conflict and disaster management. Furthermore a highly significant component of the EAC is the East African Parliament, an elected body that will provide the EAC with crucial element of democratic legitimacy.¹⁷⁷

During the Fifth Summit of Heads of State and Government held in Arusha, Tanzania on 2 March 2004, the Presidents signed a Protocol on the Establishment of the East African Customs Unions. On 30th November 2006, the Eighth EAC Summit decided to admit the Republic of Rwanda and Burundi as full members.¹⁷⁸ These two countries formally joined EAC on 18th June 2007 at the fifth Extra-Ordinary Summit in Kampala.¹⁷⁹

3.2.1 Treaty Establishing the East African Economic Community

The treaty was signed in Arusha on 30th November 1999. It came into force on 7 July 2000 following the conclusion of the process of its ratification and deposit of the Instruments of Ratification with the Secretary General by all the three partner states.¹⁸⁰ The EAC was inaugurated in January 2001.¹⁸¹

The treaty calls for a customs union, common market and monetary union. It sets the ultimate objective as the birth of a political federation of East African states. Among the key institutions are an East African parliament, a regional stock exchange and a joint court of justice.¹⁸² The regional organisation aims at achieving its goals and objectives through promotion of peace, security and stability within the region as well as good neighbourliness among partner states.

In reference to peace and security related activities, the EAC believes it can play a role in enhancing regional stability. As a demonstration of the new spirit of cooperation 1500 soldiers

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ The Institute for Security studies (note 171) at 1.

¹⁷⁹ Ibid.

¹⁸⁰ The Institute for Security studies (note 171) at 2.

¹⁸¹ Ibid.

¹⁸² EAC (note 182) at 2.

from Kenya, Tanzania and Uganda took part in a joint training exercise in the desert terrain of Northern Kenya.¹⁸³ In addition to the above, a Memorandum of Understanding on Cooperation in Defence was signed in April 1998 and revised in 2001.¹⁸⁴ On 18 October 1998, an EAC Summit on the security situation in the DRC took place in Nairobi. The Summit agreed to support SADC efforts already under way in consultation with the UN and the AU.¹⁸⁵

The EAC has established a Sectoral Committee on Cooperation in Defence and also an Inter-State Security Committee.¹⁸⁶ During 2003, these committees held meetings to exchange information on implementation of National Action Plans. The meetings also included the Nairobi Declaration on Small Arms and Light Weapons; to draft modalities for common refugee registration mechanism and a Defence Experts' Working Group on Operations and Training to discuss joint exercises on peace keeping operations, counter-terrorism and military level participation in disaster response.¹⁸⁷

Despite the above, the EAC has not yet put into practice an early warning system but it has developed a draft Protocol on Early Warning and Response Mechanism.¹⁸⁸ The objective of the EAC Early Warning Mechanism shall be to strengthen and complement other regional mechanism for conflict prevention, management and resolution in line with the provisions of Article 124 of the treaty.¹⁸⁹ The Draft protocol establishes an institutional mechanism through which the protocol shall be implemented. It will include a policy arm, administrative arm, a technical arm, the Regional Centre for Early Warning, the Early Warning Units situated within the partner states.¹⁹⁰

The protocol seeks to address issues that cut across inter-state security, defence and intra state conflicts that arise from illegal trade, sharing of cross boarder poverty and economic

¹⁸³ The institute for Security Studies (note 171) at 6.

¹⁸⁴ The institute for Security Studies (note 171) at 6.

¹⁸⁵ Ibid.

¹⁸⁶ The institute for Security Studies (note 171) at 7.

¹⁸⁷ The institute for Security Studies (note 171) at 7

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

inequalities, human rights violation among others.¹⁹¹ The EAC is in the process of developing a regional framework for Conflict Prevention Management and Resolution in order to respond to the potential conflict situations in the region. The framework for CPMR will work hand in hand with the mechanism for early warning.

3.3 The Economic Community of Central African States (ECCAS)

The Economic Community of Central African States was created due to the desire to widen the area of trading in central Africa. It was established on 18th October 1983 by the Central African Customs and Economic Union (UDEAC) and the Economic Community of the Great Lakes States (CEPGL) which consists of Burundi, Rwanda, then Zaire and Sao Tome and Principe.¹⁹² ECCAS began functioning in 1985, but it has been inactive since 1992 due to financial difficulties and the current conflicts in the Great Lakes area.¹⁹³

Faced with the above problems and in order to take into account the new challenges resulting from globalization, the assembly of ECCAS heads of state and government gathered at Malabo, Equatorial Guinea in June 1999. They defined four priority fields of focus to revitalize the community and these priorities are; to develop capacities to maintain peace, security and stability which are essential prerequisites for economic and social development, to develop physical, economic and monetary integration, to develop a culture of human integration and to establish an autonomous financing mechanism for ECCAS.¹⁹⁴

In response to conflicts occurring in the sub region, the heads of state and government of ECCAS signed a pact of non-aggression in 1996. The purpose of the pact is to restore confidence between the various states of the sub region.¹⁹⁵ In 1998, they established the Central African Council for Peace and Security (COPAX), a forum for political dialogue that meets in the event of serious threat to peace and security in one or several countries in the

¹⁹¹ Ibid.

¹⁹² Moufida Goucha and Jakkie Cilliers Peace, Human Security and Conflict Prevention in Africa: H.E. Mr. Nelson Cosme and Mr. Yonaba Fiacre: The Economic Community of Central African States and Human Security (2001) pg 69.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

sub region.¹⁹⁶ Technical organs were established for the council and these are the Central African early-warning system (MARAC), which is a mechanism for the early detection and prevention of crises. Its duty is to collect and analyze data.¹⁹⁷ Another technical organ is the Defence and Security Council which is the meeting of chiefs of staff of national armies and commanders-in-chief of police and gendarmerie forces from different Member States. Its role is to plan, organize and provide advice to the decision-making bodies of the community in order to initiate military operations if needed.¹⁹⁸ The Central African multinational force (FOMAC) is also another technical organ that is a non-permanent force of military contingents from Member States, whose purpose is to accomplish missions of peace, security and humanitarian relief.¹⁹⁹

3.4 The role played by Common Market for East and Central Africa (COMESA)

The Common Market for Eastern and Southern Africa (COMESA) is a regional integration grouping of twenty African sovereign states. These states include Angola, Burundi, the Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.²⁰⁰ Libya was the latest member to join at the Tenth Summit in Kigali in June 2005. Procedurally, the Authority may admit a country that is an immediate neighbour to an existing member state upon fulfilling the conditions that may be determined by the Authority.²⁰¹ These states have agreed to promote regional integration through trade development and to develop their natural and human resources for the mutual benefit of all their peoples.

COMESA was established in 1993 as a successor to the Preferential Trade Area for Eastern and Southern Africa (PTA) which had been existence since 1981. The latter was within the framework of the Organisation of African Unity's (OAU) Lagos Plan of Action and the

¹⁹⁶ H.E. Mr. Nelson (note 192) at 70.

¹⁹⁷ H.E. Mr. Nelson (note 192) at 71.

¹⁹⁸ H.E. Mr. Nelson (note 192) at 71.

¹⁹⁹ Ibid.

²⁰⁰ Moufida Goucha and Jakkie Cilliers Peace, *Human Security and Conflict Prevention in Africa: Mr Stephen Karangiza Sub regional Agenda for Peace and Security: The Case of COMESA* (2001) 75.

²⁰¹ The institute for Security Studies: *Common Market for East and Southern Africa (COMESA)* 8. Accessed at <<http://www.iss.co.za>>

Final Act of Lagos.²⁰² The PTA was established to take advantage of a larger market size, to allow for a greater social and economic heritage with the ultimate goal being the creation of an economic community.²⁰³ COMESA formally succeeded the PTA on 8 December 1994 upon ratification of the Treaty by 11 signatory states.

COMESA is made up of the following; firstly the Authority of Heads of State and Government, which is the supreme policy organ of the common market. The Authority is responsible for general policy, direction and control of the performance of the executive functions of the common market and the achievement of its aims and objectives.²⁰⁴ Secondly, the Council of Ministers which takes policy decisions on the programmes and activities of the common market including the monitoring and review of its financial and administrative management. Thirdly it also consists of the Court of Justice which was established under the COMESA treaty to ensure the proper interpretation and application of the provisions of the COMESA treaty. It is also meant to examine and arbitrate any disputes that may arise among member states regarding the interpretation and application of its provisions.²⁰⁵

Furthermore the common market also comprises of the Committee of Central Banks which manages the COMESA Clearing House and ensures the implementation of the monetary and financial cooperation programmes, the Intergovernmental Committee which consists of Permanent secretaries designated by each member state and is responsible for the development of programmes and action plans on all fields of cooperation except in the finance and monetary sector, the Technical committees which are responsible for the various economic sectors and for administrative and budgetary matters, the Secretariat, which provides technical support and advisory services to member states in the implementation of the treaty and the Consultative Committee of the Business Community and Other Interest Groups which provides a link and facilitates dialogue between the business community and other interest groups and organs of the common market.²⁰⁶

²⁰² Mr Stephen Karangiza (note 200) at 75.

