

The African Standby Force: major issues under ‘Mission Scenario Six’

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The African Standby Force is a key institution for the implementation of the peace and security architecture in the African Union (AU), the continental organisation of African States. The AU is given the right to intervene in its member states to pre-empt or bring to a halt the genocides, crimes against humanity and war crimes. The African Standby Force (ASF) is the AU organ mandated to implement the AU’s right of intervention by using military force inside member states. This article analyses the mandate and the role of the African Standby Force in implementing the AU’s right of intervention and appraises the prospects and challenges of military intervention by the ASF. It will be argued that there is a need for clarity of doctrine and sustainable funding system to make the African Standby Force an effective organ of military intervention under mission scenario six.

Introduction

The call for the establishment of a continent wide military force in Africa began well ahead of the establishment of the Organisation of African Unity (OAU) in 1963.¹ Already in 1961 the Casablanca group led by Kwame Nkrumah, the first President of Ghana, called for the establishment of an African High Command primarily to defend the sovereignty and territorial integrity of the newly independent African States (Legum 1963: 187-188). However, the majority of the states that established the OAU in 1963 rejected the idea of a continental military force and established, instead, a defence organ called the Defence Commission.

The OAU Defence Commission was established as one of the specialised commissions of the OAU with the general aim of coordinating defence policies of OAU member states and looking into the future possibility of establishing an Africa-wide security system (OAU 1963: Article XX). The Defence Commission held its first meeting in November 1963 in Accra, Ghana, where it came under the influence of Kwame Nkrumah, the ardent supporter of the establishment of an African High Command. Kwame Nkrumah, once again, proposed an African High Command empowered not only to defend African States but also to intervene in intra-state and inter-state conflicts in Africa (Amate 1986: 170-171). Nkrumah's proposal, which implicitly posed a threat to states' sovereignty, was met with strong opposition from majority of OAU members. Nkrumah, however, attempted to water down the opposition by arguing that the African High Command would only intervene in the internal conflicts subject to the invitation of the government of the host state (Zdenek 1969:72). Nonetheless, many OAU member states looked at Nkrumah's proposal with suspicion because of his radical views and high ambition for a politically strong African unity. Eventually, OAU member states rejected Nkrumah's second proposal for an African High Command. The idea of establishing an Africa-wide security force was not realised under the OAU. Nevertheless, a number of propositions that include the

¹ The OAU was a continental organization established in September 1963 in Addis Ababa, Ethiopia. The OAU was replaced by the African Union in May 2001. All African states except Morocco are members of the African Union.

establishment of an African Task Force and a Collective Intervention Force were made by OAU member states and officials across the years.²

In May 2001, African States replaced the OAU with a new regional organisation, the African Union (AU). A year later, member states of the AU agreed to establish the African Standby Force for the purpose of, *inter alia*, military intervention inside AU member states against genocide, crimes against humanity and war crimes. The purpose of this article is twofold; first it explains the mandate and role of the African Standby Force in implementing the AU's right of intervention against genocide, crimes against humanity and war crimes; second, it appraises the prospects and challenges for the African Standby Force in implementing such right.

The African Union's right of intervention

The AU Constitutive Act specifies that the AU has the right to intervene in member states against the commission of war crimes, genocide and crimes against humanity (African Union 2000: Article 4(h)). Intervention under Article 4(h) of the Constitutive Act implies the use of forcible measures by the AU in a member State against the commission of war crimes, crimes against humanity and genocide. However, it is not clear what kind of forcible measures are included under Article 4(h). Forcible measures under intervention can range from the use of economic and political sanctions to the use of military force (ICISS Report 2001: 29).

The individual use of force among AU member states is prohibited (African Union 2000: Article 4(f)), whereas the use of military force against genocide, crimes against humanity and war crimes provided under Article 4(h) of the Constitutive Act is a collective right. The AU Common African Defence and Security Policy affirms that the commission of genocide, crimes against humanity and war crimes inside AU member states is a common security threat that requires

² See Imobighe (1980) on the various attempts made over the years.

collective response by all AU member states (African Union 2004a: Article 8(i) b and d). The power to pass the final decision to implement intervention under Article 4(h) of the Constitutive Act remains with the AU Assembly upon the recommendation of the Peace and Security Council (African Union 2000: Article 4(h); African Union 2002: Article 7(1) e). The Assembly of the AU is the supreme decision-making organ composed of the AU members' heads of state or appointed representatives. The ASF is the main organ that carries out the Assembly's decision in favour of military intervention and is accountable to the AU Peace and Security Council.

