The African Union peace and security architecture: Can the Panel of the Wise make a difference?

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Summary

This article focuses on the establishment of the Panel of the Wise in the African Union peace and security architecture. It examines the basis, design and role of the Panel, and explores the possibilities that can be employed by the Panel in promoting the internalisation of peace and security in Africa. The writer makes recommendations in respect of the membership, norms and mandate scope of the Panel, and expresses confidence that, if properly designed and operationalised, the Panel will make a difference in the peace and security architecture of the African Union.

1 Introduction

The adoption of the Peace and Security Council (PSC) Protocol in 2002 marked the peace and security architecture of the African Union (AU). Although established to assist the PSC and the Chairperson of the AU Commission in the architecture, the Panel of the Wise (Panel) has received scanty academic attention regarding the basis for its creation, design and role.

Following a brief background, this article examines the necessity for the Panel in the AU peace and security architecture, and criticises its design. The role of the Panel is explored together with the potential of the Panel in promoting the internalisation of peace and security in Africa. The article recommends that an amendment in respect of the membership, norms and mandate of the Panel is required for it to make a difference in the AU peace and security architecture.

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2   Background to the establishment of the Panel of the Wise

At the Lusaka Summit, in July 2001, the Organisation of African Unity (OAU) took a decision to incorporate the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution as one of its organs.[1] This crystallised in 2002 in the adoption of the Protocol on the Establishment of the Peace and Security Council (PSC Protocol).[2] The PSC Protocol provides for a continental architecture for peace and security based on five structures: the Peace and Security Council, the Continental Early Warning System (CEWS), the African Standby Force (ASF), the Peace Fund and the Panel of the Wise.[3]

Subsequently, the AU adopted the Solemn Declaration on a Common African Defence and Security Policy (CADSP), a proactive Declaration based on the notion of human security rather than the narrow approach which perceives security solely as state security. An all-inclusive document, the CADSP reflects the norms which constitute the African peace and security architecture. This is an interventionist policy to security challenges in Africa.[4] Described therefore in terms of its norms and structures relating to averting conflict and war, mediating for peace, and maintaining security in Africa, the African peace and security architecture has emerged.[5] It is against this backdrop that the Panel was inaugurated on 18 December 2007.[6]

The Panel was established to support the PSC and the Chairperson of the AU Commission in their efforts in the areas of conflict prevention, promotion and the maintenance of peace, security and stability in Africa.[7] The members of the Panel, who were elected in January 2007, are respected and distinguished statesmen, namely, Salim Ahmed Salim, former Secretary-General of the OAU (East Africa), Ahmed Ben-

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[1]   OAU Doc AHG/Decl 1 (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 2001.

[2]   Adopted at the 1st ordinary session of the Assembly of the Heads of State, Durban, South Africa, 9 July 2002, Addis Ababa, Ethiopia, 9 July 2002.

[3]   PSC Protocol arts 1-21.

[4]   Adopted at the 2nd extraordinary session of the Assembly of Heads of State and Government of the AU held in Sirte, Libya from 27 to 28 February 2004; arts 7, 8(a)-(v) and 9 contain common non-traditional security threats facing Africa. See also T Murithi *The African Union: Pan-Africanism, peacebuilding and development* (2005) 25; M Mwanasali 'Emerging security architecture in Africa' (February 2004) 7 *Centre for Policy Studies Policy Issues and Actors* 4; J Cilliers 'The African standby force: An update on progress' (March 2008) Paper 160 *Institute for Security Studies* 4-6.

[5]   SA Salim 'The architecture of peace snd Security in Africa' address during the African Development Forum III, 'Defining Priorities for Regional Integration' 3-8 March 2002, Addis Ababa, Ethiopia.

[6]   PSC Protocol art 11(2).

[7]   PSC Protocol art 11(1).

Bella, former President of Algeria (North Africa), and Miguel Trovoada, former President of São Tomé and Principe (Central Africa); and respected women who head reputable domestic institutions (Brigalia Bam, Chairperson of the Independent Electoral Commission of South Africa (Southern Africa) and Elisabeth K Pognon, President of the Constitutional Court of Benin (West Africa).[8]

After an initial failure to discuss the modalities as scheduled on 8 August 2007,[9] at the meeting of the Panel on 12 December 2007 the modalities for the Panel were eventually discussed and adopted.[10] Its first meeting was held on 20 February 2008.[11] In the following section, an attempt is made to critically discuss the rationale behind the establishment of the Panel.

3 Probing the need for the Panel of the Wise

For long, in discussing the way out of the myriad problems relating to peace and security in Africa, scholars have suggested an 'African solution to African problems' approach. Their arguments in support of this approach have been premised on the values and practices from different settings of Africa on conflict prevention and resolution.[12] In a similar vein, African leaders have canvassed a renaissance of African values in addressing its contemporary challenges.[13]

This section identifies the concept of the wise as evidence of African values which validates the setting up of the Panel of the Wise in the AU peace and security architecture. In discussing this concept, proverbs from different settings in Africa are cited as a window of insight and corroborated with practices which vest wisdom for conflict prevention and resolution in the elderly and, in more recent times, on distinguished African personalities. In the main, it is argued that the creation of the

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[8]   AU Doc Assembly/AU/Dec 152(VIII).

[9]   'Panel of the Wise — Operationalising the African Union's mediation framework' *ISS Today* 23 August 2007.

[10]   Modalities of the Panel of the Wise, adopted by the Peace and Security Council at its 100th meeting held on 12 November 2007.

[11]   AU Document EX CL/438(XIII) Assembly of the African Union 11th ordinary session 30 June to 1 July 2008.

[12]   A Mazrui 'Towards containing conflict in Africa: Methods, mechanisms and values' (1995) 2 *East African Journal of Peace and Human Rights* 81-90; J Mallan 'Conflict resolution wisdom from Africa' 1997 ACCORD 9-17; EE Osaghae 'Applying traditional methods to modern conflict: Possibilities and limits' in IW Zartman (ed) *Traditional cures for modern conflicts: African conflict medicine* (2000) 201-230; NA Fadipe *Sociology of the Yoruba* (1970) 106; K Wiredu *Philosophy and an African culture* (1980).

[13]   In his view, Julius Nyeyere pointed out the need for Africa to start from its 'Africanness' and a belief in its own past to chart solutions for contemporary challenges; JK Nyeyere *Freedom and unity (Uhuru na Umoja): A selection of writings and speeches 1952-65* (1967) 316.

Panel is consistent with the African concept of the wise, and reflects the long-held notion of an African solution to African problems.

In most parts of indigenous Africa, the concept of the wise is embodied in the belief that holds the elderly as custodians of wisdom for conflict prevention and peaceful settlement of disputes.[14] Evidence in support of this world view is found in the proverbs and practices pointing at the attribute of the elderly in relation to wisdom and their unique role in conflict prevention and resolution.

Among the Nembe of the Niger Delta, for instance, there is a saying that 'more days mean more wisdom', while the Ikwerre people from the same region believe that 'what an old man sees seated, a youth does not see standing'.[15] A similar expression in the eastern part of Africa is that 'what old people see seated at the base of the tree, young people cannot see from the branches'.[16] Particularly in Uganda, there is the saying that 'it is the black spot in the eyes of the elders which has vision', meaning that what a young person may not see, elders will.