²⁰³ *Ibid.*

²⁰⁴ The institute for Security Studies (note 201) at 8.

²⁰⁵ Mr Stephen Karangiza (note 200) at 76.

²⁰⁶ *Ibid.*

3.4.1 The treaty establishing COMESA.

In the preamble, of the COMESA treaty, the member states are to have regard to the principles of international law governing relations between sovereign states and the principles of liberty, fundamental freedoms and the rule of law. The member states are inspired by the objectives of the Treaty for the Establishment of the African Economic Community and in compliance with the provisions of Article 28(1) of the said Treaty²⁰⁷

Article 3 deals with the aims and objectives of the common market which include the attainment of sustainable growth of the member states by promoting a more balanced and harmonious development of its production and marketing structures, to cooperate in the promotion of peace, security and stability among member states in order to enhance the economic development in the region and to contribute towards the establishment, process and the realization of the objectives of the African Economic Community.²⁰⁸

Article 6 of the treaty deals with the fundamental principles which the member states in pursuit of the aims and obligations stated in Article 3 should adhere to. Some of the principles include equality and inter-independence of member states, the recognition and observance of the rule of law, non-aggression between member states, the peaceful settlement of disputes among the member states, solidarity and collective self-reliance among member states, recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People's Rights and the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness.²⁰⁹

The issue of regional peace and security is dealt with in Article 163 where it asserts that the member states concur that regional peace and security are pre-requisites to social and economic development. It is also vital to the achievement of regional economic integration objectives of the Common Market. In this respect, the member states agree to foster and

²⁰⁷ The COMESA treaty Available at <http://www.comesa.int> [Accessed on 23/04/2009] 2.

²⁰⁸ The institute for Security Studies (note 201) at 9.

²⁰⁹ Ibid at 13.

maintain an atmosphere that is conducive to peace and security to peace and security.²¹⁰ This is to be attained through co-operation and consultations on issues pertaining to peace and security of the member states with a view to preventing better managing and resolving inter-State or intra-state conflicts.²¹¹

Article 178 of the treaty focuses on relations of the common market with the African Economic Community. It mentions that the final objective of the member states is to contribute to the implementation of the provision of the Treaty Establishing the African Economic Community.²¹² It further on asserts that the member states shall negotiate together with other regional economic communities, the Protocol on Relations between the African Economic Community and Regional Economic Communities.²¹³ The article encompasses the implementation provisions of this treaty with due consideration to the provisions of the Treaty Establishing the African Economic Community.²¹⁴ Following the above, it can be noted that COMESA when fulfilling its aims and obligations will have to take into consideration the provisions of the Treaty Establishing the African Economic Community hence this portrays the subsidiarity of the organisation to the African Union.

Article 179 centres on the relations with other regional economic communities of which the Common Market may enter into co-operation agreements with other regional communities. The cooperation will have to be subject to prior approval by the council.²¹⁵

Article 181 deals with the Common Market relations with co-operating partners and it affirms the establishment of close working relations with the relevant African organisations such as the United Nations Economic Commission for Africa, the African Development Bank and other intergovernmental and non-governmental organisations in the region. ²¹⁶ The article also accords special importance to co-operation with the United Nations systems, other international organisations and donors whose policies are compatible with the policies and

²¹⁰ The COMESA treaty Available at <http://www.comesa.int> [Accessed on 23/04/2009] 86.

²¹¹ Ibid.

²¹² The treaty establishing Common Market for Eastern and Southern Africa (note 207) at 96.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ COMESA Treaty (note 207) at 97.

programmes of the Common Market. ²¹⁷ The member states also undertake to promote and maintain good neighbourliness as a basis for promoting regional peace and security with the region.

3.4.2 COMESA mandate on peace and security

Although the principal objective of COMESA is development through economic and social integration, it was realized that the organisation needed to play a role in promoting peace and security in the region in order to create a peaceful and secure atmosphere in which its primary objectives, enhancing economic integration could be achieved.²¹⁸

At the 4th Summit of the COMESA Authority of Heads of State and Government which was held in Nairobi Kenya, on 24th and 25th May 1999 it was decided that COMESA Ministers of Foreign Affairs should meet at least once a year to consider modalities for promoting peace and security in the region. It was further decided that they should consider the modalities of promoting peace, security and stability within the framework of the Organisation of African Unity (OAU) Mechanism for Conflict Prevention, Management and Resolution and to report to the Authority.²¹⁹

The 5th Summit of the COMESA Authority was held in Port Louis Mauritius on 17 and 18 May 2000. it was decided that the COMESA Study on Peace and Security should take into account the need to identify human and financial resources, the root causes of the conflict, the lessons learnt from other sub regional organisations and how other stake holders such as non-governmental organisations (NGOs), parliamentarians and the business community could be involved in the development of a policy regarding peace and security. ²²⁰

COMESA started its engagement on peace and security during a meeting in Lusaka in March 2000. It then recognised that peace security and stability are basic factors in providing investment, development, trade and regional integration.²²¹ The member states of COMESA agreed to adhere to the following principles in establishing the COMESA Program for Peace

²¹⁷ Ibid.

²¹⁸ Mr Stephen Karangiza (note 200) at 77.

²¹⁹ ibid

²²⁰ Mr. Stephen Karangiza supra note 219 at 78.

²²¹ The institute for Security Studies: COMESA (note 201) at 9

and Security. These comprise of equality and inter-independence of member states, the recognition and observance of the rule of law, non-aggression between member states, the peaceful settlement of disputes among the member states, solidarity and collective self-reliance among member states, recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People's Rights and the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness.²²²

Subsequent meetings of the Ministers of Foreign Affairs identified the need to involve a wide range of stake holders in matters of peace and security within the COMESA framework including civil society and private organisations.²²³ The Authority directed that COMESA member states, civil society, and private sector actors developed rules and procedures for the accreditation of civil society and private sector organisations to the COMESA Program on Peace and Security in order to ensure systematic involvement of these non-state actors.²²⁴

The 10th Summit of the COMESA Authority was held in June 2005 which directed the Secretariat to set up an early warning and response mechanism. This was in line with COMESA mandate of conflict prevention through preventive diplomacy. The Secretariat was also directed to establish the early warning and response mechanism to compliment the Continent Early Warning and Response Mechanism with focus on the dynamics of conflicts in the COMESA region.²²⁵ In implementing its conflict prevention mandate, the Secretariat intends to work closely with civil society and the private sector. The subsequent early warning system will involve civil society and the private sector. COMESA is also in the process of acquiring ICT infrastructure that will link member states together and to COMESA, which will also benefit early warning.²²⁶

²²² Ibid.

²²³ The institute for Security Studies: COMESA (note 201) at 10.

²²⁴ The institute for Security Studies: COMESA (note 201) at 11.

²²⁵ Ibid.

²²⁶ Ibid.

In this respect, it is quite clear from COMESA that issues of economic development and integration cannot be dealt within isolation from peace and security issues and these aspects have to be addressed hand in hand. The role of civil society too cannot be ignored for there is need to involve representatives of this sector in addressing issues of peace and security.

3.5 IGAD: Intergovernmental Authority on Development

IGAD is the successor to the Intergovernmental Authority on Drought and Desertification (IGADD) which came into existence in 1986 and is currently involved in conflict prevention in the region. It consists of seven member states; Djibouti, Ethiopia, Eritrea, Kenya, Uganda, Somalia, Sudan. Its central organs are the Assembly of Heads of State and Government, the Council of Ministers, the Committee of Ambassadors and the Secretariat, which is located in Djibouti and headed by an Executive Secretary.²²⁷

In 1993, it created a Standing Committee on Peace to deal with conflict in Sudan and since 1995; IGAD has housed a conflict early warning and response network to help prevent the intensification of inter-state conflicts.²²⁸ This will enable the IGAD secretariat to implement conflict-prevention strategies such as fact finding missions. IGAD's role in conflict reduction has focused on Sudan and Somalia. IGAD has played a role in bringing peace between north and south Sudan.²²⁹ It has also attempted to play a role in reducing conflict caused by large and bloody cattle raids in the region. It was in March 1996 that the Heads of IGAD amended the organisations charter to cover political and economic issues including conflict resolution.²³⁰

In 2004 an IGAD meeting of experts established the East Africa Standby Brigade (EASBRIG). Soon thereafter, the eastern African chiefs of defence staff signed the draft Protocol for the Establishment of the Eastern African Standby Brigade and in April 2005 the

²²⁷ Bjorn (note 138) at 28.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Bjorn (note 138) at 18.

