

From Durban to Maputo

A review of 2003 Summit of the African Union

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"Africa's prospects for growth and development are affected by the trends prevailing in the global community. The most important recent developments are the emergence of the global war on terrorism, and the wars in Afghanistan and Iraq. International security issues have supplanted other priorities on the global agenda. The fear is that this may eclipse the focus on poverty and underdevelopment, particularly in Africa..."¹

INTRODUCTION AND SCOPE

In the preparation for the AU Summit, the dominant issue was the election of the 10 Commissioners for the Commission of the African Union. The chairman and the deputy chairman of the Commission have to be elected directly by the heads of state, and the remaining eight commissioners by the Executive Council. Similar to the Commission of the European Union, the AU Commission is the engine of the Union and the quality of the commissioners that are elected is key to the functioning of the AU. Thus, in his weekly 'letter from the President' published shortly before the Maputo Summit, outgoing chair of the African Union, South African President Thabo Mbeki, wrote:

"We sincerely hope that the Assembly will elect African men and women of high calibre, capable of providing effective leadership to the institutions of the Union as they work to discharge their responsibilities. This requires people with the necessary professional skills, a deep and genuine commitment to the realisation of the goals of the Union, as spelt out in the Constitutive Act, and love for our continent and its peoples. None of us should therefore seek to dump on the Commission people who have become redundant in our countries. Rather, the candidates we offer should be precisely the very same people we need for our own national development, and not 'rejects'."²

Ironically, South Africa had not fielded a single candidate for any of the vacancies at Commissioner level.

The anticipated hot contest for the Chairman of the Commission between incumbent former Minister of Foreign Affairs of Côte d'Ivoire, Amara Essy, and former President of Mali, Alpha Konare, would have been a non-event, were it not for the manner in which Essy withdrew from the race. On the second day of the Executive Council, the rumours started circulating. Essy had withdrawn. His subsequent press release revealed that he had not jumped but had been pushed: "[T]he Office of the President of Côte d'Ivoire, my country, announced on Monday 7 July 2003 the withdrawal of my candidature to the post of Chairperson of the African Union." Ivorian President Laurent Gbagbo had earlier belittled the competition from Konare for the post of Commission chairman, saying that no former chief of state should contest a 'subaltern position' and that the post of chairperson of the Commission should be left to "our competent diplomats," underscoring his backing for Essy, a career diplomat. Someone had leaned on Côte d'Ivoire.

When the Heads of State met for the elections, Konare easily met the two-thirds majority required, being elected in the first round (by secret ballot) by 35 of the 45 Heads of State present in Maputo. Similar to all Commissioners, his term is for four years and is renewable only once. The position of deputy chairperson required three rounds of voting before Mr Patrick Mazimhaka of Rwanda gained sufficient support.

Many of the decisions taken in Maputo seek to maintain the momentum on transforming the OAU to the African Union.

The election of the 10 Commissioners was complicated by the stipulation that each of Africa's five regions (North, South, Central, West and North Africa) is entitled to two Commissioners, and that half of the Commissioners must be women.³ Since the chair and deputy chair were both male, five of the remaining eight Commissioners had to be female. Only one of the incumbent interim Commissioners contested the elections, Algerian Saïd Djinnit, the interim Commissioner

for Peace and Security.

The Commissioners of the African Union who will assume office on 1st September 2003, and are as follows:

1. Chairperson, President Alpha Konare (Mali, West Africa)
2. Deputy chairperson, Mr Patrick Mazimhaka (Rwanda, East Africa)
3. Peace and Security, Mr Saïd Djinnit (Algeria, North Africa)
4. Political Affairs, Ms Julia Dolly Joiner (The Gambia, West Africa)
5. Infrastructure and Energy, Mr Bernard Zoba (Congo Brazzaville, Central Africa)
6. Social Affairs, Ms Gawanas Bience Philomina (Nambia, Southern Africa)
7. Human Resources, Science and Technology, Ms Saida Agrebi (Tunisia, North Africa)
8. Trade and Industry, Ms Elisabeth Tankeu (Cameroon, Central Africa)
9. Rural Economy and Agriculture, Ms Rosebud Kurwijila (Tanzania, East Africa)
10. Economic Affairs (Southern Africa), to be elected in February/March 2004)

Ironically, given its previous all-male composition, there were eventually insufficient male candidates (from Southern Africa). The elections for the remaining portfolio (for economic affairs) will therefore only occur later.

with the establishment of the various structures of the Union.

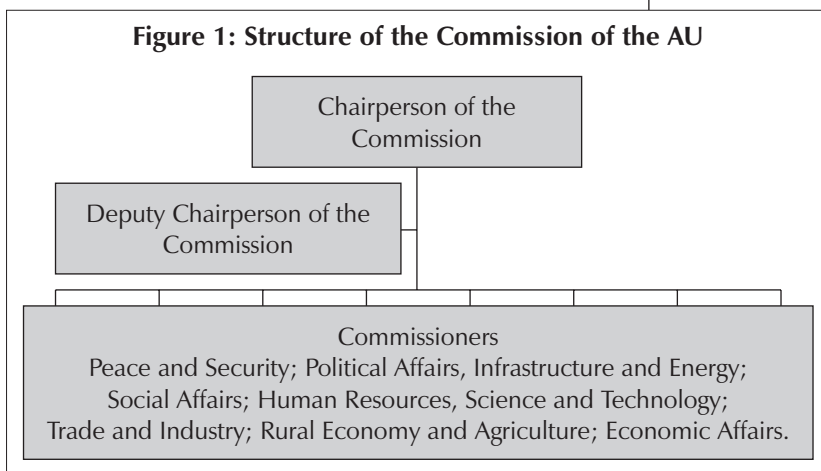
This article reviews the outcomes of the Maputo Summit, during which South Africa handed over the chair of the African Union to Mozambique, ending what was probably the most remarkable year of continental leadership in some decades. It does so by examining the following issues:

- funding of the Union's new structures;
- the relationship between NEPAD and the Commission;
- Zimbabwe, the European Union and Peacekeeping;
- disappointments with the Peace and Security Council and the Pan-African Parliament;
- the role of Libya and South Africa;
- the Common Defence and Security Policy and Combating Terrorism;
- democracy, Diaspora and ECOSOCC; and
- various key legal texts adopted, particularly the Protocols on the Rights of Women in Africa and the Court of Justice.

Funding the expanded Commission

One of the more onerous but key tasks in preparing for the Maputo Summit was that of determining which countries would be placed under sanctions for not being sufficiently up to date with their membership contributions.⁷ Guinea Bissau, Liberia, the Central African Republic, the Democratic Republic of the Congo, São Tomé and Príncipe, Seychelles, Somalia and the Union of Comoros were eventually placed under sanctions for the Maputo meeting.⁸ The situation is a serious one: a month before the Summit, the outstanding membership arrears stood at US\$39,9 million, slightly down from the US\$42,5 million owing the previous year.⁹ The Union faced a serious financial crunch, even before the recent expansion of arrears.