Practices also exist in the area of conflict prevention and decision making on community security which tapped into the wisdom of the elders.[17] 'Elder meetings' held under trees, public or village assemblies and other gatherings deal with issues of dispute before they mature into full-blown security threatening conflicts. Examples of such meetings include the 'palaver hut' meetings of the Vai and Kpelle people of Liberia,[18] and the Ndendeuli of Tanzania.[19]

Evidence of the involvement of the elders in traditional institutions for conflict prevention and community security exists in the traditional Somali society where elder-headed clans are a social and political unit of organisation and government.[20] Although the clan is cited as a factor in the collapse of Somalia,[21] proof, at least from Somaliland, points to the fact that clan elders are a source of reconciliation and the maintenance of peace.[22] In Somaliland, each clan has its own leaders and a council of elders that is involved in the maintenance of peace and conflict prevention, management and resolution. Even where a breach

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14 K Gyekye *An essay on African philosophical thought: Akan conceptual framework* (1987) 18; Mazrui (n 12 above) 85-86; LP Kimilike 'An African perspective on poverty proverbs in the book of proverbs: An analysis of transformational possibilities' unpublished PhD thesis, University of Pretoria, 2006 95.

15 http://www.ccsu.edu/afstudy/upd1-4.html (accessed 13 September 2008).

16 As above.

17 JL Comaroff & S Roberts *Rules and processes: The cultural logic of dispute in African context* (1981) 109.

18 S Nanda *Cultural anthropology* (1987) 96-98.

19 CJ Witty *Mediation and society: Conflict management in Lebanon* (1980) 6.

20 F Ssereo 'Clan-politics, clan-democracy and conflict regulation in Africa: The experience of Somalia' (2003) 2 *The Global Review of Ethnopolitics* 26.

21 As above.

22 M Bryden *Rebuilding Somaliland: Issues and possibilities* (2003) 6-27.

of security takes place, the elderly fixes the traditional customary conventions on war and crisis situations.[23]

In Uganda, among the Karamojong, the elders resolve disputes by means of discussions and debates before they worsen into conflicts.[24] In Ethiopia, among the Boran, the village council and the *Aba Olla* (village head) had far-reaching political, social, economic and judicial functions, including dispute settlement.[25] Likewise, amongst the Samburu in Kenya, there is evidence of binding mechanisms which engage the elders in dispute resolution and maintenance of peace and order.[26]

However, there are inherent flaws which cast doubt on the possibility for a general application of the indigenous conception of elders' role to the realities in contemporary African states. First, as Appiagyei-Atua argues, old age is not always synonymous with wisdom. Indeed, as shown in the practice of the Akan people, wisdom can be acquired through other sources apart from age.[27] Secondly, as Wiredu argues, in traditional African societies, thoughts and wisdom came from the elderly persons and were imposed on the rest of the community.[28] Largely dominated by the male, the *views* of women were therefore either unheard or altogether excluded in the dispute settlement framework. In Somali, for instance, the clan-based conflict resolution system is led by male clan elders (*Oday*), which severely marginalises women in decision making.[29] Thirdly, dispute management strategies often generated by the elders were localised and could not be generalised beyond local boundaries. These strategies, Osaghe argues, are located in ethnic groups and this, where ethnic conflicts exist, may be seen as a continuation of ethnic domination by one ethnic group of another and so further aggravate conflicts.[30] Finally, with the advent of colonialism, the relevance of the institution of elders itself became dysfunctional through politicisation, corruption and the abuse of traditional structures. The co-option of most elders as agents of the state and their manipulation to serve partisan ends considerably reduced

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23 Bryden (n 22 above) 25.

24 S Dzivenu 'The politics of inclusion and exclusion of traditional authorities in Africa: Chiefs and justice administration in Botswana and Ghana' (2008) 2 *Political Perspectives* 1 7.

25 As above.

26 As above.

27 K Appiagyei-Atua 'A rights-centred critique of African philosophy in the context of African development' (2004) 10 *East African Journal of Peace and Human Rights* 55-56.

28 Wiredu (n 12 above) 2-5.

29 J Gundel *The predicament of the 'Oday': The role of traditional structures in security, rights, law and development in Somalia* (2006) 21 http://siteresources.worldbank.org/ INTLAWJUSTINST/ Resources/GundelTheroleoftraditionalstructures_1.doc (accessed 10 September 2008).

30 Osaghe (n 12 above) 214-215.

the reverence and respect commanded and, therefore, their ability to resolve conflicts.[31]

In spite of the foregoing, there are reasons to suggest that the elders' role may be reconceived to creatively address concerns around conflicts in Africa. First, as Afigbo argues, 'reconstructing a usable and problem solving-oriented past' is possible in Africa.[32] Secondly, the imperviousness of the African peace and security concerns to international attentions reinforces the need for an inward search for culturally-applicable solutions.[33] Thirdly, such a conception is consistent with the call for culturally applicable solutions to African problems by international bodies such as the United Nations Educational Security Council (UNESCO).[34]

Indeed, practices exist that suggest that a new concept about elders' role is emerging in the modern approaches at addressing concerns around conflicts in Africa. For instance, post-independence national constitutions of some African states have created advisory roles for elders, not only in governance but in the promotion of peace and security. In Ghana, for instance, the Constitution provides for a Council of State which is composed of a body of distinguished personalities to counsel the President in the performance of his functions.[35] Similar provisions exist in the Constitution of Lesotho which allows for the creation of a Council to assist the King in the discharge of his functions.[36] In the Kingdom of Swaziland, the *Tindvuna* is a constitutional body of headmen which assists in the traditional governance of the country in areas including the hearing of complaints and advising on the tempo of the nation.[37] The Constitution of the self-declared state of Somaliland also establishes the House of Elders and vests it with the power to address issues regarding the security and peace of the country.[38]

Even in some national constitutions where no mention is made about the specific role for elders, institutions have been established which exercise a similar influence on issues of peace and security. Article 61 of the 1995 Constitution of the Federal Republic of Ethiopia, for instance, establishes the House of the Federation, composed of representatives

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[31]   Osaghe (n 12 above) 215.

[32]   AE Afigbo *The making of modern Africa* (1986) 30.

[33]   FO Hampson *Nurturing Peace: Why peace agreements fail or succeed* (1996) 217; IW Zartman 'Introduction: African traditional conflict medicine' in IW Zartman (ed) *Traditional cures for modern conflicts: African conflict medicine* (2000) 2.

[34]   UNESCO has argued that culture is critical to development and that development must be engaged in the context and through the medium of human cultures. Preface to UNESCO, 'Recognising culture: A series of Briefing Papers on Culture and Development'   http://www.unesco.org/culture/development/briefings/html_eng/foreword.shtml (accessed 9 September 2008).

[35]   The 1992 Constitution of the Republic of Ghana, art 89(1).

[36]   The 1993 Constitution of Lesotho, art 95(1).

[37]   The 2005 Constitution of the Kingdom of Swaziland, sec 235(4).