Policy Framework, Memorandum of Understanding and Budget for the establishment of EASBRIG were adopted.²³¹

At the summit meeting in January 2002, an elaborate protocol was adopted on the 'Conflict Early Warning and Response Mechanism for IGAD Member States' (CEWARN). CEWARN is very ambitiously intended for both early warning and response.²³² However, it seemed to entail a little more than an enhanced exchange of information, including the establishment of various databases on the basis of which the intention is to develop case scenarios and formulate options for responses.²³³ In addition to the central mechanism, the intention of CEWARN is to also establish national units and to liaise with NGOs and civil society organisations involved in the gathering of information.

IGAD also established a permanent secretariat for the Sudanese peace process in Nairobi where it held negotiations between government officials and SPLM (Sudanese Peoples Liberation Movement). One of its achievements can be seen on 20th July 2002 of the signing of the Machakos Protocol and there after the signing of other protocols such as *special problems of Abyei* (26th May 2004) and *the agreements on agreements* (June 2004) which confirmed the previous protocols and committing parties to continue.²³⁴

3.5.1 Agreement Establishing the Inter-Governmental Authority on Development (IGAD)

Article 6A²³⁵ portrays the principles which the member states must uphold. Article 6A (a) relates to the sovereign equality of each of the States while Article 6A (b) relates to the non interference of internal affairs of member states. Article 6A (d) relates to maintenance of regional peace, stability and security.²³⁶ The principle relating to non interference does create a controversy as the Article 4(h) of the African Union does relate to intervention of African states only in circumstances where war crimes, crimes against humanity and genocides exist.²³⁷

²³¹ Bjorn supra note 138 at 28.

²³² Bjorn (note 138) at 39.

²³³ Bjorn Moller (note 138) at 39.

²³⁴ Bjorn Moller (note 138) at 40.

²³⁵ Article 6A of the Agreement Establishing the Inter-Governmental Authority on Development (IGAD) at 5.

²³⁶ Ibid.

²³⁷ Ibid.

Article 7 of the IGAD Agreement also highlighted the goals to promote peace and stability in the sub region. This is to be achieved through the creation of mechanisms within the sub region for the prevention, management and resolution of inter and intra-state conflicts.²³⁸ Some of these mechanisms will include dialogue and the facilitation, repatriation and reintegration of refugees, returnees and displaced persons and demobilized soldiers. The agreement also obliges member states to deal with disputes within its regional mechanism before they are referred to other regional or international organisations.

Article 18A of the Agreement refers to member states acting collectively to preserve peace, security and stability which are essential prerequisites for economic development and social progress. It states that member states will take effective collective measures to eliminate threats to regional cooperation peace and stability.²³⁹ The member states will have to establish an effective mechanism of consultation and cooperation for the pacific settlement of differences and disputes. They too have to accept to deal with disputes between member states within this sub regional mechanism before they are referred to other regional or international organisations.²⁴⁰ Following the above principles, it is noted that IGAD priorities are focused toward the achievement of peace and stability and the enforcement of security mechanisms so as to attain the regional development in the region.

3.5.2 Challenges faced by IGAD

IGAD relies on external support to assist it during conflict resolutions hence the formation of IGAD Partners Forum. It also faces the intense hostility between several member states for example, between Ethiopia and Eritrea, Uganda and Sudan, Ethiopia and Somalia and this can be attributed to the fact that there is an absence of an obvious leader as seen in ECOWAS where Nigeria is regarded as the most dominant country the region.²⁴¹

²³⁸ Ibid.

²³⁹ Article 18A of the Agreement Establishing the Inter-Governmental Authority on Development (IGAD) at 15.

²⁴⁰ Ibid.

²⁴¹ Bjorn (note 138) at 40.

3.6 SADC: Southern Africa Development Community

The origins of SADC can be seen by the efforts of the then newly independent front-line states to combat the Unilateral Declaration of Independence (UDI) by former Rhodesia. It did not emerge as a bloc until 1980 when its predecessor the Southern African Development Coordination Conference was established by the adoption of the Lusaka Declaration and the countries which signed the Declaration were; Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia and Zimbabwe. Its main aim was to reduce the region's economic dependence on apartheid South Africa and to coordinate investment and trade.²⁴² Its membership was therefore determined by the unified stance taken by 'Frontline states' against apartheid South Africa.²⁴³ The Declaration and Treaty of SADC were adopted in August 1992 establishing a new organisation of which South Africa, Mauritius, Democratic Republic of Congo and the Seychelles later joined the original members of SADCC.²⁴⁴

In August 1998, Angola, Zimbabwe and Namibia intervened in the DRC. The purpose behind this intervention again is controversial. While SADC auspices did not organize it, the sub-regional body retroactively endorsed it. In September 1998, South Africa (with troops from Botswana arriving later) intervened into Lesotho to quell a coup d'état.²⁴⁵ This intervention was supposedly carried out under the auspices of SADC. In 1996, at the Gaborone Summit, SADC finally agreed to the establishment of the SADC Organ on Politics, Defence and Security Co-operation (OPDS) which incorporated the ISDSC (Inter-State Defence and Security Community).²⁴⁶ It is charged with protecting against instability arising from the breakdown of law and order, intra-state conflict, inter-state conflict and aggression.²⁴⁷

It is intended to promote political cooperation, develop common foreign policy approaches, promote sub-regional coordination and cooperation, and establish appropriate mechanisms to

²⁴² Mr. John Dzimba A Common Sub regional Agenda for Peace, Human Security and Conflict Prevention: A view from SADC in Moufida Goucha and Jakkie Cilliers (eds) *Peace, Human Security and Conflict Prevention in Africa* (2001) 23.

²⁴³ Mr. John Dzimba (note 242) at 23.

²⁴⁴ Regional Integration and Trade Liberalization at 114.

²⁴⁵ ²⁴⁵Mr. John Dzimba (note 242) at 25.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

prevent, contain and resolve inter- and intra-state conflict.²⁴⁸ OPDS may authorize intervention as a last resort and it is empowered to act where 'significant intra-state conflict' exists, such as where 'large-scale violence between sections of the population or between a state and sections of the population, including genocide, ethnic-cleansing and gross violation of human rights exists and where there is 'a conflict which threatens peace and security in the region or in the territory of another state party''.²⁴⁹

The main objective of the Mutual Defence Pact is to operationalize the mechanisms of the SADC Organ for mutual cooperation in defence and security matters.²⁵⁰ These include conflict resolution, military preparedness, consultation, collective defence, non-interference and identification of destabilizing factors and defence cooperation.²⁵¹ These initiatives once operational should go a long way towards ensuring the achievement of peace, stability, human security.²⁵²

3.6.1 Approach to a common security agenda

SADC's conceptual framework on peace and security recognises the new approach to security, which emphasizes the security of the people and the non-military dimensions of security.²⁵³ This model acknowledges that security of states does not necessarily have the same meaning as security of people.²⁵⁴ Threats to security are not limited to military challenges, to state sovereignty and territorial integrity; they include abuse of human rights, economic deprivation, social injustice and destruction of the environment.²⁵⁵

The objectives of the security policy go beyond achieving an absence of war to encompass the pursuit of democracy, sustainable economic development, social justice and protection of the environment.²⁵⁶ The framework recognises that states can mitigate the security dilemma

²⁴⁸ Jeremy (note 55) at 29.

²⁴⁹ Ibid.

²⁵⁰ Mr. John Dzimba (note 242) at 26.

²⁵¹ Mr. John Dzimba (note 242) at 26.

²⁵² Ibid.

²⁵³ Mr. John Dzimba (note 242) at 27.

²⁵⁴ Ibid.

²⁵⁵ Mr. John Dzimba (note 242) at 29.