ASF intervention mandate and operationalisation

Article 13 of the Peace and Security Protocol declared the establishment of the ASF with the mandate of military intervention under Article 4(h) of the Constitutive Act based on the decision of the AU Assembly. In a first step towards the operationalisation of the ASF, a Policy Framework for the establishment of the African Standby Force was adopted at the third meeting of African Chiefs of Defense Staff in May 2003. The Policy Framework for the establishment of the ASF was presented to the third extraordinary meeting of the Executive Council of the African Union by the Chairperson of the AU Commission and further discussion on the draft policy framework were recommended (African Union Executive Council 2003). Thereafter, the second consultation meeting of African Chiefs of Defense Staff and African Ministers of Defense on the draft policy framework for the establishment of the African Standby Force took place in January 2004.

The result of the consultations was presented to the fifth Ordinary Session of the Executive Council of the AU which recommended its approval by the AU Assembly (African Union 2004b). The third Ordinary Session of the Assembly of the African Union approved the Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee and requested the Chairperson of the AU Commission to take all steps required for the

implementation of the Policy Framework document. Following the request of the Assembly, the AU Commission convened a meeting of experts that provided a roadmap for the operationalisation of the African Standby Force (African Union 2005). The Policy Framework for the establishment of the ASF (African Union 2004c) and the Roadmap for the operationalisation of the ASF (African Union 2005) will be used as tools of analysis in subsequent sections in an attempt to show the role of the ASF in implementing the use of military force under Article 4(h) of the Constitutive Act and point out the conceptual and practical gaps in such a role.

ASF mission scenarios and time of deployment

Based on the mandate of the ASF, the ASF Policy provides 6 scenarios for the ASF (See Table 1).

Table 1: ASF Mission Scenarios

<i>Mission Scenario 1:</i>	AU/Regional military advice to a political mission
<i>Mission Scenario 2:</i>	AU/ Regional observer mission co-deployed with UN mission
<i>Mission Scenario 3:</i>	Stand-alone AU/Regional observer mission
<i>Mission Scenario 4:</i>	AU/Regional peacekeeping force for Chapter VI and preventive deployment missions
<i>Mission Scenario 5:</i>	AU peacekeeping force for multidimensional peacekeeping mission
<i>Mission Scenario 6:</i>	AU intervention mission

(African Union 2004c: 3).

The mandate of military intervention of the ASF under Article 4(h) of the AU Constitutive Act is shown under 'mission scenario 6' as outlined above. The time for deployment for the ASF contingents in the above scenarios is 30 days for scenarios 1 to 4, 90 days for scenario 5 and 14 days for scenario 6, all beginning from the decisions of the AU Assembly and the Peace and Security Council to carry out the operations (African Union 2004c: 6-7). The relatively smallest period of deployment (14 days) is provided in case of military intervention under Article

4(h) of the Constitutive Act against genocide, crimes against humanity and war crimes. This is very logical taking into consideration that the stakes involved are high. However, deployment within the 14 days time period under Article 4(h) presupposes a high logistical and structural capability.

Mission scenario six and ASF composition

The ASF is not a single African army. It is rather a collection of sub-regional standby forces established by the five sub- regions, namely the eastern, western, northern, central and southern sub-regions of Africa. The major sub-regional economic communities in each sub-region are instrumental in the establishment of the ASF based on consultation with the AU Commission and the Peace and Security Council.³ Some of the sub-regional economic communities had previous experiences in the deployment of military missions. In this regard, the western and southern sub-regions are expected to lead in the operationalisation of their respective contingent of the ASF based on their past experience of collective action by the Economic Community of West African States and the Southern African Development Community respectively. However, it is worth noting that the idea of ASF is related to a sub-region rather than Economic Communities of the sub-regions. Thus, a contingent of the ASF can be established by sub-regional states in an independent arrangement that has little or no connection with the sub-regional economic mechanism. All Standby Forces in the sub-regions can be used for operations in other sub-regions (African Union 2004c: 20). If member states of the AU in a sub-region are unable to come together to establish their branch of the ASF, the ASF Policy provides that 'encouragement be given to potential lead nations to form coalition of the willing as a stop-gap

³ The plethora of sub-regional organisations with double membership of many states and the fact that all the sub-regional organisations are created primarily for economic cooperation made many of the the organisations unsuitable for the Africa-wide security framework. Currently the African Union recognizes eight sub-regional communities: the Economic Community of West African States (ECOWAS), the Common Market of East and Southern Africa (COMESA), the Economic Community of Central African States (ECCAS), the Southern African Development Community (SADC), the Inter-Governmental Authority for Development (IGAD), the Arab Maghreb Union (AMU), the Economic Community of Sahelo-Saharan States (CEN-SAD) and the East African Community (EAC).

arrangement, pending the establishment of regional standby forces arrangement' (African Union 2004c: 17).