[38]   The 1997 Constitution of Somaliland, art 57.

of nations, nationalities and peoples. One significant function of the House is to strive to find solutions to disputes or misunderstandings that may arise between states.[39] In Burundi, the Post-Transition Interim Constitution provides for the National Council of *Bashingantahe*,[40] whose responsibilities include giving advice on essential questions concerning unity, peace and national reconciliation.[41] A similar role is contemplated in the Central African Republic for the National Council for Mediation.[42]

Sub-regional bodies, such as the Economic Community of West-African States (ECOWAS) and the South African Development Community (SADC), have also developed institutions and practices which tap from the concept of the wise in addressing modern-time challenges. The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security of ECOWAS (ECOWAS Protocol) creates the Council of Elders, a body of distinguished personalities.[43] On behalf of ECOWAS, members of the Council can use their good offices and experience to address issues capable of breaching peace and security within the region.[44] The Council has been engaged in handling the crisis arising from the proliferation of small arms in the sub-region.[45] The SADC Protocol on Politics, Defence, and Security Co-operation (SADC Protocol) does not provide for a similar Council.[46] Nevertheless, the SADC Protocol mandates the Organ on Politics, Defence, and Security Cooperation to prevent, manage and resolve conflict by peaceful means.[47] To this end, eminent persons are often engaged by SADC, as shown in the example of Lesotho where they were involved in post-election political concerns.[48]

Most importantly, the recent efforts of African statesmen in mediating conflict situations in Africa show the application of the concept of the wise in more recent times and the relevance of distinguished personalities to conflict resolution. Kofi Anan was, for instance, involved

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[39] The 1995 Constitution of the Federal Republic of Ethiopia, art 62(6).

[40] In pre-colonial times, the term *Bashingantahe* was used to designate a body of men renowned for their sense of truth, justice and responsibility for the overall good of the community. However, the institution is now composed of both men and women, at community level, who possess the desired attributes of wisdom, calm and a love of truth, entrusting them with the authority to arbitrate in certain disputes; http://daga.dhs.org/urugopeace/Burundi/bashingantahe.htm (accessed 22 October 2008).

[41] The 2004 Post-Transition Interim Constitution of the Republic of Burundi, art 269.

[42] The 2004 Constitution of the Central Africa Republic, art 104.

[43] ECOWAS Protocol, art 20.

[44] As above.

[45] *The Guardian* 23 May 2008 http://www.guardiannewsngr.com/news/article05//indexn2_html? pdate=230508&ptitle=Obiakor (accessed 9 September 2008).

[46] SADC Protocol, art 11(3)(a).

[47] As above.

[48] SADC News/Press Release http://www.foreign.gov.ls/news/SADC_Eminent_Person_Mission.php (accessed 9 September 2008).

in mediating the electoral crisis in Kenya.[49] The former President of Mozambique, Joachim Chissano, has been involved in the efforts to resolve the crisis in Northern Uganda.[50] Following the tension created over the elections held in Zimbabwe, Mr Thabo Mbeki has also been involved in brokering peace between the two major participants of the election, namely the incumbent President, Mr Robert Mugabe and the opposition leader, Mr Morgan Tsvangirai.[51] This trend accords with Zartman's view that modern Africa does not lack mediators.[52]

It is therefore not surprising that a mechanism bearing the brand 'Panel of the Wise' was established in the African peace and security architecture. It is argued that, in introducing the Panel into the AU peace and security architecture, the African leadership is guided by the African world view on the concept of the wise. Most importantly, it is guided by the thought that distinguished Africans can be engaged in proferring solutions to African problems relating to peace and security.

Having ascertained the basis of the Panel, the next part of the article will offer a close assessment of the features of the Panel. This is with a view to finding out whether the Panel is designed effectively.

4   An assessment of the Panel of the Wise

As Acharya and Johnston argue, the study of international relations has witnessed a shift from the question of why the establishment of peace and security institutions matters to one of how they matter. Acharya and Johnston identify five major features of institutional designs,[53] namely, membership,[54] scope,[55] formal rules,[56] norms[57] and mandate.[58] In the next sub-section, I use these features as a guide to criticise the Panel of the Wise.

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[49]   'Kenya crisis talks end' *Nation News* 30 July 2008 http://www.nation.co.ke/News/-/1056/445014/-/tj26d7/-/index.html (accessed 9 September 2008).

[50]   'Uganda: Chissano in Gulu to salvage LRA-Govt peace deal' http://www.irinnews.org/ Report.aspx?ReportId=79868 (accessed 20 October 2008).

[51]   'Zimbabwe crisis: Thabo Mbeki's role' http://www.guardian.co.uk/news/blog/2008/jun/23/ zimbabwecrisisthabombekisr (accessed 20 October 2008).

[52]   IW Zartman 'Inter-African negotiations and state renewal' in JW Harbeson & D Rothchild (eds) *Africa in world politics: The African state system in flux* (2000) 142.

[53]   A Acharya & A Johnston 'Comparing regional institutions' in A Acharya & A Johnston (eds) *Crafting co-operation: Regional Institutions in comparative perspective* (2007) 21-22.

[54]   This means how inclusive or exclusive is the membership.

[55]   This refers to how narrow or broad are the issues that the institution is designed to handle.

[56]   This entails a set of rules or policies governing how decisions are made.

[57]   This refers to the formal and informal ideology of the institution.

[58]   This refers to the general purpose of the institution.

4.1 Membership: A Pool or Panel of the Wise?

The Panel is composed of five highly-respected members from various segments of society who have made outstanding contributions to peace, security and development on the African continent.[59] Panel members are selected by the Chairperson of the Commission after consultations with the member states concerned, on the basis of regional representation to serve for a renewable period of three years.[60]

The limit of membership of the Panel is unhelpful considering the level and spontaneity of conflicts and crises in Africa. One questions the rationale behind such prescription on a continent richly endowed with dignified personalities who can make a difference in addressing conflicts and crisis situations. Although the modalities of the Panel allow for support by mediation teams,[61] this does not remove the need for a broader membership of the Panel. This is because, more than any other mechanism in the system, the assets of the Panel and its potential to make a mark in the peace and security architecture lie in the moral force of its respected personalities. Hence, a broad membership of the Panel will offer an opportunity for more influence over conflict and crisis situations in Africa.

Equally, given the distinct feature of the art of mediation which requires disputants' consent on who mediates over their disputes,[62] it is difficult to imagine how a five-member panel can effectively satisfy this requirement within the African conflict context. An example that vividly describes this concern is the Kenya election crisis. The government, in the wake of the crisis, had offered dialogue which was to be facilitated by the Ghanaian President who was also the Chairperson of the AU. Mr Ralia Odinga, the leader of the opposition, however, insisted that he would only agree to a mediation facilitated by international mediators.[63] The impasse was eventually brokered by a team of international mediators headed by the former Secretary-General of the United Nations (UN), Mr Kofi Annan, a non-member of the Panel.[64] The failure of the AU to broker the Kenya crisis has been criticised as

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[59] PSC Protocol, art 11(2).

[60] As above.

[61] n 10 above, para III (1)(f).

[62] W Ury *Getting to say yes: Negotiating agreement without giving in* (1991) 20.

[63] 'Kenya crisis talks end in failure' *BBC News* 10 January 2008 http://news.bbc.co.uk/2/hi/africa/7181184.stm (accessed 8 September 2008).

[64] 'Kenya crisis could take a year to end' *Skye News* 30 January 2008 http://news.sky.com/ skynews/Home/Sky-News-Archive/Article/20082851302827 (accessed 8 September 2008); 'Kenya crisis talks end' *Nation News* 30 July 2008 http://www.nation.co.ke/News/-/1056/445014/-/tj26d7/-/index.html (accessed 9 September 2008).

exposing the weakness of the system to act as a 'one-stop shop for security issues in Africa'.[65]

It does therefore appear that a Pool of the Wise, composed of reputable personalities from different regions of Africa, may be more fitting in the African context than a five-member panel. The idea of a pool is not strange, particularly in the sub-regional system. An example can be found in the membership of the ECOWAS Council of Elders. The Executive Secretary of ECOWAS is required to annually compile a list of eminent persons from various segments of society, including women, political, traditional and religious leaders. These are persons who, on behalf of ECOWAS, can use their good offices and experience to play the role of mediators, conciliators and facilitators whenever conflicts arise. The Council of Elders is constituted from an approved list to deal with specific conflict situations.[66]

The Council of Elders has been put to use on different issues, such as the pre-election survey in Nigeria.[67] Members of the Council have also been involved in addressing the proliferation of small and light arms in the sub-region.[68] Consequently, the AU may follow the approach of ECOWAS in redesigning the Panel into a more promising Pool of the Wise.