Figure 1: Structure of the Commission of the AU



Apart from the election of the ten Commissioners elections were also held to fill three vacancies among the 11 members of the African Commission on Human and Peoples' Rights⁴ and of four of the 11 members of the African Committee of Experts on the Rights and Welfare of the Child.⁵

The drama of the elections aside, the Maputo Summit was a relaxed event (compared to the Summit in Durban the previous year⁶) and productive, though perhaps unnecessarily long. Substantively, many of the decisions taken in Maputo seek to maintain the momentum on transforming the OAU to the African Union. Much of the focus of the summit was therefore on institutional issues, seeking to press ahead

The budget that was approved in Maputo for 2004 amounts to US\$43 million.¹⁰ This is expected to grow to a level of \$53 million once the Commission is fully staffed by 755 people. This budget provides for the new conditions of service (based on those of the Southern African Development Community salaries and become effective on 1 January 2004¹¹) for the Commission as well as 90 additional staff members, thus increasing the staff complement of the Commission to over 400 and the annual budget by about \$5 million. The plan is that the staff complement of the Commission (and therefore the budget) will increase each successive year until such time as the total staff complement has been achieved.¹²

The OAU struggled for many years to secure its annual membership fees, and the AU is not doing much better. Thus, in 2001, alternative ways were sought to bolster the financial situation.¹³ The report considered at the Maputo meeting contained the strange phrase that “*Member States’ Contributions... constitutes the main source of funds and should remain so for a few more years...*” and considered three key methods of taxation to compliment this, namely:

- a levy on the cost, insurance and freight value on all goods imported from outside the African Union (at 0,5% this could generate an estimated \$600 million per year);
- value-added tax (which would, however, require the harmonization of the financial regulations of all member countries); and
- the levying of a tax on air travel to and from Africa and ‘subventions and donations.’¹⁴

Apart from reliance upon donors to fund its operating expenses, (a potentially fatal option for the Commission that would undercut membership commitment and ownership), no ready solution presented itself. The rather lame recommendation from Maputo was to convene (yet another) meeting of experts from member states to consider the issue and to submit recommendations to the next meeting of the Executive Council during February/March 2004.¹⁵

Much time was spent in Maputo discussing the proposed revised scale of assessment to fund the new African Union. Eventually, the Assembly decided on a two-tier floor consisting of 0,25%¹⁶ of the total AU budget to be paid by countries with a high debt burden and low per capita income and a second floor of 0,75%¹⁷ for others at the bottom of the spectrum. The ceiling was set at 8,25% (0,75% more than the current maximum). Four countries will pay this proportion: Egypt, South Africa, Nigeria, Libya and eventually Algeria.¹⁸ Each member state will be entitled to a minimum of four staff members in the Commission and the remainder of the AU staff would be distributed between member states on the basis of assessed contribution of each member state, excluding General Service Category Staff.¹⁹

But the challenge to fund the Union goes much further. Even if all member states were to pay their dues on time and in full, the present AU budget does not provide for other related bodies. These are: the Pan African Parliament with its five Members of Parliament from each member state; ECOSOCC with its 150 members of civil society; the three banks envisaged in the Constitutive Act; and the various Specialized Technical Committees. It also does not provide for the additional burden that will be placed on the Commission once the Peace and Security Council becomes operational. The PSC incorporates the African standby force, a Panel of the Wise, a Military Staff

Committee, an early warning system and associated administrative and other functions. Nor will the Union be able to fund and run the two courts (Court of Justice and Court on Human and People’s Rights) without an increase in its budget. These structures and offices will clearly stretch the requirement placed on the budget beyond the ability of member states to pay, despite the apparent willingness of South Africa to consider an even larger contribution than its present obligation. In fact, many of the smaller countries protested loudly at the increased contributions that the review of membership contributions implied—a salient factor in the wake of the withdrawal of Seychelles from SADC on the grounds that it derived few benefits from membership and could not afford the dues.

NEPAD and the Commission

President Wade of Senegal presented the Declaration on the Implementation of NEPAD to the Assembly.²⁰ The Declaration listed the impressive achievements of the Partnership—successes that have clearly eclipsed the Union in terms of international ‘brand recognition’ and donor enthusiasm. The Assembly eventually adopted a decision on the Action Plan of the Environmental Initiative of NEPAD, a Declaration on Agriculture and Food Security in Africa and a Declaration on the Implementation of NEPAD.

According to the Sun City discussion by the Executive Council during May 2003: “The overriding concern with NEPAD as it transpired during the discussions was that it was operating as a separate structure from the AU and thus in competition with the AU programmes as a whole.” The simmering tension

between the AU and NEPAD eventually had the Heads of State and Governments Implementation Committee (HSIC) mandate a study on the integration of NEPAD into AU structures, since the Sun City meeting had reached ‘consensus that the Secretariat of NEPAD should be integrated into the structure of the AU as quickly as possible’. The Maputo Assembly finally decided “That the integration of the NEPAD Secretariat into the AU Commission should be gradual with a Coordinating Unit of not more than five (5) staff and should commence after the Maputo Summit with a possible duration of three (3) years or until the AU Structures are fully operational or whichever comes first.”²¹ Upon conclusion of the 8th NEPAD HSIC that met during the Summit, the subsequent Assembly declaration on NEPAD expanded the organizational quasi-independence of NEPAD by:

- providing for the establishment of linkages between the NEPAD Steering Committee (composed of the personal representatives from the HSIC) with the relevant organs of the Union, including the PRC and Executive Council. NEPAD,

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therefore, now has a mandate to engage directly with any institution of the AU;

- allowing for the NEPAD secretariat to enter into a temporary host agreement with South Africa to provide it with the “legal status of an AU office operating outside of the African Union Headquarters”²² for the transitional period of three years from July 2003;
- proposing to formalise the working relations between the AU Commission and the NEPAD Secretariat; and
- aligning and harmonising the conditions of service, rules of recruitment and accountability with those of the AU Commission.

However, the most obvious area of potential harmonization—that of the two peer review mechanisms, with separate offices for NEPAD and the CSSDCA within the new office of the Chairperson (see Figure 2)—was not addressed in Maputo. This reflects the clear desire by the HSIC to keep NEPAD distinct from the Union and away from Addis for as long as possible.

ZIMBABWE, THE EUROPEAN UNION AND PEACEKEEPING

Prior to the summit, there was much media speculation as to whether Zimbabwe would feature on the list of conflict situations to be discussed. The agenda provided only for a discussion on:

- the situation in Comoros;
- the prospects for peace in Somalia;
- the Sudan peace process;
- the tension between Sudan and Eritrea;
- the ongoing border dispute between Ethiopia and Eritrea;
- the situation in Burundi where the Union had started to deploy a peace mission;
- the peace process in the DRC;
- the situation in Angola;
- the recent coup d’état in the Central African Republic;
- the crisis in Côte d’Ivoire; and
- the situation in Liberia, where Nigeria had offered sanctuary to Charles Taylor, who had recently been indicted for war crimes.

To put Zimbabwe on this list would have required a country to formally request its inclusion as an additional agenda item, or the involvement of the Union in an internal peace or reconciliation process in Zimbabwe through the deployment of a special representative or such like. These requirements were not met. In fact, the Union had dispatched an election observer team to monitor the Zimbabwe parliamentary elections in 2002, and pronounced them to be free, fair and legitimate. These results were at variance with the findings of a number of local and foreign observer teams, and there was considerable dissent within the Commission about the composition and findings of the team. Yet this finding means that the Union has no mechanism to table the issue of Zimbabwe, beyond a motion by a member state to do so. This, together with the stature of President Robert Mugabe as a liberation president (similar to Presidents Thabo Mbeki and Sam Nujoma in Southern Africa) and the work that South Africa did to build solidarity with the ZANU(PF) government, ensured that Zimbabwe was not mentioned.