At the initial stage, each sub-region is expected to establish a standby force at brigade level with an approximate number of 5 thousand troops per sub-region making the overall number of the ASF troops approximately 20,000 excluding the civilian elements and military observers. This initial number needs to expand after the completion of the initial period of operationalisation as it has become clear that single operations like the AU/UN Mission in Darfur or Somalia need more than 20,000 troops on the ground. The brigade in each sub-region is made up of multidisciplinary contingents located in their countries of origin ready for rapid deployment anywhere in Africa at appropriate notice (African Union 2002: Article 13(1)). The degree of readiness and general location of the contingents of the ASF in the countries of origin is decided based on AU Peace Support Standard Procedures to be developed by the AU Commission (African Union 2002: Article 13(2)).

On top of the five brigades, the standby force arrangement at each of the five sub-regions contains the following elements:

- a. A brigade (mission level) Head quarters and Support Unit of up to 65 personnel and 16 vehicles.
- b. Headquarter Company and Support Unit of up to 120 personnel
- c. Four light Infantry Battalions, each composed of up to 750 personnel and 70 vehicles.
- d. Engineer Unit of up to 135 personnel.
- e. Light Signals Unit of up to 135 personnel.
- f. Reconnaissance Company (Wheeled) of up to 150 personnel
- g. Helicopter Unit of up to 80 personnel, 10 vehicles and 4 helicopters.
- h. Military Police Unit up to 48 personnel and 17 vehicles.
- i. Light Multi-Role Logistical Unit of up to 190 personnel and 40 vehicles.
- j. Level 2 Medical Unit of up to 35 personnel and 10 vehicles
- k. Military observer Group of up to 120 Officers.
- l. Civilian Support Group consisting of logistical, administrative and budget components.

(African Union 2005: A-3)

The brigade level of composition for the ASF is taken as ideal for all scenarios indicated above with the exception of mission scenario 6. The ASF Policy provides that the complexities involved in military intervention under scenario 6 need a capability of more than a brigade level. Thus, the ASF Policy states that a nation 'with standing deployable Headquarters capacity of greater than brigade level, and with forces that are capable of seizing points of entry, ideally using airborne or airmobile assets' should lead the military intervention to pre-empt or bring to halt a genocide, crimes against humanity and war crimes (African Union 2004c: 17). To this end, the ASF Policy recommends the early identification of the lead nations for the purpose of military intervention under scenario 6 (African Union 2004c: 17). The idea is that once entry is secured by a lead nation in cases of military intervention inside a member state under mission scenario 6 the regional standby forces can be used as 'follow-on' forces (African Union 2004c: 31).

It is the intention of the ASF Policy that in the long run the AU should develop its own military capabilities and stop relying on lead nations for military intervention under mission scenario 6 (African Union 2004c: 5). In this regard, the following part of the final draft ASF Peace Support Operations doctrine provides the latest conception of ASF deployment under mission scenario 6 (military intervention under Article 4(h) of the AU Constitutive Act):

- a. Scenarios 4, 5, & 6: Single and / or Multi-Brigade Deployment. Normally the ASF will deploy complete brigades (either singly or more than one), especially in response to Scenarios 4,5,6 (AU peacekeeping force for Chapter VI, preventive deployments, multi-dimensional peacekeeping force for Chapter VI, preventive deployments, multi-dimensional peacekeeping missions, and AU interventions). This would involve the AU HQ, Regional organisations and ASF regional brigades and their Planning Elements (PLANELMS).
- b. Scenarios 3, 4, 5, & 6: Delegated Single-Brigade Deployment. A circumstance may arise whereby a Regional Organisation is mandated by the AU to meet the demands of Scenarios 3, 4, 5, 6. Again this is consistent with the vision of the ASF to deploy

integrated brigades. This reflects what has happened in the past and will likely happen in the future.

e. Scenarios 4 & 6: Lead Nation: Scenarios 4 and 6 missions that might require a nation to take the lead because of the urgency of the situation. The African Mission in Burundi is a good example where a nation agreed to take the lead. However, the development of the ASF with its regional structures will reduce the occasions when the lead nation concept is used.

(African Union 2006: Chapter 5, 4)

According to the above ASF Peace Support Operations doctrine, the deployment of forces for military intervention under Article 4(h) shall be executed through the ASF and reliance on the use of a lead nation concept should be limited to urgent situations. The plan to develop ASF capability for military intervention under Article 4(h) is a step in the right direction as the extended reliance on the use of a lead nation may bring unnecessary political factors and third state interests in military intervention under Article 4(h) of the Constitutive Act. The legitimacy of military intervention under Article 4(h) rests on the notion that intervention is a collective action rather than an action by a single state. Moreover, the lead nation concept presupposes the existence of stable and capable nation that can carry out the military mission, which is not currently the case in good numbers in Africa.