In addition to the above model of ECOWAS, the Pool of the Wise is recommendable for other reasons. First, it will accommodate an increased number of eminent personalities who can engage the mandate of the Panel. Secondly, as credentials and experiences of members may vary, a pool will enable the peace and security structure to easily compose a team around diverse peace and security issues. Thirdly, a large membership of the pool may actually increase wider reach and help elicit co-operation for activities in areas of conflict prevention, peace promotion and decisions compliance.

Finally, a Pool of the Wise will further strengthen the peace and security structure by making accessible a more robust, collective wisdom and intelligence of respected personalities in coping with challenges facing peace and security in Africa.

4.2   Formal rules

The modalities of the Panel set out procedures for the appointment of the Chairperson for meetings and communications, an agenda, a

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[65]   'Kenya failure breaches African Union ambition' *Reuters* 11 January 2008 http://www.reuters. com/article/worldNews/idUSL1171753120080111 (accessed 10 September 2008).

[66]   Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security, art 20.

[67]   'Gambia President heads ECOWAS mission to Nigeria' *Afrol News* 22 January 2007 http://www.afrol.com/articles/23932 (accessed 20 October 2008).

[68]   ECOWAS 'Advisory Board for small arms in West Africa' http://www.iansa.org/regions/wafrica/BoardECOWAS.htm (accessed 20 October 2008).

quorum, recommendations and reports.[69] The Panel meets as often as the circumstances may require or at least three times a year.[70] The Panel may also sit at any time at the request of the Council or the Chairperson of the Commission.[71] It is believed that such an impromptu sitting makes good sense considering the spontaneous nature of conflicts, particularly in Africa.

The Panel holds its meetings at the headquarters of the AU or elsewhere after consultation with the Chairperson of the Commission.[72] This meeting arrangement is useful and convenient for the Panel that may wish to meet for urgent intervention in disputes before they worsen into conflict situations. Meetings are held in closed sessions.[73] Resource persons, experts, institutions or individuals may be invited to attend a meeting in order to assist the Panel in its deliberations on specific issues.[74] It is envisaged that the Panel will take advantage of this provision regularly as it will no doubt allow for greater dialogue between the Panel and the other stakeholders in the performance of its mandate. Most importantly, it will enable the Panel to tap from a wide variety of resources.

In accordance with its modalities, the Chairperson of the Panel is required to receive for inclusion in the provisional agenda of a meeting of the Panel proposals on issues of the promotion and maintenance of peace, security and stability in Africa.[75] Such proposals are received from any member of the Panel, the Council and the Chairperson of the Commission, as well as from the Pan-African Parliament, the African Commission on Human and Peoples' Rights (African Commission) and civil society groups in the context of their respective contributions to the promotion and maintenance of peace, security and stability in Africa.[76]

The individual is not included in these modalities for submission of proposals for the Panel's agenda. This is strange, particularly considering the fact that political conflicts often start as disputes between individuals.[77] Most importantly, to permit individuals to submit a proposal is consistent with the principle of participation and could increase the sense of ownership of the mechanism by individuals.

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[69] n 10 above, para IV.

[70] n 10 above, para IV(3).

[71] As above.

[72] n 10 above, para IV(4).

[73] n 10 above, para IV(5).

[74] As above.

[75] n 10 above, para IV(8).

[76] As above.

[77] Examples of these include Kenya's conflict between Rilal Odinga and Kibaki; and Zimbabwe's election crisis between Robert Mugabe and Morgan Tsvangirai.

4.3   Norms

The norms to guide the Panel can be read from article 4 of the PSC Protocol which sets out the institution's guiding principles, which are enshrined in the AU Constitutive Act, the Charter of the UN and the Universal Declaration of Human Rights (Universal Declaration). In particular, the Protocol emphasises 11 principles. Principles (a) through to (i) relate to the peaceful and early settlement of disputes, non-interference, and the recognition of the territorial integrity of its members. Significantly, Principle (d) reiterates the interdependence between socio-economic development and the security of people and states.

Principles (j) and (k) recognise the right of the AU to intervene 'in respect of grave circumstances, namely war crimes, genocide and crimes against humanity', and the right of members to request intervention. Principle (j) rehearses the provision of article 4(h) of the Constitutive Act of the AU.[78] Principle (j) of the PSC Protocol contrasts with the position under the OAU. Traditionally, under the OAU, as Salim Ahmed Salim remarks, the view was held among African leaders that conflicts within states fell within the exclusive competence of the states concerned. Consequently, the OAU had to stand by even where conflicts tore countries apart and caused grave afflictions on innocent people.[79] Principle (j) therefore significantly departs from the inflexible adherence of the OAU to the principle of international sovereignty which seriously undermined the maintenance and promotion of peace and security on the continent. It is therefore expected that the foregoing principles will guide the Panel in fulfilling its mandate.

4.4   Mandate

The general purpose of the Panel is found in the PSC Protocol read with the modalities for the Panel. Articles 11(1), (3) and (4) of the PSC Protocol define the mandate of the Panel. The mandate of the Panel is to be supportive and advisory of the efforts of the Chairperson of the AU Commission and the PSC in the areas of conflict prevention. The Panel is also required to support and advise on the promotion and maintenance of peace, security and stability in Africa.

More specifically, in co-ordination with the PSC and the Chairperson of the Commission, and through the Special Envoys/Representatives and other emissaries, the Panel is required to carry out a number of activities. These activities include the facilitating of the establishment

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[78]   Protocol on Amendments to the Constitutive Act of the African Union adopted in Maputo, Mozambique on 11 July 2003. As of May 2007, the Protocol had not entered into force. The Protocol amended art 4(h) of the AU Constitutive Act to include intervention in the event of 'a serious threat to legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council'.

[79]   A Salim, quoted in C Peck *Sustainable peace: The rule of the UN and regional organisations in preventing conflict* (1998) 160.

of channels of communication engaging parties involved in a dispute with the view of preventing such dispute from escalating into conflict. Another activity is the carrying out of fact-finding missions as a means of conflict prevention.[80] The Panel may also conduct shuttle diplomacy between parties unwilling to engage in formal talks; assist and advise mediation teams engaged in formal negotiations; and develop and recommend ideas and proposals that can contribute to promoting peace, security and stability on the continent.[81]

In its operation, the Panel may issue a press release or a statement, or a communication in any other form it considers appropriate, on any matter under its consideration.[82] Being some of the most viable means through which the public can become aware of the activities of the Panel, it is important that the Panel makes good use of these communication mechanisms. The recent press statement by the Panel indicates a reason to be hopeful. In the statement, the Panel informs of an exchange of views on tensions and crises associated with electoral processes in Africa.[83] More is, however, expected of the Panel in view of its mandate. It is envisaged that the Panel will routinely pronounce on issues of conflict as the moral weight carried by such pronouncements may go a long way in dousing tensions.