However, Zimbabwe did have a voice in Maputo. Unlike the Durban summit, during which President Mugabe did not speak at all, the Zimbabwean leader took the floor to launch his customary attack on ‘foreign-funded

Figure 2: Office of the Chairperson

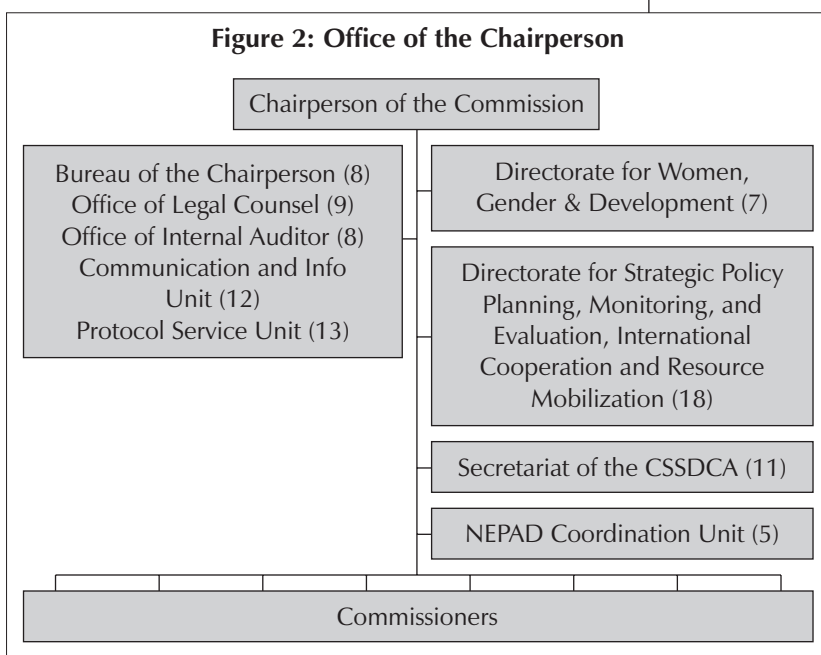
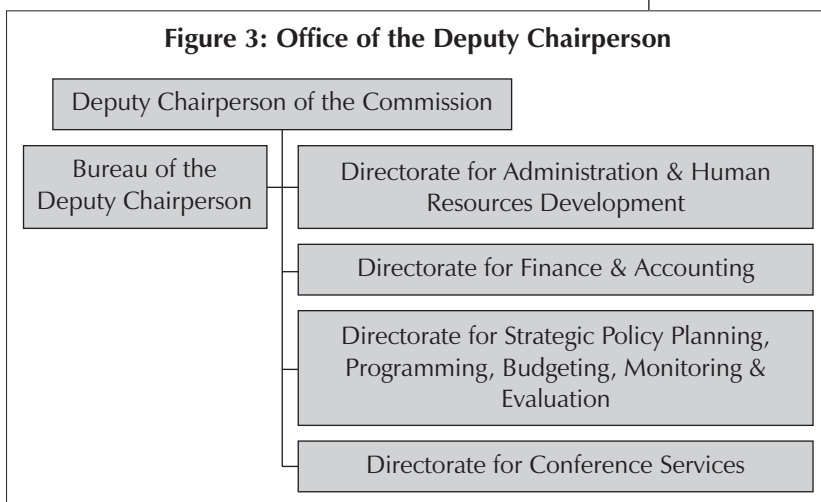


Figure 3: Office of the Deputy Chairperson



opposition parties, imperialism and capitalism', as did his foreign minister, Stan Mudenge. The Maputo Summit also saw Zimbabwe appointed as one of the members of the Bureau of the Assembly.²³

The importance of this appointment does not lie with the function of the Bureau during the Assembly, for it plays a limited role: largely as stand-in when the chair (in this case President Chissano) is absent for a short while. Much more important is that those countries that form part of the Bureau at Assembly level (three per region, fifteen in total) plus the incoming chair, the current chair and outgoing chair²⁴ constitute the members of the Central Mechanism for Conflict Prevention, Management and Resolution.

The Central Mechanism was established in 1993 following the adoption of the Cairo Declaration and will eventually be replaced by the Peace and Security Council. Until then, it serves as the primary vehicle of the African Union for "the anticipation and prevention of conflicts. In circumstances where conflicts have occurred, it will be its responsibility to undertake peace-making and peace-building functions in order to facilitate the resolution of these conflicts."²⁵ The Bureau is responsible for the overall direction and co-ordination of the activities of the Mechanism between Summits, and, similar to the proposed Peace and Security Council, it functions at the level of heads of state, ministers of foreign affairs and permanent representatives. Two implications are obvious: Zimbabwe will not be in any hurry to ratify the Protocol that establishes the Peace and Security Council; and it is unlikely that the Central Mechanism will discuss the situation in Zimbabwe.

The issue of Zimbabwe has already served as a reality check for many of Africa's development partners, in terms of their expectations around NEPAD and the prospects of the NEPAD African Peer Review Mechanism. It has also damaged Africa's relations with the European Union. Thus, earlier this year when the EU wished to host a follow-up meeting in Lisbon to the 2002 Cairo meeting between Africa and Europe,²⁶ South Africa again rallied to the cause of ZANU(PF) once the EU indicated that President Mugabe would not be welcome. Amid much acrimony, the Africa-Europe meeting was postponed.

There is every indication, however, that Europe and possibly even the Commonwealth, is getting over Zimbabwe as an impediment to engagement with Africa. There is, after all, no other show in town apart from the African Union and NEPAD, both of which had largely ignored the extent of human rights abuses in that country or pleaded helplessness. Thus the Maputo Summit saw the public announcement of an innovative initiative involving both EU and the AU

Commissions, on the funding of African peacekeeping missions.

The degree of acceptance of African responsibility for meeting the peace and security challenges on the continent has changed in recent years. The rhetorical blame game of the 1970s and 1980s has given way to increasing engagement, but at a time when the resources available to the continent for conflict management are declining year after year. While South Africa has in the past two years brought unparalleled commitment and means to peacemaking in Africa, even that has its limits. UN and international commitment to the continent remains moderate, but is clearly not at the same level as Afghanistan and Iraq, where resources have been rapidly mustered for their rebuilding. Nor does the UN requirement for a prior binding and comprehensive ceasefire to be in place before the (laborious and expensive) blue helmets' deployment offer a realistic response to regional and internal conflicts. In many cases, any number of protagonists engage with impunity in casual slaughter and regional genocide. Innovative solutions are being sought for Africa—and Africans are often in the forefront of this search.

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Whilst countries such as France, the United Kingdom and the United States have been investing in token support to build African capacity for peace missions for several years, more effective bilateral solutions have recently been developed that circumvent the cumbersome and expensive UN multilateral processes. Thus, the United Kingdom deployed a parallel mission to Sierra Leone, outside the UN mandate of UNAMSIL to back-stop what was essentially a third world peace mission. France, historically a major military actor on the continent, has similarly returned to areas such as Côte d'Ivoire and the eastern parts of the DRC. Even the US, least concerned with stability where its national interests are not directly at stake, has been shamed into considering military engagement in Liberia.