²⁵⁶ Ibid.

and promote regional stability by adopting a defence rather than an offensive military doctrine and posture. The conceptual framework adopted by SADC also emphasizes that domestic security policy should pay greater attention to social sources of instability such as the problem of violence against women and children.²⁵⁷

All SADC's protocols and terms of reference on a common regional security approach are based on these principles of the new approach to human security.²⁵⁸ They recognize the need to establish a framework and mechanisms to strengthen regional solidarity and provide mutual peace and security.²⁵⁹ The protocols are based on the recognition that war and insecurity are the enemies of economic progress and social welfare. Good political relations among the countries of the region, together with peace and mutual security are critical components of total environment for regional cooperation and integration²⁶⁰

3.6.2 The SADC Protocol on Politics Defence and Security Cooperation

The Protocol on Politics, Defence and Security Cooperation was incorporated ISDSC (Inter-State Defence and Security Community) under the OPDS as a legal apparatus that is beneficial to the Organ when enforcing its peace and security measures.²⁶¹ Some of the relevant articles relating to defence and security are to be mentioned and discussed below in order to ascertain the extent of the objectives and jurisdiction bestowed on the Organ.

In the preamble, the member states recognise and re-affirm the principles of strict respect for sovereignty, sovereign equality, territorial integrity, political independence, good neighbourliness, interdependence, non-aggression and non-interference in internal affairs of other states hence the principle of sovereignty is still respected but only to the extent where acts such as genocides, war crimes and crimes against humanity surface then its stronghold is

²⁵⁷ Mr. John Dzimba supra note 242 at 26.

²⁵⁸ Ibid.

²⁵⁹ Mr. John Dzimba (note 242) at 29.

²⁶⁰ Mr. John Dzimba (note 242) at 29.

²⁶¹ Jeremy (note 55) at 29.

weakened to accommodate the regional security intervention as seen in Article 4(h) of the Constitutive Act of the AU.²⁶²

The preamble also confirms that the member states consider peace, security and strong political relations as critical factors in creating a conducive environment for regional co-operation and integration.²⁶³ They too are determined to achieve solidarity, peace and security in the region through close cooperation on matters of politics, defence and security.²⁶⁴ The member states' aim is to ensure that close cooperation on matters of politics, defence and security shall at all times promote the peaceful settlement of disputes by negotiation, conciliation or arbitration.²⁶⁵

Article 2 of the Protocol conveys the objectives of which the aspects of peace, and security are main priorities of the member states as shown below: Article 2(2)²⁶⁶ deals with the specific objectives of the Organ such as protection of the people and the safeguard of the development of the region against instability arising from the breakdown of law and order, intra-state conflict, inter-state conflict and aggression.²⁶⁷ The organ is obliged to promote regional co-ordination and co-operation on matters related to security and defence and establish appropriate mechanisms to this end.²⁶⁸ It's duty is to prevent, contain and resolve inter-and intra-state conflict by peaceful means and consider the development of a Mutual Defence Pact which would regulate a form of collective security in the region.²⁶⁹ The organ's obligation is to develop a peacekeeping capacity of national defence forces and co-ordinate the participation of State Parties in international and regional peacekeeping operations.²⁷⁰

Article 7 relates to the functions of the Inter-State Defence and Security Committee. It mentions that the ISDSC performance of such functions as may be necessary to achieve the objectives of the Organ relating to defence and security. The present ISDSC will assume the

²⁶² The SADC Protocol on Politics, Defence and Security Cooperation (1996) at 2.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Article 2 of the SADC Protocol on Politics, Defence and Security Cooperation (1996) at 2 and 3.

²⁶⁷ Article 2 of the SADC Protocol on Politics, Defence and Security Cooperation (1996) at 2 and 3.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

objectives and functions of the existing Inter-State Defence and Security Committee.²⁷¹ It is also oversees developments in the areas of defence, public security and state security. According to the protocol, states may not use or threaten to use force against each other except in cases of self defence.²⁷²

Article 11 relates to conflict prevention, management and resolution. It affirms that the role of the Organ is to manage and resolve inter and intra- state conflicts by peaceful means. Article 11(2) conveys the jurisdiction of the Organ of which deals with the resolution any significant inter-state conflict between state parties or between a state party and non- state party.²⁷³ The significant inter-state conflict includes a conflict over territorial boundaries or natural resources, a conflict in which an act of aggression or other form of military force has occurred or been threatened and a conflict which threatens peace and security in the region or in the territory of a state party which is not a party to the conflict.²⁷⁴

The Organ seeks to resolve any significant intra-state conflict within the territory of a state party. A significant intra-state conflict includes large-scale violence between sections of the population or between the state and sections of the population, including genocide, ethnic cleansing and gross violation of human rights. It also encompasses a military coup or other threat to the legitimate authority of a state and a condition of civil war or insurgency and a conflict which threatens peace and security in the Region or in the territory of another state party.

Article 11(4) (d) stipulates that the Organ will respond to requests by state parties and will only use diplomatic means where this is not forthcoming.²⁷⁵ This makes it unlikely that enforcement action will be taken although this is allowed for. The Organ Chairperson, acting on the advice of the Ministerial Committee may recommend enforcement action to the summit only as last resort.²⁷⁶

²⁷¹ Article 7(2) of the SADC Protocol on Politics, Defence and Security Cooperation (1996) at 6.

²⁷² *Ibid.*

²⁷³ Article 11(1)(c) of the SADC Protocol on Politics, Defence and Security Cooperation (1996) at 6.

²⁷⁴ *Ibid.*

²⁷⁵ Mr. John Dzimba (note 242) at 26.

²⁷⁶ *Ibid.*

With regard to the above Protocol which is SADC's legal instrument for the implementation of peace and stability among member states it can be noted that a lot of emphasis was put on the need to control intra-state conflicts and the mechanisms involved were to ensure peace keeping and stability. Despite the detailed peace and security prioritized protocol, SADC has faced a number of challenges in trying to fulfil its objectives when assisting member states.

3.6.3 Challenges faced by SADC in deploying its conflict resolution measures

Although South Africa is considered the undisputed economic power in the region, Zimbabwe often lays claims to be a 'senior' in the armed struggle, having won its armed war of independence more than a decade before South Africa.²⁷⁷ Most of the masses in Zimbabwe believe that their own war was more conclusive, and that their independence was won because of their efforts, and not through the kind of global security shift and the goodwill of De Klerk that determined South Africa's independence.²⁷⁸

Further more Zimbabwe and, to an extent Namibia, felt unhappy with the shift of global goodwill to South Africa: Namibia and Zimbabwe had previously enjoyed some form of global goodwill and sympathy as recently liberated countries and all this disappeared after South Africa became independent.²⁷⁹ Finally many of the countries in southern Africa find it difficult to understand why South Africa could easily conclude trade agreements with the European Union, and not with its fellow southern African states.²⁸⁰

The civil war in the Democratic Republic of Congo also exposed the inner tensions of the member states in SADC. Although the organisation wanted to come up with a credible policy that could help resolve the crisis, the various countries perception of their national interest and prestige overrode sub-regional interest.²⁸¹ Once the rebel force attacked the fledging government of Laurent Kabila and began to enjoy from Uganda and Rwanda, governments in

²⁷⁷ Abiodun (note 129) at 18.

²⁷⁸ Ibid.

²⁷⁹ Abiodun (note 129) at 18.

²⁸⁰ Ibid.

²⁸¹ Ibid.

countries like Zimbabwe, Angola and Namibia viewed the developments as a case of foreign attack, and thus felt obliged to support the Kabila government.²⁸² A meeting by the Defence Ministers of Angola, Namibia, Zambia and Zimbabwe was held in Harare, Zimbabwe of which approval was said to have been given for military support whereby in the end Zimbabwe, Angola, Namibia sent troops to assist Kabila.²⁸³

3.6.4 Achievements of SADC in conflict resolution

Despite the tensions and challenges faced, SADC has also taken some steps to address the serious problem of small arms proliferation in the region—partly as a legacy of the end of the civil wars in Angola and Mozambique—e.g. with a *Protocol on the Control of Firearms, Ammunition and Other Related Materials*.²⁸⁴ The military activities have, likewise, been expanded, mainly in the form of training for peacekeeping activities, (e.g. at the now defunct Regional Peacekeeping Training Centre, RPTC, in Harare), towards which end a couple of military exercises have also been conducted, including the 'Blue Hungwe' and the 'Blue Crane'.²⁸⁵ SADC has also adopted a policy of 'freeing resources from military to productive development activities'.²⁸⁶ The rationale was that an arms build-up was dangerous for the region because it heightened political instability, the risk of armed hostilities and the human and economic costs of warfare.²⁸⁷

²⁸² Ibid.

²⁸³ Ibid (note 129) at 19.

²⁸⁴ Jeremy (note 55) at 29.

²⁸⁵ Jeremy (note 55) at 29.