Certain ambiguities, however, exist in terms of the Panel's mandate, which require clarification. It is not certain whether the Panel can intervene in the disputes involving states who, though members of the AU, have not ratified the PSC Protocol. Argument can be made in support of the proposition that the Panel can and that such position should be adopted in its manner of operation. A reason for this is that, although article 22 of the PSC provides for ratification by a simple majority of the member states before entering into force, the PSC Protocol seems different from other African Protocols. These other Protocols include the Protocol on Amendments to the Constitutive Act (Amendment Protocol) and the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan–African Parliament.

For instance, while article 13 of the Amendment Protocol makes it clear that to be bound by the Amendment Protocol, state parties to the Constitutive Act have to ratify the Amendment Protocol, the PSC Protocol adopts a different approach. Article 1(i) of the PSC Protocol refers to the 'member states of the African Union' and not to member states of the PSC Protocol only. Article 3(a) of the PSC Protocol goes further to support this uniqueness by stating that the objectives for which PSC is established shall be to 'promote peace, security and stability in Africa' and not in state parties to the Protocol only.

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80 n 10 above,) paras III(1)(a)-(c).
81 n 10 above, para III(1)(d).
82 n 10 above, para VI.
83 Press statement of the Panel of the Wise, 2nd meeting, 17 July 2008, Addis Ababa, Ethiopia.

The foregoing shows that the PSC Protocol must have been intended to bind all AU member states. This means that the Panel is empowered to intervene in disputes involving any member states of the AU even though they have not ratified the PSC Protocol. Indeed, the PSC has in the past intervened by sanctioning countries that have not ratified the PSC Protocol. Examples of such member states include Côte d'Ivoire,[84] Guinea Bissau, and the Democratic Republic of Congo in whose reconciliation processes the PSC is involved.[85]

Consequently, the Protocol appears to differ from the international law of treaties and the principle of *pacta sunt servanda*.[86] The justification for this exception may well be because the PSC Protocol considers the issue of promotion of peace and security as very urgent in Africa. The promotion of peace and security may also be argued as an obligation *erga omnes,* the observance of which all states may have an interest.[87]

4.5 Scope of mandate

There is a potential overlap in the interaction of the Panel and Special Envoys/Representatives with the PSC and the Chairperson of the Commission. Widely regarded as respected, experienced and impartial diplomats,[88] these personalities are dispatched to travel to areas in conflict to help reduce tensions and resolve disputes. At a glance, the functions of the Panel may appear to be a duplication of the responsibilities of these other mechanisms. However, given the unimpressive contributions made by Special Envoys/Representatives mechanisms to conflict prevention in Africa,[89] greater involvement is perhaps more preferable for the Panel in conflict prevention. This preference is premised on the fact that the members of the Panel are non-partisan and independent,[90] and are therefore best placed to perform in such role rather than diplomats as the case with the special envoys.

In all, it would seem from this assessment that an amendment of the membership, norms and mandate scope of the Panel is required.

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[84] Côte d'Ivoire ratified the the PSC Protocol on 24 August 2007 http://www.africa-union.org/root/au/Documents/Treaties/List/Peace%20and%20Security%20Protocol.pdf (accessed 13 September 2009).

[85] F Viljoen *International human rights law in Africa* (2007) 216.

[86] Vienna Convention on the Law of Treaties 1969, art 26.

[87] Vienna Convention on the Law of Treaties 1969, art 53.

[88] n 10 above, para III(1)(d) of the Modalities and PSC Protocol art 10(2)(b), which place a similar responsibility on the Panel and Special Envoys in their relationship with the Chairperson of the African Commission.

[89] Zartman (n 33 above) 2-3.

[90] Ambassador Ramtane Lamara, AU's Commissioner for Peace and Security, stamped the Panel with three seals, namely, 'seals of experience, independence and hope' in 'AU's Panel of the Wise gather to discuss conflicts and peace building in Africa' *Sub-Saharan Informer* 22 July 2008 http://www.ssinformer.com/news/africa/african_union/2008/July/18/Aup_18_08_08_001.html (accessed 10 September 2008).

This is in order to enable it to discharge its role more effectively in the African peace and security architecture.

5   The role of the Panel of the Wise

In analysing the mandate of the Panel of the Wise in the preceding section of this article, although reference was made to the purpose of the Panel, this was not discussed. This part of the article explores the potential role of the Panel more closely. For reasons of convenience, the role is discussed under two main heads, namely, peaceful interventions and peace and security promotion.

Although the role of the Panel is generally complementary of the PSC and the Chairperson of the African Commission, in respect of peaceful interventions, identifiable functions of the Panel are in terms of article 6(b) early warning and preventive diplomacy, (c) peace making, including the use of good offices, mediation, conciliation, and enquiry. On the other hand, the mandate on peace and security promotion involves articles 6(a), (d), (e) and (f) of the PSC Protocol, namely, promotion of peace, security and stability in Africa, peace support operations and intervention, peace building and post-conflict reconstruction, and humanitarian action and disaster management.

5.1   Peaceful interventions

Considering that the functions of the Panel in the area of peaceful interventions are only practicable when applied to practical challenges, they are discussed under two sub-heads, pro-democratic and humanitarian interventions. The preference for democratic and humanitarian interventions is informed largely by the challenging developments in those areas which have implications for the mandate of the Panel. In discussing these developments, the main argument here is that the Panel can assume leadership in setting the agenda and tone of action that will help support democratisation and address humanitarian concerns in Africa. Practical examples of what the Panel might do are provided.

5.1.1   Pro-democratic interventions

Defined by Whitehead as a progress 'towards a more rule-based, more consensual and more participatory type of politics',[91] in Africa, democratisation is explained in the form of waves which became almost unstoppable from the mid-1990s.[92] In spite of the excitement

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[91]   L Whitehead *Democratisation — Theory and experience* (2002) 27.

[92]   See C Legum (ed) *Africa contemporary record* (1996-1998); C Young 'Africa: An interim balance sheet' (1996) 7 *Journal of Democracy* 53 54; SP Hutchington *The third wave of democratisation in the late twentieth century* (1991); J Wiseman *Democracy in black Africa: Survival and revival* (1990).

caused by these waves, commentators observe that the political tem-
peraments of African countries in grasping with democratic challenges
are a reason for concern.[93] On this point, Olukoshi notes:[94]

> Elections are held routinely, robust constitutions have been produced,
> multi-party systems are registered in large numbers, military incursions
> into formal arena of governance are rare. Nevertheless, the quality of the
> political systems that are in the making as measured by thier inclusiveness,
> representatives, and accountability is in serious doubt and the feeling is
> widespread across the continent that so far, in matters of political reform,
> *plus ca change, plus c'est la meme-chose.*

Issues around 'inclusiveness, representatives and accountability' are
reflected in the reluctant recognition of opposition parties, electoral
conflicts and self-determination agitations which have featured promi-
nently on the African political landscape. Addressing these issues is
therefore necessary in the interest of democratic consolidation in
Africa.

The Panel may be engaged in addressing some of these democratic
concerns. The obligation for such pro-democratic interventions is bol-
stered by article 4(h) of the Constitutive Act of the AU which empowers
the AU to intervene in respect of grave circumstances including a
serious threat to legitimate order. This position is also accommodated
under article 4(j) of the PSC Protocol. Further reinforcing this position
are other instruments that prescribe interventions, particularly where
there is a serious threat to legitimate order.

Significant examples of such instruments include the OAU Decla-
ration on the Framework for an OAU Response to Unconstitutional
Changes of Government (Lomé Declaration)[95] and the Charter on
Democracy and Unconstitutional Change of Government (Charter on
Democracy). For instance, once diplomatic initiatives have failed, article
25(1) of the Charter on Democracy empowers the PSC to suspend the
erring party from the exercise of its right to participate in the activities
of the region.