Mission scenario six and ASF time table of establishment

The ASF requires management and planning systems at the AU headquarters, sub-regional and national levels. At the AU level the Commission of the AU is expected to develop a Multidimensional Strategic Level Management Capability and a 15-person Planning Element (PLANELMS) with the aim of developing standard operating procedures for the ASF, the doctrine of the ASF, a continental command and communication system, a continental training concept, a continental standby system, and forging partnership with the UN Standby Arrangement System and other relevant organizations (African Union 2005: 6).

At the level of the sub-regions, member states of the AU in each sub-region need to establish the brigade headquarters and a 5-person regional PLANELMS with the aim of coordinating with the AU headquarters, directing management of sub-regional training and logistical infrastructures, and assessing the shortfalls in the regional brigade (African Union 2004c: 23, African Union 2005: 7). At national level, member states contributing contingents to the sub-regional brigade are expected to train the individuals and units that form part of the standby brigade in basic military tasks as well as in standardised doctrine based on the AU and UN standardised operating procedures (African Union 2004c: 23). AU member states contributing contingents are also required to allow access to the units and personnel that form part of the ASF by the relevant authorities from the sub-regional planning and management organs or the AU Commission for the purpose periodic reviews and verification of standards of training and shortfalls (African Union 2004c: 23, African Union 2002: Article 13(2)).

The initial time table for the establishment of the ASF provided under the ASF Policy has two phases. The first phase, which was envisaged to be completed by June 2005, included the plan to establish a strategic management capacity for scenarios 1 and 2 described above within the AU headquarters, while the sub-regions would establish the brigades for scenarios 1 up to 4 (African Union 2005: 1). In the second phase that runs up to June 2010, the AU plans to continue to develop its management capacity for scenarios up to the fifth level while the sub-regions 'will continue to develop the capacity to deploy a mission Headquarters for Scenario 4, involving AU/Regional peacekeeping forces' (African Union 2005: 1).

Even though the first phase of establishment of the ASF has taken beyond the time limit provided, considerable work has been done at the AU and sub-regional level. At the level of the AU, the development of procedures, and communication and information systems under the AU Commission continued in 2007 as part of the development of a strategic level management at continental level (African

Union Executive Council 2007: 13). Moreover, the AU Commission is currently finalizing the development of Peace Support Operations doctrine and standard of procedures of the ASF. At sub-regional level, the eastern sub-region has reported the establishment of the ASF eastern brigade in early 2005. The Eastern African Standby force has 5,500 troops with the planning headquarters in Kenya while the logistics and brigade headquarters is in Ethiopia (IRIN 2005). Similarly, by September 2005 the southern sub-region has reported the establishment of the southern ASF with its operational center in Botswana (Mantu 2005). The western and central sub-regions are also making the preparations to establish the branch of the ASF for their respective sub-region while the northern sub-region has not made any move so far.⁴

However, it is not clear why the above timetable provided under the ASF Roadmap has excluded the development of capabilities to mission under scenario 6. Moreover, the timetable does not provide any plan for the identification of the lead nation to cover situations under scenario 6 until the ASF has reached organisational and logistical capability to carry out intervention under Article 4(h). Unlike the ASF Roadmap, the ASF Policy provides that under the second phase of ASF development (up to June 2010) 'all regions should try to develop a standby brigade in this period, and those with existing brigades should increase their rapid deployment capability' (African Union 2004c: 40). The reference to the 'rapid deployment capability' under the ASF Policy may be taken as a reference to mission scenario six where deployment should occur within 14 days.

ASF doctrine and training for mission scenario six

The development of a doctrine for all ASF operations is primarily done at the AU level. In this regard the ASF Policy provides that 'the AU should consult closely with the UN to gain access to the latest UN peace operations doctrine and

⁴ See African Union (2005) pages 3 and 4 for specific actions by the sub-regions towards the establishment of the sub-regional branches with the exception of the northern sub-region.

training material and modify this as necessary to suit African conditions' (African Union 2004c: 24). Accordingly, the development of ASF doctrine by the AU is underway based on the UN experience in peace support operations.⁵ Both the ASF Policy and the ASF Roadmap singled out the development of doctrine for intervention purposes under Article 4(h) as an area that needs wider consultations. Thus, the ASF Roadmap provides that 'the AU would seek appropriate advice for the production of doctrine for intervention missions as envisaged in scenario 6' (African Union 2005: 10).⁶