²⁸⁶ Mr. John Dzimba (note 242) at 30.

²⁸⁷ Ibid.

CHAPTER FOUR

4 The influence of international non-state actors on regional organisations in conflict resolution

In this chapter, the focus is on role played by external factions such as the United Nations, Non-governmental Organisations in the peace keeping process in Africa. This chapter will also examine the influence the external factions which are mostly non-state actors have on the regional organisations during conflict resolution. It is thus important to identify these other actors and recognise those areas where they can contribute, and have indeed contributed, to the process, as well as to appreciate better their nature, their mode of Intervention and the constraints hampering their action to explore ways in which their participation can be rendered more fruitful and less problematic²⁸⁸ Examples of these non-state actors are NGO's the media, the private sector, faith-based organisations academic and youth organisations among others.

4.1 United Nations Security Council Policy on Africa

Wars and armed conflicts in Africa have provided the opportunity for various interventions to manage, resolve and keep peace such as the UN peace keeping, regional organisations such as the AU, ECOWAS among others. However the UN and its peace keeping and peace support have operations have been the dominant form of intervention to stabilise and resolve conflicts in Africa and if those conflicts are perceived as a threat to international peace and security. The Question to ask is whether the UN has given the regional organisations a greater role in dealing with conflict in Africa? To answer this, the relevant articles of the UN Charter will be analysed in respect to the peace keeping operations performed by some of the regional organisations.

Article 33 of the UN Charter stipulates the role of regional organisations and arrangements in the maintenance of peace and security in their respective regions, in particular any dispute endearing international peace and security. The article states that any

²⁸⁸ UNDP 7th Africa Governance forum Building the Capable State in Africa; Jenenali Ulimwengu: the role of non-state actors 2000 pg 1

regional organisation or arrangement 'shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice'.²⁸⁹

Article 52(1) fortifies the priority of the use of regional arrangements for the peace settlement of disputes by stating that 'nothing in the present Charter precludes the existence of regional arrangements or agencies from dealing with such matters relating to the maintenance on international peace and security as are appropriate for regional action'.²⁹⁰

From the above it is clear that the Charter mandates regional organisations as a response mechanism to any regional dispute or conflict before referring to the Security Council which is the primary organ responsible for international peace and security. The Charter also recognises the delegation of regional peace and security issues to regional arrangements and agencies.²⁹¹ The Charter further states that no enforcement action shall be undertaken by any regional organisation or agency without specific authorisation of the UN Security Council but at the same time it expresses the desire to utilise regional organisations or agencies under its authority, for enforcement action.²⁹²

However, the Charter does not confer on regional organisations the authority of enforcement action except in pursuit of the inherent right of individual or collective self defence as stipulated in Article 51.²⁹³ There have been a few instances in which the Security Council has used Chapter VII to authorise the use of force beyond self defence in Africa and these are; two of the three operations in Somalia of which it was used to authorise the Unified Task Force operation in Somalia to use force in order to establish a secure environment for the delivery of humanitarian aid.²⁹⁴ The United Nations Operation in Somalia II also had Chapter VII

²⁸⁹ UN, Charter of the United Nations. New York: United Nations Publications, 1945.

²⁹⁰ Ibid.

²⁹¹ David J Francis *Uniting Africa: building regional peace and security systems* (2006) 92.

²⁹² David J Francis (note 291) at 93.

²⁹³ Ibid.

²⁹⁴ Jane Boulden *Dealing with Conflict in Africa: The UN and regional organisations* (2003) 14.

authorisation this time to carry out a range of military tasks including disarmament which was associated with a very broad-based peace keeping mandate.²⁹⁵

Article 54 stipulates the need for the Security Council oversight of activities undertaken by regional organisations for the maintenance of international peace and security.²⁹⁶ Therefore the Charter clearly demarcates the nature of co-operative security, the level and scope of delegation in the maintenance of international security. If any regional organisation or agency undertakes enforcement action without the Security Council authorisation or neglects the oversight role of the council then the organisation or agency is deemed to be in breach of the Charter.²⁹⁷

4.2 General characteristics of the UN operations in Africa

The UN has carried out 20 operations in Africa; four have been in Angola, three in Somalia, two in the Congo, two in the Congo, two in Rwanda and two in Sierra Leone. Of all the operations in Africa, only one operation occurred during the Cold War and it took place in the Congo from 1960-1964. This is because The Congo was one of the few places in Africa at that time until after independence that remained outside the Cold War struggle for influence in Africa.²⁹⁸

Almost all of the UN operations in Africa have dealt with internal conflicts, tasks relating to some form of peace agreement. The peace agreement is often the result of the UN efforts to facilitate a peaceful resolution to the crisis and because of their association with peace agreements, these operations generally include; monitoring the withdrawal of troops from a given area, monitoring a cease fire, overseeing and implementing disarmament, demobilization and reintegration of forces, the protection of civilian populations, including refugees or internally displaced peoples and overseeing elections.²⁹⁹

²⁹⁵ Ibid.

²⁹⁶ David J Francis (note 291) at 93.

²⁹⁷ Ibid.

²⁹⁸ Jane Boulden (note 294) at 12.

²⁹⁹ Jane Boulden (note 294) at 13.

Notwithstanding the above there are some instances, in which the UN Security Council authorised an operation in Africa without a peace agreement in place; the first UN operation in the Congo in 1960-1964, all three operations in Somalia and the UN Observer Mission in Sierra Leone (UNOMSIL).³⁰⁰ All these missions were difficult and it resulted in the UN withdrawing completely from Somalia. It also withdrew most of its personnel from Sierra Leone when rebels overran the capital city.³⁰¹

In the post-Cold war period, the UN and its peace keeping missions operate in a changed environment of which they are required to carry out much more demanding and complex peace keeping operations particularly in Africa.³⁰² UN peace keeping interventions in these conflict situations have led to failures and humiliations such as Somalia, Rwanda, and Sierra Leone. This is because the UN is expected to take on a range of responsibilities it is often ill-prepared for and lacks the capacity to deliver³⁰³. By 1995, the UN had become overburdened with the many and diverse responsibilities relating to peace and security. After the debacles in Somalia, Bosnia and Rwanda the UN decided to re think the whole notion of its peace keeping. This led to the down sizing of peace keeping personnel from 78,744 to 14,500 in November 1998³⁰⁴. This act questioned the credibility, capacity and primacy of the UN in the maintenance of international peace and security.

The *Agenda for Peace* 1992 and the Brahimi Report of 2000 are constructive attempts to engage with the changing nature of the UN in the post-Cold war era.³⁰⁵ There was a need for transformation of UN peace keeping operations. During that time there was a rise in the participation of maintaining peace and security on the continent by the regional and sub-regional organisations such as the West African regional multinational force, ECOMOG, and SADC's Allied Forces peace keeping in the DRC.³⁰⁶ Therefore in Africa, the expansion into the security domain by regional economic organisations became part of the debate on 'Africa

³⁰⁰ Ibid.

³⁰¹ Jane Boulden (note 294) at 13.

³⁰² David J Francis (note 291) at 95.

³⁰³ David J Francis (note 291) at 96.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

approaches to African problems' and the 'Try Africa First Approach' to conflict management and resolution.³⁰⁷

The shift toward greater cooperation with regional organisations is associated with *An Agenda for Peace* and the moves to develop new ways in which the UN could deal with conflict. It outlines the nature and form of the emerging co-operative security between the UN and regional organisations including consultation, preventative diplomacy, diplomatic support, operational support, joint operations and co-deployment.³⁰⁸ Regional organisations do have advantages in responding to conflicts within their respective regions in that they are not constrained by the use of veto by permanent members in the decisions to intervene in regional conflicts as in the case of the UN.³⁰⁹ However, the organisations are sometimes limited by lack of consensus due to diverse national interests and diverse politics. Another advantage of regional organisations is that they have limited agendas and therefore have the capacity to focus on the issue at hand that requires regional attention.

UN co-operative security with regional organisations provides opportunities for oversight of delegation in the maintenance of international peace and security.³¹⁰ It provides legitimacy for any co-deployment peace keeping operations, and it also lends greater support for peace keeping and peace support operations.³¹¹ Regional organisations can assist in diplomatic efforts in mobilising international support for political settlement of a conflict and for peace keeping operations for example ECOWAS Ambassadors lobby group at the UN headquarters in New York.³¹²

³⁰⁷ David J Francis (note 291) at 96.

³⁰⁸ David J Francis (note 291) at 93 Co- deployment is described as a military deployment or deployment of a field mission in conjunction with regional peace keeping forces specifically authorised by the UN Security Council with a mandate to assist in the restoration of peace and security to a country in conflict within a particular region.