In Burundi, on the other hand, Africa has been spurred into taking responsibility where the rest of the world refused to do so. Desperate to maintain a momentum for peace at literally any cost, South Africa agreed to deploy troops to that country, eventually taking the lead in the configuration of an African Mission in Burundi (AMIB), potentially consisting of 2,300 troops with a total annual cost of \$185 million. While South Africa could, at a stretch, fund its own participation, neither of the other troop-contributing countries, Ethiopia and Mozambique, can do so. Thus the US had stepped in with a promise of \$6,5 million to support Ethiopian preparations for AMIB and the UK with about £3 million to provide equipment (sourced from South Africa) for Mozambique. The EU had also committed €10 million to support AMIB.²⁷ This being

said, it would only be fair to point to the great extent of donor frustration at the inability of the African Union to finalize—and present to potential supporters—a clear and consolidated budget for AMIB, including an entry point for consolidated support.

Faced with the impossible situation of a shortfall of more than \$150 million, the AU and EU revealed an innovative initiative that, once established, could overcome some of the problems. The African Peace Support Facility (APSF) proposes the establishment of an African peacekeeping fund of some \$250–\$300 million by carving off 1,5% of the EU assistance provided to each African country and placing it at the disposal of the Union. Speaking at the Assembly meeting, EU Commissioner Paul Nielsen paid tribute to the role of ‘strong personalities’ and the fact that regional organizations were now doing things impossible to conceive a decade earlier. “Ten years ago”, he said, “the world was waiting for Africa. Now Africa is waiting for the world.” For the first time, the EU was talking about donor sustainability and not African sustainability, for one of the primary concerns that Nielsen raised was the need for the establishment of a sustainable fund by the EU. The Facility is still at the conceptual stage, but if the EU can escape its normal stifling bureaucracy, a mechanism is in the offing that could close the gap between Africa’s apparent willingness on the one hand, and the limited ability to deploy and fund peace missions by Africans on the other.

Thus the Maputo Summit:

“Welcomes the dynamic and reinforcing partnership that is developing between the AU and the European Union (EU) in promoting peace, security and stability in Africa, as a crucial area of cooperation and dialogue, and expresses its profound gratitude to the EU for the assistance rendered so far to the AU, especially in support of its peace and security agenda;

Requests the EU to examine the possibility of setting up a Peace Support Operation Facility (PSOF), to fund peace support and peace-keeping operations conducted under the authority of the AU, thereby enhancing the capacity of the Union to fully play its role in the promotion of peace, security and stability in Africa. Such a Facility should be based on the principle of solidarity among African countries and should be financed from resources allocated to each of them under the existing cooperation agreements with the EU, initially supplemented by an equivalent amount of unallocated European Development Fund (EDF) resources;

Further requests the AU Commission to liaise with the EU Commission to work out the modalities and functioning of such Facility which should be sustainable and replenished whenever necessary.”²⁸

The deployment of peacekeepers is, of course, only a last and final resort, if a very visible one with high media impact. Less well recognized is the extent of existing AU engagement in peacemaking and preventive diplomacy. The AU already has Special Representatives (staffed offices) in the DRC, Burundi, Côte d’Ivoire and the Central African Republic. It also has Special Envoys that shuttle between Addis Ababa and the Comoros (Mr Francisco Madeira), Côte d’Ivoire (Prof Andre Salifou), Sudan (Amb Gaba Gana Kingibe), Somalia (Amb MA Foum), DR Congo (Mr Martin Bongo who also heads up the liaison office) and in Burundi (Amb Mamadou Bah). In addition, liaison offices have been established (but at a lower level) in the Comoros (in Moroni), Asmara, Addis Ababa, Kinshasa and the AU Mission in Western Sahara (headed by Amb Yilma Tadesse). Apart from the deployment of military observers alongside a UN mission (the AU Liaison Mission in Ethiopia–Eritrea, OLMEE), and in Burundi (as part of the AU Mission in Burundi, MIOB), the AU has plans to establish the African Union Mission in Somalia, AMISOM, consisting of 81 observers. The AU also plans to deploy 6 (out of

44) observers in Sudan as part of the civilian verification and monitoring team (provided for in the 4 February 2003 Addendum to the Memorandum of Understanding of 15th October 2002 on the cessations of hostilities).²⁹

Eventually, the Department for Peace and Security under Commissioner Saïd Djinnit will service the engagement of the Union in conflict prevention and mitigation. The overall objective of the Department is the maintenance of peace, security and stability through the co-ordination and promotion of African and other initiatives on conflict prevention,

management and resolution within the context of the UN. Once fully established, the Department will have a staff complement of 53, including the Peace and Security Council secretariat and PSO division. However, this number excludes the various Special Envoys, Special Representatives, AU Field Missions and other initiatives that the Department will technically support.³⁰

DISAPPOINTMENTS WITH THE PEACE AND SECURITY COUNCIL AND THE PAN-AFRICAN PARLIAMENT

Seen from the point of view of South Africa, Maputo held two disappointments to which President Mbeki referred in his final speech as outgoing chairperson at the Maputo Summit. The first, and most important, disappointment was the fact that the proposed key instrument for conflict prevention and mitigation on the continent, the Peace and Security Council, did not receive sufficient ratifications for the relevant Protocol to come into effect. The second disappointment relates

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to the establishment of the Pan African Parliament. Both, Mr Mbeki urged, should receive sufficient ratifications to enter into force by the end of 2003.

The Protocol Relating to the Establishment of the Peace and Security Council of the African Union was finalized in great haste in mid-2002, in time for approval by Heads of State during the inaugural Summit of the African Union in Durban in July 2002. Once ratified by a simple majority of member states, (27 out of 53), the Peace and Security Council would replace the Central Mechanism referred to earlier, and serve as the “standing decision-making organ for the prevention, management and resolution of conflicts... a collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.”³¹ At the time that the Assembly met in Maputo, only Algeria, Ethiopia, Equatorial Guinea, Mali, Mozambique, Libya, Lesotho, Mauritius, Sierra Leone, Malawi, Zambia, Ghana, the Sudan, Rwanda and South Africa (15/27) had deposited their instruments of ratification with the Commission in Addis Ababa. However, a number of countries had indicated that they were preparing to deposit the same.³²

freedoms, respect for the sanctity of human life and international law”.³⁵

Most meetings will be in closed session and any member state of the Union, the AU Commission or literally any organ of the Union can call a meeting of the Peace and Security Council.³⁶

The Commission had, by the time of the Maputo Summit, done most of the groundwork for the Peace and Security Council.³⁷ For example, a meeting of African Chiefs of Defence Staff in Addis Ababa during May 2003 had agreed on the framework for the proposed African Stand-by Force. This is to consist of five regional standby-by brigades, established in two phases up to 2005 and 2010. The force will operate on the basis of six scenarios, ranging from observer missions to intervention.

The meeting in Addis Ababa on the African Standby-Force was a rushed affair held at a time when the Commission was overburdened by a series of other tasks, but done so that the report could be tabled at the meeting of Executive Council of the Union that was held in Sun City, South Africa during May 2003.