Taking into consideration that the AU Constitutive Act is the first international treaty that provides for military intervention in member states to pre-empt or bring to halt the commission of genocide, crimes against humanity and war crimes, it is not surprising that the ASF Policy and the ASF Roadmap singled out the doctrine for military intervention inside member states as a special area that needs consultations and development of new doctrine. In this regard, the UN experience does not help much as the UN Charter does not allow military intervention inside member states against the commission of the specified human rights and humanitarian law violations.⁷ Thus, the development of a doctrine and procedures for the ASF military intervention inside member states makes the experience of the AU unique. The ASF Peace Support Operations Doctrine prepared by the AU Peace Support Operations department is dubious when it provides the nature and purpose of military intervention under Article 4(h) of the AU Constitutive Act in the following terms:

Protection of Fundamental Human Rights. PSO [peace support operations] interventions are increasingly into situations in which there are widespread and ongoing abuses of human rights and the

⁵ See African Union (2006).

⁶ See also African Union (2004c), paragraph 2.13 provides that 'in the case of intervention, the AU may wish to seek NATO and European advice.'

⁷ In recent times the UN has used its enforcement powers to intervene in intra-state conflicts through the interpretation of 'threat or breach of peace' criteria under Article 39 of its Charter. However, the interpretation of the criteria of 'threat or breach of peace' to stress the international implication of internal conflicts has been criticized as an attempt to unduly expand the meaning of Article 39 of the Charter and thereby the power of the Security Council.

commission of war crimes, crimes against humanity and genocide. Such abuses frequently occur in collapsed or collapsing states in which the rule of law has ceased to exist. Only a military component prepared for combat can operate in such an environment and create a secure environment in which civilian agencies can redress the underlying causes of the conflict and address the requirements of peace building. However, any military component will help deter human rights abuses by its presence and by any reports it may send to UNHCR and other human rights agencies.

(African Union 2006: Chapter 3, 7)

The above quotation underscores the developing AU doctrine on military intervention inside member states to pre-empt or bring to halt the commission of genocide, crimes against humanity and war crimes. The concept is flawed in many respects. First, military intervention under Article 4(h) of the AU Continuative Act and peace support operations are different. Peace support operations refer to operations of peacekeeping, peace enforcement and the related civilian operations of conflict prevention, peacemaking, peace building and humanitarian relief. As such, the rules of engagement for peace support operations are fundamentally different than military intervention. Second, even if one were to assume that there is standard definition for 'collapsed' or 'collapsing' states, it must be noted that the violations of human rights and humanitarian laws that are grounds for military intervention under Article 4(h) do not necessarily and always happen in 'collapsed' or 'collapsing' states.

Training of military and civilian personnel of the ASF is based on the guidelines prepared by the AU Commission. Member states who contribute contingents to the sub-regional ASF are expected to harmonise the training of designated force with standards that are provided at continental and sub-regional levels. All designated training centres for the ASF of the sub-regions and national schools of excellence in member states are required to follow the standard of training procedures developed by the AU Commission in training the ASF contingents. The AU Commission and sub-regional headquarters of the ASF are also

expected to make use of the UN training capabilities and centres to develop training plan for ASF contingents (African Union 2002: Article 13(16)).

The standard training guidelines include training in doctrine and in humanitarian law and international human rights law for the civilian and military personnel of the ASF (African Union 2004c: 8-9). In this regard it is worth pointing out that even though the aim of military intervention under Article 4(h) is not war *per se*, it is most likely to happen in a combat situation. As such ASF military forces are bound by the rules of international humanitarian law. Even though ASF forces are not 'State' forces in the strict sense of the word, their involvement inside a member state of the AU is governed by the rules applicable to international armed conflicts because the ASF forces are considered to be third parties inside a state.⁸

Moreover, depending on the specific case of intervention, the law of occupation under international humanitarian law applies in a situation where the ASF military forces control and administer a territory for the purpose of protecting the civilian population against genocide, crimes against humanity or war crimes. As an occupying power, the ASF military forces are bound by the obligations under the 1907 Hague Regulations and the Fourth Geneva Convention. The obligations include the respect for the sovereignty of the occupied territory, the duty to restore and ensure public order, the duty to limit the occupation and the duty to allow access to international humanitarian organisations.⁹ While humanitarian law and human rights law contain different sets of rules, there are areas of convergence between the two. The convergence between humanitarian law and human rights law is stronger in 'such matters as the right to life; the prohibition of torture and cruel, inhuman, or degrading treatment or punishment; arbitrary

⁸ See for instance Andreas Zimmermann, 'Preliminary Remarks on para.2(c)-(f) and para.3', page 264 on the characterisation of international armed conflict; see also Daphna Shrager (1996) page 333: 'In the legal literature, however, it has been the prevalent view that the law applicable to the United Nations forces engaged in internal conflicts should, to some extent at least, be the law governing international armed conflicts.'