Interventions by the PSC to restore constitutional or democratic
order have lately taken other shapes. For instance, in 2005 the PSC
suspended Togo from participating in the activities of all the organs
of the AU 'until such a time when constitutional legality is restored'.[96]
Different measures of interventions are also noticeable in Burundi,

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93   M Bratton *et al Public opinion, democracy and market reform in Africa: Regime transi-
     tions in comparative perspective* (2005); E Gyimah-Boadi (ed) *Democratic reform in
     Africa: The quality of progress* (2004); JF Bayart *The state in Africa: The politics of the
     belly* (1993).

94   A Olukoshi 'Assessing Africa's new governance models' in J Oloka-Onyango &
     NK Muwanga (eds) *Africa's new governance models: Debating form and substance*
     (2007) 3-4.

95   Lomé Declaration, AHG/Decl 5 (XXXVI) 2000.

96   AU Doc PSC/PR/Comm(XXV), 25 February 2005, para 3. Communiqué of the 25th
     meeting of the PSC.

Comoros, Liberia, the Democratic Republic of Congo (DRC), Guinea-Bissau, Sudan and Côte d'Ivoire.[97] In Burundi, the PSC spearheaded the Constitutional Referendum of 25 June 2006 and multi-party elections for the National Assembly in November 2006.[98] The PSC played a crucial role in the elections in the DRC, Mauritania and in the reconciliation process, which contributed to the holding of the April-May presidential elections in the Comoros.[99]

In addition to assisting the PSC and the Chairperson of the African Commission, the Panel can on its own initiative, and as part of its early warning measures, intervene to support Africa's democratic efforts. From time to time, the Panel may engage civil society in setting the tone for good governance in Africa. This could be effected through regular discourse on issues that impact on democratic practice and are capable of giving rise to conflict situations. The Panel could focus on issues such as violence and self-determination, conflict and political participation, as well as elections in Africa.

Although regional discourse is vital in raising awareness and sustaining its tempo, it is unlikely to achieve much without being supported with objective pronouncement by the members of Panel. Consequently, in line with article 11(4) of the PSC Protocol, the Panel can pronounce on such issues as they affect democratic development in Africa. When done consistently on deserving matters, it will help shape political behaviour in Africa. Similarly, in deserving circumstances, the Panel may use good offices, and facilitate mediation as well as conciliation among key actors involved in democracy-threatening issues.

5.1.2 Humanitarian interventions

Traditionally, the term humanitarian intervention describes the threat or use of force by a state or group of states, designed to compel a sovereign to respect fundamental human rights in the exercise of its sovereign powers.[100] The idea of humanitarian intervention has been argued and expanded to cover interventions designed to ensure the safe delivery of humanitarian assistance to a population in dire need, particularly where it is necessary to avert mass starvation or other immediate threats to life.[101]

Through effective early warning mechanisms, the Panel can on its own initiative alert the PSC and the Chairperson of the African Commission to deserving situations in Africa which may degenerate into

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[97]   AU Doc Assembly/AU/Decl 3(VI), Declaration on the Activities of the Peace and Security Council of the African Union and the State of Peace and Security in Africa.

[98]   Viljoen (n 85 above) 210.

[99]   AU Doc Communiqué PSC/PR/Comm (XVII), 20 October 2004.

[100]   DJ Scheffer 'Toward a modern doctrine of humanitarian intervention' (1992) 23 *University of Toledo Law Review* 264.

[101]   RE Gordon 'Humanitarian intervention by the United Nations: Iraq, Somalia, and Haiti' (1996) 31 *Texas International Law Journal* 43-44.

humanitarian crises. Similarly, the Panel can intervene in inter-state as well as intra-state tensions before they become full-blown conflicts with its attendant humanitarian crisis. As Kindiki argues, the intervention of the Panel in situations of armed conflicts where massive violations of human rights are taking place may be helpful in reconciling warring parties, given Africans' respect for elders.[102]

In order to enable the Panel to perform the foregoing, a secretariat that engages in a permanent monitoring and collection of information on the security situation in Africa is required.

5.2 Peace and security promotion

The role of the Panel in relation to peace and security promotion is encapsulated in the PSC Protocol and its functions.[103] There are, however, other AU instruments which implicate peace and security promotion, and consequently the potential role of the Panel. The African Charter on Human and Peoples' Rights (African Charter), for instance, provides that 'all peoples shall have the right to national and international peace'.[104] Also in establishing the Conflict Management Mechanism, the OAU Declaration on the establishment of a Mechanism for Conflict Prevention, Management and Resolution (Cairo Declaration) enunciates the promotion of peace and security in Africa as a matter of necessity.[105] The UN Secretary-General's report of 1998[106] deals with the promotion of durable peace in Africa. Similarly, as a demonstration of its commitment to peace, security and stability, the OAU Ministers' Grand Bay Declaration of 16 April 1999 acknowledges that the observance of human rights is a key tool for promoting collective security, durable peace and sustainable development.[107]

In terms of its mandate, the AU Constitutive Act requires the AU to promote peace, security and stability on the continent.[108] The right of member states 'to live in peace and security'[109] and the right of every member state to request intervention from the AU in order to restore

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[102] K Kindiki 'The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: A critical appraisal' (2003) 3 *African Human Rights Journal* 116.

[103] PSC Protocol, art 6.

[104] Adopted by the OAU in Nairobi, Kenya, on 27 June 1981 and entered into force on 21 October 1986, art 23.

[105] Adopted by the 29th ordinary session of the Assembly of Heads of State and Government of the OAU, held in Cairo, Egypt, 28 to 30 June 1993.

[106] UN Secretary-General's Report on the Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa (1998), adopted by the UN General Assembly on 16 December 1998 Res 53/92 http://www.un.org/ esa/africa/ reports.html (accessed 10 October 2008).

[107] Adopted by the First OAU Ministerial Conference on Human Rights in April 1999, Preamble.

[108] AU Constitutive Act, art 3(f).

[109] AU Constitutive Act, art 4(i).

peace and security are also highlighted in the AU Act.[110] The need for the promotion of peace and security is also a component of the 2003[111] and 2004[112] reports of the Chairperson of the AU Commission and forms part of its strategic programme of action.[113] There are also statements of support for peace and security promotion from other regional bodies, such as the G8[114] and the African Caribbean Pacific Group of States.[115]

Peace and security are, however, not straightforward concepts, as depicted in the Latin maxim, *Si vis pacem para bellum* ('if you want peace, prepare the war').[116] The same contradictions have emerged strongly in Western societies over the past few years, dividing public opinion into two major groups. These are namely those supporting and those against military interventions to enforce or keep peace.[117]

Traditionally, too, national security is defined in terms of the ability of a state to protect its interests from external threats and conflicts.[118] There is, however, a growing debate on the need to expand the traditional notions of security to address non-traditional threats and so develop a more comprehensive approach to security.[119] The trend now

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[110] AU Constitutive Act, art 4(j).

[111] Reports of the Chairperson of the African Union Commission delivered at the 7th ordinary session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Heads of State and Government Level in Addis Ababa, Ethiopia, 4 February 2003 (Central Organ/MEC/AHG/2 (VII)) paras 28-180.

[112] Report of the Chairperson of the Commission on the Establishment of a Continental Peace and Security Architecture and the Status of Peace Processes in Africa (2004) delivered at the launch of the Peace and Security Council in Addis Ababa, Ethiopia, 25 May 2004 (PSC/AHG/3 (IX)).