Having thus been ‘noted’ by African foreign ministers, the document could serve as the common African position during the Africa–G8 meeting in Evian France. At that meeting, the G8 reconfirmed their commitment to help Africa establish a brigade size standby force by 2010.³⁸

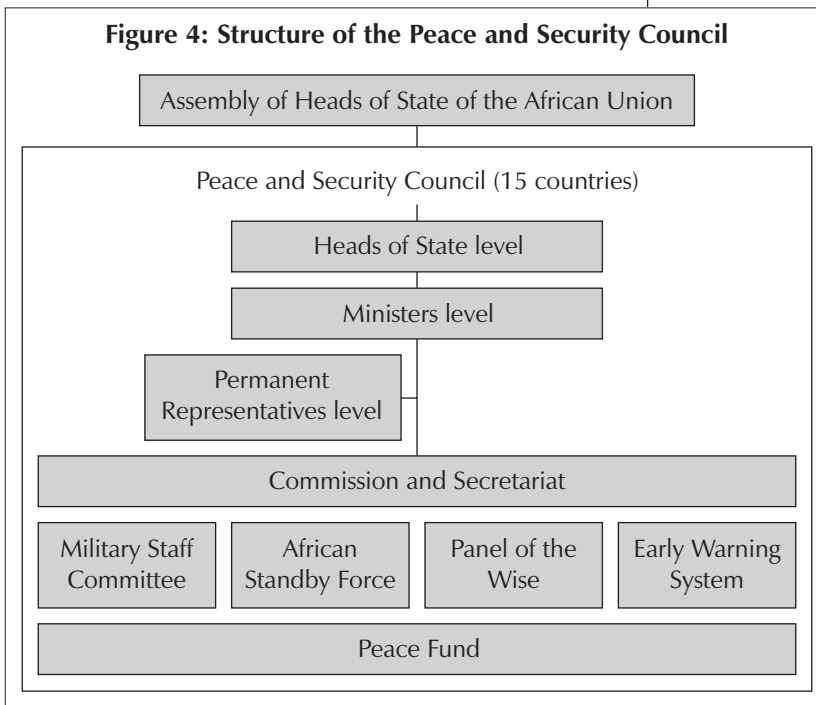
The same meeting of African Chiefs of Defence Staff in Addis Ababa also recommended modalities for the African Military Staff Committee. The Committee is to be established pursuant to Article 13 of the Protocol on the Peace and Security Council as a standing advisory military committee to the Council and would have the same membership, i.e. the 15 elected member states, three from each region.³⁹

Despite the fact that the Commission and the Central Organ had also done a lot of work on the Rules of Procedure and the Modalities of the Panel of the

Wise, the Assembly was of the view that both these issues needed to be considered further. This will be done by a meeting of continental experts before being tabled before the Executive Council during its next meeting in February/March 2004.⁴⁰

The draft Modalities of the Panel of the Wise suggests that it consist of five highly respected African personalities⁴¹ (who do not hold active political office) who select their own chair, and who work through the Chairperson of the Commission to the Peace and Security Council. Their function is to advise the Chair-

Figure 4: Structure of the Peace and Security Council



The structure of the Peace and Security Council is depicted graphically in figure 4. The 15 member states elected to the PSC will operate at the level of permanent representatives (ambassadors), foreign ministers and heads of state.³³ At the level of permanent representatives, the Peace and Security Council is required to meet at least twice a month and ministers and heads of state at least annually. In performing its task (to “promote peace, security and stability in Africa...”³⁴) it must “promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental

person of Commission and the Peace and Security Council on situations, to provide back-channels of communication with parties in dispute, to assist in behind-the-scenes negotiations, to pronounce themselves on issues of peace, stability and security, and to develop and recommend ideas and proposals to promote peace, stability and security.

Heads of State are apparently confident that sufficient additional countries will ratify the Peace and Security Council Protocol to allow it to enter into force within the next 12 months. As a result, the Maputo Assembly authorized the Executive Council to prepare for the operationalization of the Protocol, including the election of its 15 member states and to adopt the Rules of Procedure for the Council.⁴² It would be realistic to expect the AU to host an extraordinary Summit to launch the Peace and Security Council before July 2004.

Maputo saw yet another push by South Africa to ensure the early entry into force of the Protocol relating to the Pan-African Parliament (PAP). According to Article 2(3) of the Protocol: "The ultimate aim of the Pan-African Parliament shall be to evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage. However, until such time as the member states decide otherwise by an amendment to this Protocol:

The Pan-African Parliament shall have consultative and advisory powers only; and

The Members of the Pan-African Parliament shall be appointed..." [i.e. not elected]

Article 4 subsequently states that each member state will be represented by five members, at least one of who must be a woman and that this composition "must reflect the diversity of political opinions in each National Parliament or other deliberative organ."

The Parliament will meet in ordinary session at least twice a year for up to one month.⁴³

If the calculations presented by the South African speaker of Parliament at the Summit are correct, the PAP could gain the necessary ratifications before the end of the year.⁴⁴ Frene Ginwala⁴⁵ also called on an early decision on the location of the PAP. South Africa and Libya are the only countries to have offered to host the Pan-African Parliament. Having no national parliament, there is little chance that Libya could succeed, despite the lavish buildings that Ghaddafi had constructed for this purpose in Sirte. Towards the end of the Maputo Summit, rumours started circulating that the Libyan offer to host had been withdrawn, although no formal announcement to this effect was made.

THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA AND THE REPUBLIC OF SOUTH AFRICA

While the clash between Nigerian President Olusegun Obasanjo and Senegalese President Abdou Wade was a major talking-point at the Durban Summit in 2002, the differences between Mr Mbeki and Colonel Ghaddafi dominated in Maputo and provided an indication of some of the changing dynamics on the continent.

Colonel Muammar Ghaddafi, ever the *prima donna*, craves the limelight, while President Thabo Mbeki epitomises impersonal efficiency. The two have danced around one another for some years. Substantively, Ghaddafi is no match for Mbeki, but what he lacks in his understanding of democratic process and the rules of accountability, he makes up for in canny determination to the point of victory by verbal exhaustion and sheer doggedness.

Libya submitted four items for consideration by Heads of State during the Maputo Assembly. The first was for the establishment of five regional offices of the African Union, nominating South Africa, Nigeria, Libya, Gabon and Ethiopia as surprised beneficiaries. This, despite the fact that the AU had recently established a regional office in Malawi for Southern Africa, and that the Union had just completed an exhaustive process to determine the offices, grades and personnel structure of the Commission within affordable limits.⁴⁶ A second item was on 'the relations of the African Union with the continents of the World'.

While introducing the latter issue, Ghaddafi struck a responsive chord. It is a shame, he argued to the delight of many present, that 50 African heads of state travel to France to meet with one foreign leader, (President Jacques Chirac, during the Africa-France dialogue). A regionally representative composition of, say, five African heads of state representing the African Union would be appropriate for an Africa-EU meeting, but not this type of neo-colonialism that panders to a single country! Does Africa have no pride? he asked repeatedly to loud applause⁴⁷ Ghaddafi's more substantive comments, as was the case in Durban, relate to the negation of democracy and capitalism as the wave of the future. Why should Africa copy the West, he argued. We are different! Indeed, few would differ with the view that Libya is different.

As in the past, Libya was successively frustrated in the two substantive recommendations listed above. Each defeat is, however, softened by a compromise on a symbolic issue that panders to Ghaddafi's desire for recognition as the continental leader. As a result, the date for 'Africa Day' will now be 9 September as opposed to 2 March each year⁴⁸—the date of the

Ghaddafi's more substantive comments, relate to the negation of democracy and capitalism as the wave of the future.