⁹ See Hague Regulations (1907), articles 42-56; the Fourth Geneva Convention, articles 27-34 and articles 47-78.

arrest or detention; discrimination on grounds of race, sex, language, or religion; and due process of law' (Meron 2000: 266).

The application of human rights law is more apparent when the ASF is in occupation where the rights of the population need to be respected and protected by the ASF military and civilian personnel. The need to train ASF intervention forces in human rights (both civilian and military components) can not be emphasised enough. In the past it has been observed that the human rights violations and lack of discipline of the troops in Africa's peacekeeping operations such as ECOMOG's activities of looting and widespread promiscuity in Liberia and Sierra Leone affected the legitimacy of such operations (Durward 2006: 356). The main responsibility of training and ensuring enforcement of humanitarian and human rights laws by the ASF military and civilian personnel lies with the AU Peace and Security Council and the AU Assembly.

Mandating authority and chain of command under mission scenario six

As a rule all operations that are carried by the ASF should be mandated by the AU Assembly or the Peace and Security Council depending on the specific kind of operation (African Union 2004c: 4). In case of military intervention under Article 4(h) of the Constitutive Act, the AU Assembly authorises ASF deployment based on the recommendations of the Peace and Security Council. Once the intervention mission is authorised by the AU Assembly, the details of the specific tasks and modus operandi of the ASF under the intervention mission is worked out by the AU Commission and presented for approval by the Peace and Security Council (African Union 2002: Article 13(5)). After the detailed tasks and modus operandi of the ASF deployment is approved by the Peace and Security, it is the duty of the Chairperson of the AU Commission to monitor the implementation of the approved plan of action and report to the Peace and Security Council and the Chairperson of the AU Assembly (African Union 2002: Article 10(3) (b)).

The Chairperson of the AU Commission begins the implementation process by establishing the command and control line of the ASF intervention force. The ASF intervention force chain of command has the following ranks appointed by the Chairperson of the AU Commission: Special Representative or Head of Mission, a Force Commander, Commissioner of Police, Heads of civilian components and a Head of Mission Support (African Union 2002: Article 13(6) and (7); African Union 2006: 29-30). The overall control of the activities of the heads of the military, police and civilian components of the ASF in a mission is done by the Special Representative or Head of Mission, who reports to the Peace and Security Commissioner. The Peace and Security Commissioner is directly accountable to the Chairperson of the AU Commission. However, the Special Representative or Head of Mission can directly access the Chairperson of the AU Commission if necessary (African Union 2004c: 28).

The direct command and control of the ASF intervention mission by the AU helps to avoid the problems of accountability and management that arise because of the 'split personality' common in many peacekeeping and peace enforcement operations where contributing states and international organisations such as the UN have coordinated command and control. The fact that the ASF intervention mission is under full operational command and control of the AU means that the AU is responsible for any violations of humanitarian and human rights laws by the ASF civilian and military personnel.

Sustainability, reimbursement and funding

The ASF Policy correctly notes that 'the identification of broad sustainability, logistical support, and funding requirements are key components for the deployment of any peace operations' including military intervention under mission scenario six (African Union 2004c: 11). The problem of logistics is not only that of outdated communication and operational equipments but also the ability of the AU Commission and the sub-regional organisations to maintain modern logistical infrastructure and supply system. The standardisation of logistical equipments

among the contingents of the ASF in as much as possible is a very important element of successful operation. However, the ASF Policy laments that 'due to different development processes of Member State defence forces, equipment standardisation will not be possible across the whole spectrum of ASF military equipment' (African Union 2004c: 12). One kind of solution to bridge the gap that may exist between the different ASF contingents is the early identification and standardisation of areas where interoperability between contingents is crucial to the success of the ASF (African Union 2004c: 12).

ASF contingents under scenario 6 are expected to be self-sustainable for 90 (African Union 2004c: 11). In this regard, the Peace and Security Council may invite members contributing contingents for the ASF intervention mission to bear the cost of transportation and maintenance of their contingents for the first three months (African Union 2002: Article 21(6)). The AU is expected to refund the expenses incurred for the three months within a period of six months and to continue financing the intervention mission (African Union 2002: Article 21(7)). However, taking into consideration the economic power of most member states of the AU, the issue of sustainability of the ASF in the initial period of deployment may become a problem for many states contributing contingents thereby affecting the performance of the ASF. Moreover, the lack of a policy of reimbursement on the side of the AU might push member states away from contributing contingents to the ASF. The apprehension of member states of the AU on the lack of reimbursement for their forces that have participated in AU led operations was clear in the case of the African Mission in Sudan (AMIS). While AMIS suffered from lack of personnel, many member states of the AU suddenly declared their intention to send contingents to Darfur upon the announcement of the involvement of the UN in the administration of the new AU-UN hybrid mission to Darfur. As a first step towards a solution, the ASF Policy urges for the development of AU level reimbursement policy of costs incurred by the member states who contribute contingents of the ASF (African Union 2004c: 12-13).