[113] Commission of the African Union: 2004–2007 Strategic Plan Vol 2 http://www.africa-union.org/AU%20summit%202004/volume%202%20final%20-%20English%20%20June%202004.pdf (accessed 11 September 2008) 13-14.

[114] The G8 Summit held in Gleneagles, UK, from 6 to 8 July 2005, renewed its commitment to Africa and support for NEPAD; http:// www.g8.gov.uk/servlete_operations (accessed 20 August 2008).

[115] Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its member states, of the other part (Cotonou Agreement) (2000) signed in Cotonou, Benin, on 23 June 2000. Art 10(5) emphasises that broadly-based policies to promote peace and to prevent, manage and resolve violence conflicts shall play a prominent role in the dialogue of the partnership; http://europa.eu.int/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100 (accessed 12 September 2008).

[116] Paraphrased from Vegetius, quoted in M Sarrica & A Contarello 'Peace, war and conflict: Social representations shared by peace activists and non-activists' (2004) 41 5 *Journal of Peace Research* 549.

[117] Sarrica & Contarello (n 116 above) 549.

[118] K Bajpai 'Human security: concept and measurement' John B Kroc Institute *Occasional Paper* 19 August 2000 http:// www.nd.edu/~krocinst/ocpapers/op_19_1.PDF (accessed 15 October 2008).

[119] B Buzan *People, states and fear: An agenda for International security in the post-Cold War era* (1991) 96-107; Human Development Report: New dimensions of human security. http://hdr.undp.org/en/media/hdr_1994_en_overview.pdf (accessed 15 October 2008).

is therefore an expansion of the security paradigm to address rapidly-growing non-traditional threats to security, including 'the struggle for resources embedded in the pursuit of energy, security, and environmental degradation'. Other threats include forced migration, international terrorism, insurgency, ascendancy of non-state actors in drugs, arms, money laundering, and financial crime organisation.[120]

Whether the concept of peace is construed as supporting or against military interventions to enforce or keep peace, there can be little doubt that the Panel should play the role of ensuring that force is employed as a matter of last resort when all peaceful modes have failed. This can be achieved by involving the members of the Panel not only in peacemaking and building efforts, but also in peace enforcement measures. In the latter, the Panel should be interested in likely disputes or agitations that may emerge from the application of force, or the threat of its use, to maintain or restore peace and order.

In addition to involvement in disputes, the Panel should be engaged in addressing, or at the very least pronouncing, on the issues of non-traditional threats to security. This is necessary because non-traditional threats to security have been reported as capable of producing the displacement and mass migration of peoples within and beyond national borders.[121] Even where the displacement or migration of people becomes inevitable, the Panel should play a significant role to negotiate, where appropriate, the proper treatment for mass migrants. Experience in Africa has shown serious violations of the rights of refugees. In time past, Nigeria had expelled refugees from Chad.[122] Kenya and Zimbabwe failed to protect Somali and Mozambiquan refugees, respectively.[123] Senegal did not recognise Mauritanian expellees as refugees.[124] More recently, South Africa's treatment of people fleeing hardship in Zimbabwe is not remarkable.[125] This trend offends the spirit and provision of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention).[126]

Article 11(1) of the OAU Refugee Convention enjoins states 'to use their best endeavours ... to receive all refugees'. A major gap in this instrument is that it does not provide for a monitoring mechanism.

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[120] D Banerjee 'Security studies in South Asia: Change and challenge' (2000) *Manoha* 50.

[121] UN Secretary-General Boutros Boutros-Ghali prepared the ground-breaking 'Agenda for peace' pursuant to the request of the Security Council meeting at the Heads of States and Government level held on 31 January 1992, para 13.

[122] Lawyers Committee for Human Rights *African exodus: Refugee crisis, human rights and the 1969 OAU Refugee Convention* (1995) 87-89.

[123] n 122 above, 64-71 78-80.

[124] n 122 above, 54.

[125] 'The Zimbabwe situation' http://www.zimbabwesituation.com/oct21a_2008.html (accessed 25 October 2008).

[126] OAU Doc CAB/LEG/24.3 adopted 10 September 1969, entered into force 20 June 1974.

In promoting dignified treatment, not only of the refugees but internally displaced persons, the Panel may in this regard leverage on the respectable personalities of its members to intervene by entering into political dialogue with non-co-operative states. This can be achieved by working together with the Special Rapporteur on Refugees, Asylum Seekers and Displaced Persons in Africa. This, no doubt, is consistent with the mandate of the Panel which allows it to complement the efforts of other AU emissaries in facilitating political dialogue among parties as a measure of conflict prevention.[127]

With respect to terrorism and the role of the Panel, the relevant normative framework includes the OAU Convention on the Prevention and Combating of Terrorism (Anti-Terrorism Convention), the AU Declaration against Terrorism,[128] and a Plan of Action for the Prevention and Combating of Terrorism.[129] These instruments afford the PSC a wide mandate for combating and preventing terrorism which the Panel in its advisory role may utilise in promoting regional peace and security. The PSC is, for instance, given the mandate to 'co-ordinate and harmonise continental efforts in the prevention and combating of international terrorism'.[130] Its other functions include the monitoring of the implementation of the Anti-Terrorism Convention.[131]

A crucial step to ensure the fulfilment of the above functions was the establishment in 2004 of the African Centre for the Study and Research on Terrorism as a structure of the AU Commission and the PSC to conduct studies and provide training related to terrorism in Africa.[132] It is envisaged that the Centre will provide useful information that the Panel can use in making informed pronouncements in line with its modalities which may guide the application of the Anti-Terrorism Convention.[133]

The Panel may also engage in other non-traditional conflict issues involving age-long violations of rights, particularly socio-economic rights such as land, water and a healthy environment. In line with its mandate, the Panel can conduct fact-finding missions to such nations where violations are rampant.[134] Visits of such a nature will go a long way to complement not only the activities of other AU emissaries. Such visits can also be used to sponsor further discussion and debate; guide the Panel in its pronouncements; and thereby promote peace and security in Africa.

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[127] n 10 above, para III(1)(e).

[128] M Ewi & K Aning 'Assessing the role of the African Union in preventing and combating terrorism in Africa' (2006) 15 *African Security Review* 32 38.

[129] AU Doc Mtg/HLIG/Conv.Terror/Plan (I), 11-14 September 2002.

[130] PSC Protocol, art 3(d).

[131] PSC Protocol, art 7(1)(i).

[132] AU Doc Mtg/HLIG/Conv.Terror/Decl (II)Rev 2, 13-14 October 2004.

[133] n 10 above, paras II(3) & VI.

[134] n 10 above, para III(1)(c).

In the following sub-section, I identify and discuss the possibilities that may assist the Panel in promoting peace and security in the African region.

5.3 Internalising the promotion of peace and security in Africa: Possibilities for the Panel

The functions of the Panel empower it to develop and recommend ideas and proposals that can contribute to promoting peace, security and stability on the continent.[135] The possibilities which the Panel can exploit to push the internalisation of the promotion of peace and security in Africa are discussed below.

5.3.1   National constitutions and peace education

Promoting a culture of peace at the national level seems to be the real challenge. This is because threats to peace and security often start at the national level. If there are problems with peace at the national level, they will be compounded at the sub-regional and regional levels. While there are significant contributions that the Panel can make to peace promotion, these may remain elusive unless a necessary framework exists for that purpose at the national level. The constitutional framework of states must, therefore, at the very least, reflect the aspiration of states towards peace.