Extraordinary Summit meeting in Sirte in 1999 during which the African Union heads of state announced their decision to “Establish an African Union...”.⁴⁹ The other successful Libyan proposal was to amend the term of office of the chairperson of the Assembly to “one year renewable.”⁵⁰

Midway during a discussion on conflict situations, Colonel Ghaddafi launched into a power-point presentation on the state of agriculture and lack of water in certain parts of Africa (the north and south in particular). This was shortly before the NEPAD report-back that included the distribution of the results of the Comprehensive Africa Agriculture Development Programme (CAADP)—one of the two NEPAD continental programs in their implementation phase.⁵¹ The purpose of his intervention was to propose an extraordinary Summit meeting in Sirte to discuss agriculture and water. South Africa would have none of this and Mr Mbeki repeatedly took the floor even to the point of refusing to accept the ruling of the Chairperson who was desperately seeking a way to appease both leaders while also having to deal with suggestions from Senegal to broaden the agenda of the proposed meeting to include energy. The reason for Mbeki’s displeasure was not hard to find. Not only had the same Maputo Summit endorsed the Action Plan of the Environmental Initiative of NEPAD⁵² (that had come out of the African Ministerial Conference on the Environment the previous month),⁵³ but it had also decided to implement “as a matter of urgency” the Comprehensive Africa Agriculture Development Programme (CAADP)⁵⁴. The CAADP included a commitment of at least 10% of national budgetary resources to its implementation within five years.⁵⁵

A proposed Extraordinary Summit would therefore serve little purpose, but it took more than an hour before the Chair managed to obtain agreement that member states could submit their ideas in this regard to the Commission for consideration. The subsequent decision calls upon member states to submit suggestions to the Commission for possible inclusion on the agenda of an Extraordinary Summit on Agriculture, Water Resources and Energy in Africa. It also mandated the Commission “to initiate a feasibility study with appropriate Terms of Reference on the themes of the Extraordinary Summit, using as guide the proposals put forward by the Leader of the Libyan Revolution Colonel Muamar Khaddafi and other States.”⁵⁶

COMMON AFRICAN DEFENCE AND SECURITY POLICY AND COMBATING TERRORISM

During the Durban Summit in 2002, Libya had submitted a ‘Draft Resolution on the Establishment of the African Army’ that proposed a single ‘African Army’

with a single joint command staff to secure peace and stability, avert the outbreak of any internal armed dispute and to safeguard the sovereignty, security and safety of the Union. The subsequent decision⁵⁷ made no mention of the stated desire by Ghaddafi to also host an extraordinary Summit on the issue in Sirte (repeated at the Maputo Summit). Instead, it emphasised the need for common African defence and security within the context of the Constitutive Act and requested South Africa, as the then chair of the AU, to establish a group of experts and submit recommendations to the Maputo meeting.

South Africa had dutifully arranged two expert meetings,⁵⁸ and despite some substantive concerns, the subsequent framework document was considered by the Executive Council in Sun City during May 2003 who ‘noted’ it and recommended “further consultations with all stakeholders”.⁵⁹ The Maputo Summit would confirm these recommendations, requesting the Commission to “conduct further consultations with all stakeholders including Ministers responsible for Defence and Security and legal Experts with the view to finalizing the Common African Defence and Security Policy in time for consideration by the next Session of the Assembly; or at an Extraordinary Session of the Assembly to be convened by the Current Chairman if deemed necessary.”⁶⁰

An earlier meeting in Sirte had seen Libya parade its armed forces past heads of state for several hours.

The pointed inclusion of the phrase ‘by the Current Chairman if deemed necessary’ followed the long discussion amongst heads of state in Maputo and the repeated efforts by Colonel Ghaddafi to secure a commitment for yet another extraordinary Summit in Sirte. An earlier meeting in Sirte had seen Libya parade its armed forces past heads of state for several hours as a demonstration of the capacity of that country to provide the core for such a single army. Other leaders would have none of this, supporting the suggestion by Mr Mbeki that the document be referred to a ministerial meeting, as reflected in the subsequent decision by the Assembly (above).

The AU Convention on the Prevention and Combating of Terrorism (1999) entered into force on 6 December 2002 after obtaining 23 ratifications. In an effort to build momentum towards ratification, the African Union convened an ‘Inter-Governmental High Level Meeting’ during September 2002 in Algiers to design an Action Plan to operationalize the Convention. Largely at the insistence of the host country, Algeria, the meeting also recommended that the AU start work on an implementation and monitoring mechanism (to be reflected in a Protocol) and also proposed the establishment of an African Centre for the Study and Research of Terrorism in that country. The subsequent draft Protocol to the 1999 Algiers Convention on the Prevention and Combating of Terrorism was reviewed in Addis Ababa by a meeting of the Central Organ in

June 2003. It was met with limited enthusiasm by a number of countries that felt that they already suffer under onerous reporting obligations to the United Nations Counter-Terrorism Committee. The draft Protocol was therefore referred back to a meeting of experts of member states.⁶¹

DEMOCRACY, DIASPORA AND ECOSOCC

Democracy

UN Secretary-General Kofi Annan's annual address during the AU Summit has become something of a regular highlight. Not only is Mr Annan a good speaker, but his presentations are always brief and direct. This year he pointedly stated that: "Lasting peace is... sustainable only if accompanied by democratic transformation and good governance. ... Democracy also means alternating government. ... If term limits are necessary to make this possible, so be it."⁶² One can only wonder at the personal reaction of some of Africa's longer-serving self-appointed leaders present in the hall, any number of whom were busily engineering their constitutions and national legislation to ensure their grip on power long beyond the accepted norm of two successive terms.

Earlier in 2003, the AU and the South African Independent Electoral Commission had organized a Conference on Elections, Democracy and Governance in Pretoria. The Pretoria Conference examined and enriched three documents submitted by the Commission, namely: the Draft Guidelines on Election Observation and Monitoring; the Draft Declaration on Elections, Democracy and Governance in Africa; and the Prospects for establishing an Electoral Assistance Fund. At the end of its deliberations, the Conference adopted a Declaration on Elections, Democracy and Governance. These documents were submitted to the Maputo Summit and will be distributed to members. The summit also decided to formulate a draft document on democracy and governance that would take on board all the commitments made by member states in this respect and to submit it to the proposed meeting of government experts for consideration.⁶³

The Maputo Summit also considered and adopted the 16th Annual Activity Report of the African Commission on Human and Peoples' Rights and, perhaps guilty of some hyperbole "commends it for the excellent work accomplished during the past year."⁶⁴ The report was authorized for publication and referred to the Executive Council.

Introducing the report, the Chairperson listed the numerous obstacles that the Commission faced. It has no permanent secretariat building and inadequate

funds. Often it was denied permission to travel to countries for its on-site missions.

The Commission's significant accomplishments during the year under review were its two ordinary sessions hosted over a total period of 22 days. To compound matters, the record of member state reporting to the African Commission on Human and Peoples' Rights is a poor one. In accordance with the provisions of Article 62 of the African Charter on Human and Peoples' Rights, each country undertakes to present a report on legislative and other measures taken with a view to giving effect to the rights and freedoms guaranteed under the Charter. All 53 member states of the Union are parties to the Charter, but only nine countries submit their reports regularly, while 25 countries have submitted their reports 'with a delay'. Nineteen countries have never submitted a report.⁶⁵

The Chairperson of the Commission might also have mentioned the dozens of decisions on violations of the Charter that the Commission has taken in its quasi-judicial capacity, most of which have not been implemented. This indicates a problem of political will of states parties to the Charter, as much as a lack of resources.