³⁰⁹ David J Francis (note 291) at 96.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Ibid.

Despite the co-operative frame work between the UN and the regional organisations in promoting peace and security in specified regions, one begs to question as to whether this co-operation dilutes the UN's (Security Council) primary role in maintaining international peace and security.³¹³

4.3 The role of Non-governmental organisations (NGOs) in conflict resolution in Africa

These are mostly single issue organisations, engaged either in development activities or in advocacy work. In development work they tend to be restricted in scope, operating in small geographical areas, covering small groups of people. In single issue advocacy, they have chosen problems close to the heart of the founders, such as rural poverty, women and children rights, campaigns against female genital mutilation, etc. Sometimes, though, they have extended their branches to enhance cooperation with other grassroots organizations doing similar work, eventually leading to the formation of national umbrella organizations.³¹⁴ Some of NGOs have chosen to serve more broad-based constituencies, such as when they cover multifaceted area like human rights, general gender issues, poverty, development forums, political liberalisation, economic liberalisation, etc. Sometimes they have tapped into the knowledge base of single issue associations, which have helped them to present a more holistic picture of NGO activities at national or regional or international level.³¹⁵

In respect of their achievements, NGOs have acted as intermediaries between conflicting parties to try to assist them arrive at a negotiated solution to their conflict. For example the peace settlement in Mozambique where the Community of St. Edigo, a private voluntary Catholic organisation with connections to the Vatican acted as third party intermediaries with the support of a number of governments.³¹⁶ Another example is in 1999 a South African NGO, *U Managing Conflict* (UMAC), had been founded in 1985 at the height of insecurity and violence all too often instigated by the Apartheid regime, set to work to translate policy and

³¹³ David J Francis (note 291) at 97.

³¹⁴ UNDP (note 288) at 5.

³¹⁵ Ibid.

³¹⁶ Connie Peck Sustainable Peace: the role of the UN and regional Organisations in Preventing Conflicts (1998) 191.

legislation into action, including monitoring violence.³¹⁷ Working in close collaboration with local authorities and interacting with other civil society organisations, UMAC helped launch the Community Safety Forum project, involving community policing that helped to radically reduce violent crime in several notoriously dangerous places. The success of UMAC's work is attributed to the commitment of the organisation's leadership and the support accorded them by local authorities.³¹⁸

NGOs have also acted as consultants to the regional organisations that is to say; they assist them in devising more meaningful approaches to conflict analysis, prevention and resolution.³¹⁹ For example, the OAU has relied on the International Peace Academy to organise consultations which draw upon a wide range of expert opinion within Africa as a means of developing ideas and a consensus for its new Conflict Prevention Management and Resolution Mechanism.³²⁰ Further more NGOs do participate as evaluators in inter-governmental organisations actions. In recent years a number of research institutions have begun to study case examples of efforts at conflict resolution in order to derive policy recommendations for improving practice.³²¹ The International Peace Academy has conducted a number of research projects to examine the UN peacekeeping efforts and subsequently made recommendations.³²²

Here are some of the challenges that the NGO's, non- state actors face when assisting regional organisations in conflict resolution in Africa. First of all there is mutual suspicion at times between African states and these organisations based on the fact that these organisations are interfering with the government territory and are delegating roles to themselves that are of the states. The states feel that this undermines their authority and it also discredits them. Secondly the fact that these organisations have to obtain funding from foreign sources also relays the suspicion as to what is the motive of the foreign sources on the

³¹⁷ UNDP (note 288) at 12.

³¹⁸ Ibid.

³¹⁹ UNDP (note 288) at 12.

³²⁰ Connie (note 316) at 191.

³²¹ Ibid.

³²² Ibid.

African states and what do they achieve in the end after contributing the necessary resources.

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In addition to the above, many non state actors, including NGOs, are led by urban-based, educated elites, with a political axe to grind. They may have been excluded from the mainstream of political activity and, in the eyes of governments, tend to be mere fault finders without any positive contribution to make to the development effort. This is because some of the African governments believe that imperialism is being masked under the face of globalization hence the fear of being neo-colonised.

On the other hand, these non-state actors and organisations tend to feel that the government disregards the real interests of the people, or tend to ignore those who have been excluded from political processes by, say, ethnically based systems.³²⁴ With rampant corruption, graft, nepotism and favouritism in most African states, the belief that government agents are given to self seeking is quite strong. Governments are viewed as inefficient and, by their very nature, unable to cover the interests and concerns of all their constituents; thus, leaving huge gaps that must be serviced by focused groups that relentlessly apply themselves to specific areas of activity in which they have built strong affinities and competencies.³²⁵ Particular mention is made of roles that can be played by non-state actors in areas where the government ability to act meaningfully is heavily constrained.

Another example emerges of what non-state actors can do in a situation of instability and near state collapse.³²⁶ Within the framework of the Great Lakes Policy Forum (GLPF), bringing together international organizations, governmental and non-governmental agencies, business leaders and the media to find ways of building sustainable peace and preventing further bloodshed, a number of activities were undertaken in Burundi, including confidence building measures across the ethnic divide.³²⁷ Activities included forming inter-ethnic women and youth groups to support the peace efforts spearheaded, first by Julius Nyerere and later

³²³ UNDP (note 288) at 10.

³²⁴ UNDP (note 288) at 12.

³²⁵ *Ibid.*

³²⁶ *Ibid.*

³²⁷ UNDP *supra* note 324.

by Nelson Mandela in Arusha and Dar-es-Salaam. Pivotal in this enterprise was the role played by a civil society radio station, *Studio Ijambo*, which produced 'a wide mix of radio programmes that addresses the daily issues confronting Burundians in a manner that promotes dialogue, reconciliation and peace building, using common ground journalism techniques.'³²⁸

4.4 Capacity development programmes

The development programmes have been advanced by western governments in order to assist regional organisations involved in peace keeping and peace support operations.³²⁹ It involves the strengthening of peace keeping capabilities for African countries through the provision of training and lethal and non-lethal military equipment.³³⁰ Some of the formal programmes include the following;

The United States African Crisis Response Initiative (ACRI) was established by the Clinton administration in 1997 to train African armies for peace keeping duties. It was envisaged as a stand by military force for deployment in Rwandan type conflict situation. Another beneficiary is the US-sponsored African Contingency Operations Training and Assistance (ACOTA). Its objective is training and equipping programme for selected African militaries to enhance and strengthen their peace keeping and peace support operations rapid development in African conflict situations³³¹

The French developed the *Reinforcement of African Peace keeping Capacities* (RECAMP) to train African armies for peace keeping operations and strengthen peace and security on the continent. The creation of RECAMP was a departure from the French traditional policy of intervention on French African countries.³³² The British International Military Assistance

³²⁸ Ibid.

³²⁹ David J Francis (note 291) at 96.

³³⁰ Ibid.

³³¹ US Department of State Foreign Military Training: Joint Report to Congress, Fiscal Years 2004 and 2005. Available at: <http://www.satae.gov/t/pm/rls/rpt/fmtrpt/2002/45669.htm>.

³³² David J Francis (note 291) at 99.

Training Team (IMATT) has been the focus of the British government's training support programme for Africa.³³³

The EU-African Peace Facility which amounts to €250 million is a three year peace, security and conflict management capacity building programme for the African Union.³³⁴ Its objective is to capacitate both the African Union and sub-regional organisations to train and deploy peace keeping and peace enforcement intervention operations in conflict situations in Africa.³³⁵ The Peace Facility Fund is geared to translating into practical terms the African Union's Constitutive Act which mandates member states to intervene in another state's internal affairs in situations of war crimes, crimes against humanity and genocides.³³⁶ The creation of the Peace Facility represents a shift in approach on the part of the European Union in as much as it transfers funds earmarked for development to peace and security initiatives although these funds can not be used to finance the procurement of ammunition, arms and specific military equipment, salaries, military training or deployment of European peace keepers.³³⁷

G8 Africa is a process of dialogue between the African countries and the G8 designed to strengthen and promote relation with Africa and to further the continent's social and economic development.³³⁸ The premise for this new focus was the awareness that Africa has been deprived of the international community's much needed attention for too long. It was a way of recognising the inadequacies of the past. African Heads of State and Government leaders (Algeria, Egypt, Nigeria, Senegal and South Africa) were invited to attend the G8 summit for the very first time in 2001 to present their NEPAD project.³³⁹

³³³ US Department of State Foreign Military Training: Joint Report to Congress, Fiscal Years 2004 and 2005. Available at: <http://www.satae.gov/pm/rls/rpt/fmtrpt/2002/45669.htm>.