Sustainability, reimbursement and logistics all point to the issue of funding. The issue of funding is the most crucial problem that may affect the whole ASF system both at its establishment and deployment levels. Funding under the ASF is needed for pre-deployment activities such as training, communication, logistical interoperability, planning at the AU, sub-regional and national levels, deployment and post deployment activities such as transportation and remuneration. Funding of the ASF system including intervention under mission scenario six comes from the Peace Fund established under the Peace and Security Council (African Union 2002: Article 21).

The primary source of the Peace Fund is the regular budget to the Union, known as the General Peace Fund (African Union 2002: Article 21(2)). In the 2006 assessment maximum of 6 per cent of the regular budget of the AU was transferred to the Peace Fund under the General Peace Fund category. However, the transfer of fund from the regular budget to the Peace Fund has been hampered by the lack of dedication of member states of the AU in paying up their assessed contributions to the regular budget. In 2007, the Chairperson of the AU Commission reported the gravity of the situation:

Member States' contributions to the regular budget are not always forthcoming, and arrears of contributions are mounting, extending even further the list of countries under sanction. As at the date of finalising this Report, the arrears stood at the high level of US \$ 14,626,331.77 for 2006, and a total of US\$ 42,923,575.27 brought forward from previous years, all amounting to US\$ 57,549,907.04. This situation is critical. I therefore make an urgent appeal to Member States that have not already done so, to pay up their contributions to the regular budget; and for those that have accumulated arrears, to clear these arrears to enable the Commission to function smoothly.
(African Union Executive Council 2007: iii)

The other major category of the Peace Fund is called the Special Contribution. Under the Special Contribution, the sources of the Peace fund are voluntary contributions from member states, the private sector and civil society as well as

individuals in member states and donations from non-member states (African Union 2002: Article 21(2)) whereas donations from sources outside of Africa are accepted in so far as they are 'in conformity with the objectives and principles of the Union' (African Union 2002: Article 21(3)).

Due to the failure of many AU member states to pay their assessed contributions to the budget of the Union, the Peace Fund is not in a position to cover the expenses of smaller observation missions let alone highly expensive ASF intervention missions under scenario six. Taking into consideration the high possibility of lack of funding for ASF missions, the Peace and Security Council Protocol mandates the AU policy organs to consider the situation of a mission and if required decide that AU member states cover the cost of operations authorised by the Peace and Security Council and the AU Assembly according to an assessment based on their scale of contribution to the regular budget of the Union (African Union 2002: Article 21(5)). Alluding to the acute problems of funding, the ASF Policy has also suggested the adoption of additional sources of revenue for the Peace Fund such as increasing the contributions of member states to the regular budget, involving insurance companies and the levying of peace tax in member states (African Union 2004c: 12, 33).

Conclusion

The operational dimension of the use of force under Article 4(h) of the Constitutive Act highly depends on the capability of the ASF. The Peace and Security Council Protocol and the ASF Policy have recognised military intervention under Article 4 (h) as one mission scenario for the ASF. However, the ASF Policy has also adopted the lead nation concept to secure entry points in military intervention under Article 4(h) to be followed by contingents of the ASF. The lack of single states militarily and economically capable to implement the single nation concept is a big challenge. In the long run the ASF capability should be enhanced to fully carry out military intervention under Article 4(h) without reliance on a lead nation. However, the timetable for the establishment of the

ASF does not show the AU plan and time framework to develop its capabilities to fully carry out intervention missions under Article 4(h).

The most pressing problem that may cripple the whole ASF system is the absence of sustainable funding system. Funding is very crucial for all activities ranging from management, training to deployment of the ASF. The ASF can not depend on voluntary contributions from donors. Neither can it be dependent upon unreliable sources that fail to materialise. The effort to establish a sustainable system of funding the ASF should be a top priority to the AU, sub-regional organisations, and member states. The AU may go beyond the continent in securing some form of arrangement with other international and regional organisations which can support the ASF effort in a predictable manner. However, the primary responsibility to provide the ASF with predictable and sustainable source of funding rests on the shoulder of member states of the AU.