The record of member state reporting to the African Commission on Human and Peoples' Rights is a poor one.

It must be remembered that the Commission is the premier structure of the African Union responsible for human rights on the continent, and the institution that will assume responsibility for human rights review as part of the NEPAD APRM. Clearly the Union and its member states need to take a long and hard look at the resources and capacity available to the Commission, and to augment them where necessary.

There is also room for some concern about the speed and efficacy with which the African Commission on Human and Peoples' Rights conducts its work, if one considers the following paragraph: "Commissioner Pityana presented the report of the Fact-finding Mission to Zimbabwe that was undertaken from 24th to 28th June 2002. The African Commission however resolved to defer further consideration of the report to the 34th Ordinary Session when the report once translated into the working languages of the African Commission would be formally considered and adopted."⁶⁶

This being said, the institutional commitment to democracy, human rights and good governance is a growing focus within the Union. The new Department for Political Affairs under Commissioner (Ms) Julia Dolly Joiner will have a modest staff complement of only 13 persons (much smaller than that for Peace and Security, for example). One of the first things this Department could do is to take over some of the responsibilities for reminding states of their Charter obligations. But the establishment of her department gives practical demonstration to the changes that are occurring on the

continent. One of the more important areas is that of election monitoring and observation—now a regular practice, whereas it hardly existed some years ago. For example, during the first six months of 2003, the AU participated in election monitoring and fact-finding missions to Bénin, Nigeria, Tanzania, Rwanda and Togo.⁶⁷ The problem is, however, that these missions appear to be almost entirely dependent upon donor funds as apposed to membership contributions, and thus their sustainability, and the degree to which they represent political will towards transparency, is questionable.

Another significant development was that, at the invitation of the Rwanda, a Meeting of Experts on the First AU Ministerial Conference on Human Rights in Africa was held in that country during May 2003, followed by a Ministerial Conference on Human Rights in Africa. The Summit endorsed the Kigali Declaration that emanated from the Rwanda process and called for the full implementation of the Kigali Declaration and the Grand Bay (Mauritius) Declaration and Plan of Action.⁶⁸

African Diaspora

The debate on the African Diaspora was interesting. Previously, Senegalese President Abdoulaye Wade had proposed that the Diaspora constitute a 6th African region (i.e. in addition to south, central, west, east and north Africa). This was a suggestion that he reiterated in Maputo. Having returned from the heads of state and government meeting of the Caribbean Community (CARICOM) in Montego Bay, Jamaica a few days earlier, President Mbeki spoke with passion about the forthcoming bicentenary of the birth of the world's first black republic on 1 January 2004. Haiti, he noted, came about as a result of the victorious struggles of the African slaves there, and the Government of Haiti wanted the peoples of Africa to be represented at these celebrations, both to pay tribute to a historic African victory against slavery and colonialism, and to strengthen the ties between Africa and the Caribbean.

Days before the Maputo Summit, Mbeki wrote: "The Caribbean Community looks forward to the elaboration of a practical programme of action to bring about this result. Accordingly, the Maputo Assembly will take the necessary decisions to take this matter forward, relating to the entirety of the African Diaspora."⁶⁹ Taking the floor twice on this issue, Mbeki explained that the concept of the Diaspora could not be limited to those that had recently left the continent, but that it should include those millions of slaves that had been transported to the New and Old World in previous centuries. Our relationship with the Diaspora should not be a one-way affair that focuses on financial

support for Africa, but a reciprocal relationship, he argued.

In making these remarks, Mbeki was drawing upon an internal discussion document within the Commission that argued: "Those transported across the Atlantic [as slaves] began as second class citizens in their new abode just as the establishment of the colonial order of the African continent relegated their brothers to the same status on the continent. Hence, the quest for freedom and social emancipation became a shared concern. Africans on both sides of the Atlantic divide felt the impact of vestigial discrimination in the aftermath of the abolition of the Slave Trade and the onset of the 20th century. Thus the Civil Rights Movement in the Diaspora and the Independence Movement in Africa coincided with each other and became mutually reinforcing. Continental Africans supported the Afro-American quest for equality and civil rights while Afro-Americans campaigned strenuously for African Independence."⁷⁰

To this end, a Western Hemisphere Diaspora Network (WHADN) was established to interface with the African Union Commission. The Extraordinary Summit that was held in Addis Ababa on 3rd February 2003 agreed to add a new Article 3(q) to the existing objectives of the Union, namely to: "invite and encourage the full participation of the African Diaspora as an important part of our Continent, in the building of the African Union."⁷¹

The AU and others will eventually have to confront the ethical and philosophical efficacy of an approach that seeks to build a common heritage based on race and the challenges that this poses to Africans of Arab or European descent. This presents an obvious dichotomy to parties and political systems that seek to build non-racial societies, including the efforts of many in the African National Congress such as Mbeki's predecessor, Nelson Mandela, and in a country such as the United States of America.

One of the institutions within which some in the AU want the African Diaspora to be represented is in the Economic, Social and Cultural Council (ECOSOCC).

The Economic, Social and Cultural Council (ECOSOCC)⁷²

The relationship between African civil society organisations and the state-driven OAU and even NEPAD was originally one of some suspicion and scepticism. On the one hand, many civil society actors voice a blanket criticism that these are opaque and top-down initiatives lacking a popular mandate. On the other hand, governments are frustrated by the weakness of African civil society, by the superficial analysis that

Mbeki explained that the concept of the Diaspora could not be limited to those that had recently left the continent.

some non-government organizations produce, and, of course, dislike criticism in general. This is a relationship that is changing, however. One recent definition holds that civil society is a realm in which citizens associate with each other to ensure that government responds to their needs and is accountable to them.⁷³ Civil society is not, therefore, an alternative to the state—it is a complement to the state. It follows, then, that the quality of democracy is closely bound up with civil society's prospects.

When compared to the OAU, the African Union provides unparalleled opportunities for civil society engagement—most importantly through the proposed establishment of ECOSOCC. Article 22 of the Constitutive Act provides as follows:

1. The Economic, Social and Cultural Council shall be an advisory organ composed of different social and professional groups of the Member States of the Union.
2. The functions, powers, composition and organization of the Economic, Social and Cultural Council shall be determined by the Assembly."

Unlike the Pan-African Parliament or the Court of Justice, ECOSOCC will not be established through a legally-binding protocol or convention to which member states need to accede, but by the approval of the Assembly of a set of statutes. This means there will be no drawn-out process of ratification by member states. Once the statutes are adopted, ECOSOCC could be convened immediately. The intention prior to the Maputo Summit was that the statutes would be approved and that ECOSOCC would convene for the first time before the end of 2003.

According to the Draft Statutes submitted to the Maputo Summit, the Council will be composed of 150 civil society organizations representing social groups such as women, youth, the elderly and persons with disabilities; professional groups such as doctors, lawyers, media and business organisations; NGOs and community based organisations; organisations of workers and employers; and traditional leaders, academia, religious and cultural associations. Political parties are specifically excluded from this list, as they have representation through the Pan-African Parliament.