³³⁴ European Commission, Securing Peace and Stability for Africa: The EU-Funded African Peace Facility. Brussels; EUROPEAN Commission, July 2004.

³³⁵ Ibid.

³³⁶ European Commission, Securing Peace and Stability for Africa: The EU-Funded African Peace Facility. Brussels; EUROPEAN Commission, July 2004.

³³⁷ Kristiana Powell (note 48) at 25.

³³⁸ G8 Summit: <http://www.g8.org>.

³³⁹ Ibid.

The G8 has also offered direct support to building the peace and security infrastructure of the African Union. It adopted the African Action Plan (AAP) as a collective response to the NEPAD initiative at its summit in Kananakis in 2002.³⁴⁰ The AAP developed eight areas of engagement that correspond with the main priorities for sustainable development identified in the NEPAD initiative. NEPAD lists peace and security as top priority and stresses the importance of building the capacity of African institutions for early warning as well as the prevention, management and resolution of conflicts.³⁴¹ The G8 agreed to provide technical and financial assistance to enhance capacity of African countries and regional organisations to prevent and resolve violent conflict. The AAP called on member states to design a joint plan to develop African capacities to perform peace support operations, including at the regional level.

³⁴²

At the Evian Summit in 2003, G8 member states reinforced their commitments to promoting peace and security in Africa. This summit however concentrated almost exclusively on building Africa capacities to undertake military operations hence it shifted the focus of the Kananakis agenda that was based on developing and resolution capacities.³⁴³ Instead the G8 announced a joint Africa/ G8 plan to enhance African capabilities to undertake peace support operations.³⁴⁴ With the use of the African Union's Peace and Security protocol together with the AU's Policy Framework for the Establishment of African Standby Force, the G8 consented to work with African partners to establish, equip and train a single standby brigade by 2010.³⁴⁵

Subsequently, the 2004 Sea Island Summit proposal concentrates exclusively on building peace support operations in Africa globally.³⁴⁶ It commits member states to train and equip peace keeping troops, to develop peace support capabilities in regions that are capable of deploying in Africa, to establish transportation and logistics arrangements and to train forces for peace support operations in Africa. The 2009 G8 Summit was held in L'Aquila Italy whereby the aid fund for Africa has risen from 15 to 20 billion dollars over the three years after working

³⁴⁰ Kristiana Powell supra note 48 at 25.

³⁴¹ Ibid.

³⁴² Kristiana Powell (note 48) at 25.

³⁴³ Kristiana Powell supra note 48 at 26.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

sessions with the African countries. The pivotal topics were food, security and aid for the African countries in conflict situations.³⁴⁷ Despite the G8's contribution to building of peace and security in Africa through regional organisations, one has got to question the G8's concentration on developing military capabilities over conflict resolution and prevention capacities for it leads to the risk of creating a security framework based on military responses to crises.

Canada has been a central player in placing and keeping Africa on the G8's agenda and in developing a set of initiatives that respond to New Partnership for Africa's Development's (NEPAD) broad peace, security and development priorities. Canada is also one of the first donors to provide genuinely flexible funding to the African Union.³⁴⁸ However the contributions to peace and security capacity building for the African Union and the regional organisations are minimal in comparison to resources provided to the North Atlantic Treaty Organisation (NATO) and the UN.³⁴⁹ This imbalance is potentially problematic as African leaders, the United Nations and donors assign the AU and regional organisations a role in maintaining peace and security in Africa.³⁵⁰

Furthermore, Canada like other G8 countries faces critical questions about how to reconcile the urgent need to build peace support operations (PSO) capacity and support crisis response in Africa with the equally pressing need to develop a range of conflict prevention, management and resolution capacities in Africa.³⁵¹ The Canadian support for Africa's peace and security regime tends to favour developing West African capacities over funding for the African Union. For example Canada's support to West Africa through West Africa Peace and Security Initiative (PSI) was greater than combined Canada Fund for Africa (CFA) and Pan-Africa Programme contributions to the African Union from 2002.³⁵²

³⁴⁷ G8 Summit (note 338).

³⁴⁸ Kristiana Powell (note 48) at xii.

³⁴⁹ *Ibid.*

³⁵⁰ Kristiana Powell *supra* note 48 at 30.

³⁵¹ *Ibid.*

³⁵² *Ibid.*

4.5 African Human Security Initiative (AHSI)

The AHSI is comprised of organisations that took the initiative to emphasise human security in Africa.³⁵³ The Institute of Security Studies (ISS) first initiated the AHSI1, which was a regional program that used the system of peer review to monitor the extent of compliance of eight African countries' commitment to democracy, good governance and civil society participation.³⁵⁴ One of the overarching objectives of the African Human Security Initiative (AHSI) is to build the capacity of an expanded membership of African organisations in conducting research on security issues on the African continent.³⁵⁵ The AHSI organised an international conference on the theme 'Peace and security in Africa: Beyond the African Union Charter: Peace, Security and Justice' in Addis Ababa from 21-23 February 2008.³⁵⁶ One of the goals was to analyse the role of regional and international organisations in contributing to Africa's peace, security and justice in relation to the AU's Peace and Security Council (PSC).³⁵⁷ There have been examples of successful peace building experiences in which both the AU and the international community have come together to build peace in war-ravaged societies. An example is the Democratic Republic of Congo (DRC) which is slowly approaching democratic stability following the 2006 elections.³⁵⁸

Africa faces the challenge of effectively responding to current human security threats, as well as foreseeing and combating emergent threats to human security.³⁵⁹ There are frameworks currently in place to promote peace and security in Africa, including that of the AU Charter. However the main issue is how to strengthen the capacity of the AU to fulfil its mandate and implement protocols, charters and conventions more effectively.³⁶⁰ It is then imperative to examine whether the AU PSC

³⁵³ Annie Chikwanha *Peace and Security in Africa: Beyond the African Union Charter, Peace, Security and Justice* (2008) Institute for Security Studies ISBN: 978-1-920114-38-1 pg iv.

³⁵⁴ Annie Chikwanha (note 353) at 3.

³⁵⁵ *Ibid.*

³⁵⁶ Annie Chikwanha *Peace and Security in Africa: Beyond the African Union Charter, Peace, Security and Justice* (2008) Institute for Security Studies ISBN: 978-1-920114-38-1 pg iv.

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*

³⁵⁹ *Ibid.*

³⁶⁰ *Ibid.*

has the capacity to deal with the present and emerging conflicts and threats to human security.³⁶¹

A general consensus which emerged from the conference is that new and emergent challenges to peace and security on the continent require Africa to move beyond the AU Charter, beyond elections and constitutionalism, and beyond conflict resolution. In order to build a culture of peace there is a need for a paradigm shift from non-interference to interference. At times when conflicts continue to cause irreparable damage to human security and development on the continent, the issue of sovereignty must be critically interrogated as to whether it provides justification for inaction.³⁶²

Some of the recommendations that emerged from the conference were to establish within the AU and the UN measures to address non-compliance with established protocols and conventions. To provide necessary capacity building support systems to regional and sub-regional organisations so that these organisations can effectively fulfil their responsibilities based on the established frameworks, to promote local civil society organisations as leading actors in addressing post conflict reconstruction processes and to give the International Criminal Court a clear mandate to prosecute rape as a war crime.

According to the author Macahava*, the root causes of conflict range from the colonial legacy, the legacy of the cold war, poverty, illiteracy, poor governance, ethnicity and ecological disasters.³⁶³ In order to address conflict-related challenges in Africa, it is essential to establish conflict management frameworks at national, regional and continental levels.³⁶⁴ It is also imperative to first analyse the root causes of conflict and differentiate between root causes and proximate causes of conflict when putting in place conflict management

³⁶¹ Annie Chikwanha (note 356) at pg iv.

³⁶² Ibid.

*Aderito Machava was a presenter at the AHSI conference held in Addis Ababa February 2008. He presented on the topic: Toward a better conflict management framework: the role of regional and continental organisations.

³⁶³ Aderito Machava Toward a better conflict management framework: the role of national regional and continental organisations Peace and Security in Africa: Beyond the African Union Charter, Peace, Security and Justice (2008) Institute for Security Studies ISBN: 978-1-920114-38-1 pg 11.