Although most constitutions of African nations do express the general intention of building peaceful and secured societies, these constitutions rarely codify peace as a human right.[136] This does not serve to provide or advance an appropriate framework to encourage peace education as a means of building a culture of peace. Therefore, it is envisaged that, in line with its functions, the Panel will engage in initiatives such as an audit of national constitutions with the view to facilitating an appropriate framework for peace education in the AU member states.[137]

5.3.2   Sub-regional and regional possibilities

Most sub-regional organisations in Africa were established to address economic and social issues. Many of these organisations have, however, revised their mandates to incorporate pervasive challenges facing Africa in the area of peace and security.[138] Evidence of this is to be

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[135] n 10 above, para III(1)(h).

[136] The 2006 Constitution of DRC, art 23, which guarantees the right of people to peace and security, is an example of an exception to the trend.

[137] n 10 above, para IV(8).

[138] The Infrastructure of Peace in Africa Assessing the Peace-Building Capacity of African Institutions *A Report submitted by the Africa Programme of the International Peace Academy to the Ford Foundation* (2002) 23.

found in documents of ECOWAS, the Intergovernmental Authority on Development (IGAD) and SADC.

Article 21 of the ECOWAS Protocol creates the Council of Elders. The IGAD,[139] at least in terms of its principles, support the peaceful settlement of inter- and intra-state conflicts through dialogue; and maintenance of regional peace, stability and security.[140] The mediation of the Zimbabwe crisis under the platform of SADC shows the capacity and interest of that organisation in the promotion of peace, stability and security.

The Panel may either incorporate such personalities at the sub-regional level as part of the Pool of the Wise of the architecture. This is particularly necessary if the AU and the RECs are to form a single security architecture, as envisioned in the PSC Protocol.[141]

In addition to the above, the functions of the Panel envisage a relationship between the Panel and other organs of the AU. These organs are the Assembly, the Pan-African Parliament (PAP) and the African Commission which in their respective ways contribute to the promotion and maintenance of peace, security and stability in Africa.[142] Though not specifically mentioned in the functions, possibilities do also exist for the Panel to relate with other programmes of the AU, such as the African Peer Review Mechanism (APRM).

Upon invitation by the AU Assembly,[143] the Panel may draw the attention of the Assembly to pertinent issues in Africa capable of escalating into conflict and make recommendations on how they can be curtailed. In the exercise of its deliberation and oversight functions, the PAP may embark upon fact-finding missions followed by resolutions and recommendations. In that respect, the Panel may build on such recommendations by following up on issues relating to its mandate or using such issues in setting its agenda.[144] Once the report from the APRM process is tabled in the REC to which the state belongs, the African Commission, the PAP and the PSC,[145] the Panel can use information from the report to inform its programme of action on conflict prevention in respect to a particular state.

When entertaining inter-state communications, the African Commission is mandated 'to reach an amicable settlement'.[146] In the case of individual communications, as Viljoen argues, the African Commission

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[139] Adopted by the Assembly of Heads of State and Government in Nairobi, Kenya, 21 March 1996 http://www.igad.org/about/agreement_establishing_igad.pdf (accessed 8 October 2008).

[140] IGAD Agreement, arts 6(a) & (c).

[141] PSC Protocol, art 16(1).

[142] n 10 above, para VII(2); see also PSC Protocol, arts 18 & 19.

[143] n 10 above, para VII(2).

[144] PSC Protocol, art 18.

[145] As above.

[146] African Charter, art 52.

only assists in transmitting a reconciliatory response of a state to the complainants.[147] It appears therefore that a window of opportunity exists for a referral from the African Commission to the Panel of serious issues which are consistent with the mandate of the Panel on mediation.

6 Global partnerships

Most international conferences on African development constantly advocate the 'ownership' by African countries of their development processes and 'partnership' by the international community in support of such ownership.[148] The G8 expressed an intention to support Africa's efforts to build a peaceful and stable Africa.[149] Similar sentiments have been expressed by the European Union — African, Caribbean and Pacific Group of States Partnership.[150] In line with the PSC Protocol,[151] the Panel may explore these expressions of goodwill for the development of its capacities and to publish its activities. The latter will not only help in raising the level of awareness of its efforts to the larger world but, most importantly, it will help make its voice a moral force and consequently project the relevance of its involvement in the cause of peace and security promotion in Africa.

7 Conclusions and recommendations

This article set out to investigate whether the Panel of the Wise can make a difference in the African peace and security architecture. Although only recently established, such an investigation cannot be premature. This is in view of the fact that a well-conceived concept is different from a well-designed and implemented concept.

Evidence from different parts of Africa and post-colonial national constitutions demonstrates that the concept of the wise is exemplified in the elders and useful in the areas of conflict prevention and the maintenance of peace and security. Therefore, the notion behind the

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[147] Viljoen (n 85 above) 330.

[148] TICAD Tenth Anniversary Declaration (TICAD III) (2003) adopted at the Third Tokyo International Conference on African Development held in Tokyo, Japan, from 29 September to 1 October 2003 http:// www.ticad.net/decla ration2003.pdf (accessed 20 September 2008).

[149] The G8 Summit held in Gleneagles, UK, from 6 to 8 July 2005, renewed its commitment to Africa and support for NEPAD http:// www.g8.gov.uk/servlete_operations/ (accessed 20 September 2008) para 8.

[150] Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its member states, of the other part (Cotonou Agreement) (2000) art 10(5).

[151] See art 17 on the relationship betweeen the PSC and the UN and other international organisations.

introduction of the Panel into the AU peace and security architecture is at the very least a renaissance of the concept of the wise in most indigenous African settings.

In examining the design of the Panel, weaknesses are highlighted in terms of its membership, norms and scope of mandate. Limiting the membership of the Panel to five seems to fly in the face of the spontaneity of conflicts and potential crises in Africa. It also contradicts the vast resource of dignified women and men in Africa who can be engaged in preventing conflicts and promoting peace in Africa. Excluding individuals from submitting proposals to the Panel may not help the ownership of the mechanism by individuals. Also, an overlap of functions may arise in the dealings of the Panel and the Special Envoys/Representatives with the PSC and Chairperson of the Commission.

In terms of the role of the Panel relating to peaceful interventions, two areas which have implications for the mandate of the Panel are identified and discussed, namely, pro-democratic and humanitarian intervention. Also discussed is the role of the Panel in the areas of peace and security promotion, as well as the internalisation of a culture of peace in Africa.

7.1   Recommendations

The Panel of the Wise should be redesigned and operated in a way that will allow it to function as a Pool of the Wise. In designing a Pool of the Wise, lessons can be drawn from the ECOWAS model. The modalities for the operation of the Panel should clearly permit individual persons to submit proposals for inclusion in the agenda of the Panel. A better approach to the potential overlap between the special emissaries, representatives, envoys and the Panel is to depend on the Panel for initiatives on conflict prevention and mediation.

Vast resources to gauge the tempo of peace and security in Africa perhaps exist in the activities of other organs or programmes of the AU. The Secretariat of the Panel should therefore follow up on the activities of organs or programmes such as the PAP, the African Commission and the APRM to inform its agenda. Efforts aimed at encouraging national constitutions to establish an institution and mechanism similar to the Panel are also necessary for peace promotion.

It is necessary for the Panel to be proactive about its pronouncements and publicity. More than anything else, this remains the effective way by which the Panel can make its presence known to the stakeholders whose interests it is meant to serve. The Panel of the Wise is well conceived. If properly designed and operationalised, it will make a difference in the peace and security architecture of the African Union.