The failure of member states to pay contributions to the regular budget of the AU has a negative impact on the capability of the ASF. AU member states should back up their declaration to establish the ASF with actual and long lasting financial commitment. More importantly member states should provide the financial means to run the ASF based on the logic that investment in the maintenance of peace and security in the continent amounts to buying security for their efforts on development and better life for their citizens. The implementation of military intervention under Article 4(h) of the Constitutive Act against the commission of genocide, crimes against humanity and war crimes ultimately depends on a well-financed and developed ASF system.

Bibliography

Amate, C.O.C. 1986. *Inside the OAU: Pan-Africanism in Practice*. London: Macmillan Publishers Ltd.

African Union. 2000. *Constitutive Act of the African Union*. OAU Assembly, Lome, Togo, 10-12 July; entered into force on May 26, 2001. Available at: http://www.chr.up.ac.za/hr_docs/documents/African_Union_Constitutive_Act.pdf (Accessed December 13, 2007)

African Union. 2002. *Protocol relating to the establishment of the Peace and Security Council of the African Union*. First Ordinary Session of the Assembly of the African Union Durban, South Africa, 9 July; entered into force on December 26, 2003.

African Union. 2004a. *Solemn Declaration on a Common African Defense and Security Policy*. Second Extraordinary Session of the African Union Assembly, Sirte, Libya, 27-28 February.

African Union. 2004b. *Decision on the African Standby Force and the Military Staff Committee*. Doc. EX.CL/110(V), Assembly of the African Union, Third Ordinary Session, Addis Ababa, Ethiopia, 6-8 July.

African Union. 2004c. *Policy Framework for the establishment of the African Standby Force and the Military Staff Committee*. Assembly of the African Union, Third Ordinary Session, Addis Ababa, Ethiopia, 6-8 July.

African Union. 2005. *Roadmap for the operationalisation of the African Standby Force*. EXP/AU-RECs/ASF/4(I), Experts' Meeting on the Relationship between the AU and the Regional Mechanisms for Conflict Prevention, Management and Resolution, Addis Ababa, 22-23 March.

African Union. 2006. *Peace Support Operations Doctrine, Final Draft*. Peace Support Operations Division, Peace and Security Directorate.

African Union Executive Council. 2003a. *Decision on the Report of the Third Meeting of the African Chiefs of Defense Staff*. Doc.Ext/EX/CL/3(III), Executive Council, Third Extraordinary Session, Sun City, South Africa, 21-24 May.

African Union Executive Council. 2007. *Report of the Chairperson of the Commission for the Period July to December 2006*. Executive Council, 10th Ordinary Session, Ababa, Ethiopia, 25-26 January 2007.

Durward, Rosemary. 2006. "Security Council Authorisation for Regional Peace Operations: A Critical Analysis," *International Peacekeeping*, 13 (3).

Fourth Geneva Convention. 1949. "The Four Geneva Conventions of August 12, 1949," in Triffterer, Otto (Ed.) 1999. *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*. Baden-Baden: Nomos Verlagsgesellschaft.

Hague Regulations. 1907. *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*. The Hague, 18 October 1907. Available at: <http://www.icrc.org/ihl.nsf/FULL/195> (Accessed December 13, 2007)

Imobighe, T.A. 1980. "An African High Command: The Search for a Feasible Strategy of Continental Defense," *African Affairs*, 79 (315).

ICISS. 2001. *The Responsibility to Protect*. Ottawa: International Development Research Centre.

IRIN. 2005. "African Regional emergency force set up," UN Office for the Coordination of Humanitarian Affairs, 12 April 2005. Available at: <http://www.globalsecurity.org/military/library/news/2005/04/mil-050412-irin04.htm> (Accessed September 5, 2007).

Legum, Colin. 1963. *Pan-Africanism-A Short Political Guide*. New York: Frederick A. Praeger Publisher.

Mantu, Richard. 2007. "SADC peacekeepers ready," available at: <http://www.southafrica.info/africa/sadcbbrigade.htm> (Accessed September 5, 2007).

Meron, Theodor. 2000. "The Humanization of Humanitarian Law," *American Journal of International Law*, 94.

Organisation of African Unity. 1963. *OAU Charter*. Adopted by African Heads of States and Government on May 25, 1963, entered into force on September 13, 1963. Available at: http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/OAU_Charter_1963.pdf (Accessed December 13, 2007)

Shraga, Daphna. 1996. "The United Nations as an actor bound by International Humanitarian Law", *The United Nations and International Humanitarian Law, Actes du Colloque International, de l'universite de Geneve*, 13, rue Soufflot.

Zdenek, Cervenka. 1969. *The Organization of African Unity and Its Charter*. Praeger: New York.

Zimmermann, Andreas. 1999. "Preliminary Remarks on para.2(c)-(f) and para.3," in Otto Triffterer (Ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*. Baden-Baden: Nomos Verlagsgesellschaft.