³⁶⁴ Ibid.

frameworks.³⁶⁵ Frameworks must be comprehensive and identify innovative ways to bridge the divide between conflicting groups.³⁶⁶

One of the primary challenges is that regional organisations, the AU and national countries lack the necessary capacity to effectively implement conflict prevention and peace building frameworks.³⁶⁷ Such bodies are expected to formulate and implement effective capacity-building programs that focus on conflict prevention and conflict resolution skills.³⁶⁸

4.5.1 Influence of international laws in peace agreements and mediation process; human rights and conflict management

The presenter Mwanika* focused role of diplomacy, human rights as a mode of mediation in protracted conflicts. He explored the concept of peace building and utilisation of regional arms control, legal regimes and disarmament, diplomacy using Somalia as a specific case study.³⁶⁹ The presence, proliferation and lack of transparent control of small arms and light weapons continues to be a major challenge in Somalia despite the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons and the UN Security Council arms embargo that has been in place since 1992.³⁷⁰

With regard to whether sovereignty of states stands as a justification for non-intervention focusing on Darfur, the presenter Sharkdam* stated that the government of Sudan has been reluctant to allow the international community to intervene in conflict arguing that it is

³⁶⁵ Ibid.

³⁶⁶ Supra 363.

³⁶⁷ Ibid.

³⁶⁸ Ibid.

*Philip Njuguna Mwanika was a presenter at the AHSI conference held in Addis Ababa in February 2008. His topic focused on Mediation and Peace building through Regional Arms Control Disarmament Diplomacy: A Diplomatic Continuum in the Somali Peace Process.

³⁶⁹ Philip Njuguna Mwanika Mediation and Peace building through Regional Arms Control Disarmament Diplomacy: A Diplomatic Continuum in the Somali Peace Process. Peace and Security in Africa: Beyond the African Union Charter, Peace, Security and Justice (2008) Institute for Security Studies ISBN: 978-1-920114-38-1 pg 18.

³⁷⁰ Ibid.

*Sharkdam Wapmuk was a presenter at the AHSI conference held at Addis Ababa on 21 February 2008. His topic centred on; The Darfur Conflict and Humanitarian Crises in the Region: Can Sovereignty of States stand as justification for non-intervention.

protecting its sovereignty.³⁷¹ However the Sharkdam argues that sovereignty does not imply that states are free from the obligations to their citizens and their responsibility to members of the international community. Humanitarian intervention and forcible military assistance can and should be implemented with out agreement from the state in the case of grave and large-scale violations of human rights.³⁷²

Sharkdam went on to criticize the AU and the UN for failing to respond timely to this matter. The AU, he argued must clarify its position on interference and intervention in Article 4(h) and 4(g)of the AU Constitutive Act in order to pave way for meaningful peace operations. While Article 2 of the UN charter posits the UN respect for the sovereignty of member states, Article 24 gives the Security Council responsibility for maintaining international peace and security. According to the presenter it will not be sufficient for the UN to enforce action on Sudan under Chapter VII of its Charter because of the evolving, complex nature of the conflict in Darfur.³⁷³

In conclusion, Sharkdam reiterated that the defence of state sovereignty does not mean unlimited power. Sovereignty is subject to international recognition and without such recognition, a nation is not sovereign. It also does not permit for the interference in another state's domestic affairs.³⁷⁴ He stated that the above definition is hypocritical and has been abused by states.

³⁷¹ Sharkdam Wapmuk *The Darfur Conflict and Humanitarian Crises in the Region: Can Sovereignty of States stand as justification for non-intervention Peace and Security in Africa: Beyond the African Union Charter, Peace, Security and Justice* (2008) Institute for Security Studies ISBN: 978-1-920114-38-1 at 18.

³⁷² Ibid.

³⁷³ Sharkdam Wapmuk *The Darfur Conflict and Humanitarian Crises in the Region: Can Sovereignty of States stand as justification for non-intervention Peace and Security in Africa: Beyond the African Union Charter, Peace, Security and Justice* (2008) Institute for Security Studies ISBN: 978-1-920114-38-1 pg 18

³⁷⁴ ibid

CHAPTER FIVE

5.1 Recommendation to the African Union

The African Union needs to establish a concrete institutional framework in order to attain peace, stability and security on the continent. I applaud the normative framework the organisation has put in place for these norms do create obligations to fulfil and principles to adhere thus giving responsibilities to the member states and other regional organisations. Despite its active normative framework, implementation of these norms should be emphasized and enforced by the organisation.

From the AHSI the following improvements were recommended. There should be greater improvements by grassroots organisations in conflict management because these groups are equipped with important local knowledge that helps to resolve conflicts.³⁷⁵ Strengthen and improve the capacity of various actors at the national, regional and continental levels to maintain peace, manage conflict and promote political, social and economic stability.³⁷⁶ Provide necessary capacity building support systems to regional and sub-regional organisations so that these organisations can effectively fulfil their responsibilities based on established frameworks.³⁷⁷ The AU must assume a more proactive role in dealing with those issues likely to lead to the escalation of conflict.

With regard to the common defence and security of Africa, it should be based on both the traditional, state-centric notion that the armed forces of states are responsible for the protection of their national sovereignty and territorial integrity. The notion should be accompanied together with the less traditional non-military aspects which are informed by the 'new' international environment and the high incidence of intra-state conflict.³⁷⁸ In this regard,

³⁷⁵ Aderito Machava *Toward a better conflict management framework: the role of national regional and continental organisations Peace and Security in Africa: Beyond the African Union Charter, Peace, Security and Justice* (2008) Institute for Security Studies ISBN: 978-1-920114-38-1 pg 12.

³⁷⁶ *Ibid.*

³⁷⁷ *Ibid.*

³⁷⁸ Prof Theo Neethling 'Pursuing a policy framework for peace and security in Africa: development, progress and challenges' School for Security and Africa Studies, Faculty of Military Science University of Pretoria. (2004) 11.

the point is clearly made that each African state is inextricably linked to other African states, other regions and, by the same token, to the African continent as a whole.³⁷⁹

With regard to institutional initiatives, existing organisations such as the UN, UNESCO and the AU do have a role to play in the promotion of human security in all respects. Regional trade organisations, non-governmental organisations (NGOs) and civil society should each make their own contribution to this process. The aim is to build institutions that reach beyond national boundaries and are trusted by the citizens of the region.³⁸⁰

To sum it all up, the following action could be taken for peaceful and constructive settlement of conflicts; creating a culture of democracy and tolerance would entail the creation of organs of civil society to carry out mass education on the concept and practice of democracy and tolerance.³⁸¹ The establishment of forums and mediums would allow governments to interact with various sections of the population, particularly in design and implementation of public policies.³⁸²

5.2 Conclusion

In conclusion, regional organisations have emerged as premier peace enforcers on the continent.³⁸³ This is a significant development which has so far been a series of ad hoc responses to particular conflicts. As yet there is no institution in Africa devoted to strategic planning concerning the social and economic components of conflict and post-conflict transitions. This is a potential role for the Economic Commission for Africa in coordination with sub regional organisations.³⁸⁴ Logically the common agenda for peace and security in regional organisations on our continent should be focused on the attainment of a harmonious, safe and

³⁷⁹ Ibid.

³⁸⁰ Ms Henrietta Didigu (note 132) at 74.

³⁸¹ Ms Henrietta Didigu (note 132) at 34.

³⁸² Ibid.

³⁸³ Ms Henrietta Didigu (note 132) at 9.

³⁸⁴ Alex de Waal (note 126) at 9.

stable environment to make possible the evolution and implementation of development programmes that will provide economic prosperity for our people.³⁸⁵

The regional organisations have each contributed to the main issue that has been crippling the continent that is maintenance of peace and security. The organisations have managed to achieve certain degree of peace and stability in their regions and have met challenging hurdles but are still intent to fulfilling their obligations. Despite their ups and downs, regard has to be given to the fact that these organisations were originally created for economic integration but the ongoing intra-state conflicts were and are still hindering the integration progress hence the necessity to create peace and security measures to curb the upheavals. The organisations did establish various peace keeping mechanisms such as the East Africa Standby Brigade (EASBRIG) by IGAD, ECOMOG by ECOWAS among others.

Finally regional organisations have binding obligations to fulfil as they also ratified their regional peace keeping protocols which serve as legal instruments. Since the OAU and the UN were under the obligation to implement conflict resolution on the continent together with individual member states, less peace keeping missions were underway thus leading to civil wars in Liberia, genocide in Rwanda among others hence forth the involvement of the sub regional organisations in assisting in these missions has improved the situation and lessened the burden therefore portraying that in order for the African Economic Community to be achieved, integration must be achieved in a peaceful environment without the impediments of conflicts.

³⁸⁵Alex de Waal supra note 126 at 41.

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