Of the 150 members, there will be two from each member state; 24 transnational sectoral civil society organizations selected at regional and continental level; and 20 representing the African Diaspora. A 50% gender equality principle applies to this membership. Importantly, the draft protocol provides for a Selection Committee, made up of civil society organizations, to invite candidatures for membership to ECOSOCC and process applications for membership. This is vital to establishing the independence of ECOSOCC. If

selection of membership is left to the AU Assembly, as suggested by Article 22(2) of the Constitutive Act, only select 'sweetheart' organisations would serve on the Council.

The key question in terms of the functions and powers of ECOSOCC is the relative weight that is to be attached to the advisory function on the one hand, and that of representivity on the other. The larger the organization and the greater the focus on representivity, the more difficult the advisory function becomes. According to the draft statutes, ECOSOCC will meet in plenary only once every two years, while the advisory work of the Council will be done in 10 Sectoral Cluster Committees⁷⁴, co-ordinated by a 12 member Steering Committee.

The obvious danger of regarding ECOSOCC as the primary vehicle for civil society engagement with the African Union is that it could serve to co-opt certain NGOs and marginalize others if it closed off their ability to seek accreditation and observer status to other AU structures. This would apply particularly to those engaged in the more sensitive areas such as advocacy in support of anti-corruption and the advance of democracy, conflict prevention and human rights issues. On the other hand the power of ECOSOCC lies in the fact that, as a structure of the Union, it has the 'right to be heard' and its submissions taken into account.⁷⁵

In part fulfilment of its mandate to solicit the input of civil society, the OAU Secretariat hosted two large meetings of African civil society organizations in Addis Ababa. The 1st OAU–Civil Society Conference was held in June, 2001 with the theme "Building Partnership for Promoting Peace and Development in Africa".⁷⁶ The main objective of that conference was to assist in promoting a home-grown African civil society and enhancing its contribution to the Organisation. A framework for co-operation between the OAU and civil society organizations was adopted, that included the decision to establish a civil society desk within the Secretariat.⁷⁷

The 2nd AU–Civil Society Conference was held about a year later with the theme "Developing Partnership between the OAU and the African Civil Society Organisations". Amongst other recommendations, the 2nd AU–Civil Society Conference established an AU–CSO Provisional Working Group (PWG) composed of 20 representatives from civil society from across the African continent, including one representative from the Diaspora in Europe and one for the western hemisphere (including the US and other parts of the Americas).⁷⁸ The terms of reference for the working group are to:

- a) prepare criteria for accreditation and affiliation of African Civil Society organizations across the continent;

Civil society is not, therefore, an alternative to the state—it is a complement to the state.

- b) participate in the formulation of possible modalities relating to the participation of civil society in ECOSOCC and other relevant AU organs; and
- c) develop a Code of Conduct and Ethics for civil society organisations.

Given a two-year mandate, this group met in Ghana towards the end of 2002 and again in Addis Ababa during June 2003. It was here that the PWG was asked to consider the draft statutes of ECOSOCC that had been completed by a group of experts, drawing upon the input received during the Ghana meeting.

At the Ghana meeting of the PWG, recommendations were also made on a new system for granting accreditation to the AU. The existing system on 'Criteria for Granting OAU Observer Status' was adopted in Cairo during 1993.⁷⁹ The Organisation subsequently granted observer status to a number of civil society organizations and concluded memoranda of understanding and co-operation agreements with others. However, the rights of observers and partners were limited, and the criteria for accreditation narrow and restrictive, indicating the need for a change along with the establishment of the African Union.

The PWG thus recommended that accreditation to the AU should be an open, transparent and technical process, free from political interference by individual member states and subject to appeal to an independent accreditation committee. However, the most recent document that has been prepared by the AU, entitled "Review of the Criteria for Granting of OAU/AU Observer Status" includes the following requirement in its criteria for accreditation: "If the organisation is an NGO, [it should submit] the particulars of at least two Member States of the Union, that have intimate knowledge of it, and are prepared to sponsor it. One of the States should be that where the organisation has its registered headquarters." If adopted this would allow host governments to act as gatekeepers to NGO engagement with the AU and threatens those organizations engaged in human rights and advocacy work.

Eventually, the draft statutes for ECOSOCC were not approved in Maputo. The Summit did, however, request that the Chairperson of the Commission widen the consultations on the Draft Statutes with civil society organizations (beyond the Provisional Working Group) and subsequently submit the Draft Statutes to the Permanent Representatives Committee and thereafter to the next ordinary session of the Executive Council in February/March 2004.⁸⁰ Since approval by the Assembly would then only occur in July 2004, ECOSOCC will probably not hold its inaugural general assembly meeting before the third quarter of that year. That meeting "would be expected to consider and

approve the Rules of Procedure of ECOSOCC, elaborate the work programme and budget, set up the operational mechanisms, including election to key posts, and of members of the Steering Committee as well as Sectoral Cluster Committees, and discuss the subject of financing ECOSOCC activities."⁸¹

KEY NEW LEGAL TEXTS

Protocol on the Rights of Women in Africa

The Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women that was adopted at the Maputo Summit⁸² will probably prove to be one of the more important results. The finalization of the Protocol follows a laborious and lengthy process. Following the adoption, in 1990, of the African Charter on the Rights and Welfare of the Child as a supplement to the African Charter on Human and Peoples' Rights,⁸³ a first meeting on the theme on 'the African Charter on Human and Peoples' Rights and the rights of Women in Africa' was organized in Togo during March 1995. The meeting recommended a Protocol on the Rights of Women in Africa—a recommendation taken up by

Heads of State during their 31st Ordinary Session in Addis Ababa later that year. Their subsequent resolution⁸⁴ mandated the Commission to prepare a preliminary draft of the document, but little happened, resulting in a second Resolution at the Ouagadougou Summit in 1998⁸⁵ requesting the Commission to finalize the draft Protocol as early as possible. The working group established for this purpose held three successive meetings⁸⁶ before the African Commission on Human and Peoples' Rights adopted the preliminary draft and submitted it to the Commission in Addis Ababa. This text proved disappointing and was submitted

to two further meetings of experts⁸⁷ before being presented to a meeting of ministers responsible for Human Rights issues in Africa, following which the draft Protocol was submitted to the Maputo Summit.

The Protocol now open for signature is an impressive text when measured against the reality of Africa. It obliges states parties to "include in their national constitutions and other legislative instruments... the principle of equality between women and men and ensure its effective application".⁸⁸ Importantly, it prohibits "through legislative measures backed by sanctions, all forms of female genital mutilation..."⁸⁹, and protects a number of other key rights, such as: consensual marriage, and a minimum age of consent of 18 years for marriage; right to property during a marriage, equal rights in case of separation; equal protection by the law; equal representation in political life; promotion of equal remuneration and occupational freedom; and the right to control fertility and method of contraception⁹⁰.

The draft statutes for ECOSOCC were not approved in Maputo.

A number of countries expressed reservations on the text submitted to Maputo, with some (such as South Africa) arguing that its benchmarks were too low, and others (such as Libya and Egypt) protesting that the protocol violated Sharia law. Kenya was concerned about the legality of customary marriages in terms of the Protocol. Eventually, the text was adopted without reservation, leaving the national legislature of each country to deal with specific concerns.

The Protocol on the Rights of Women is now open for ratification, and it only requires 15 ratifications to enter into force. However, even this low number of ratifications will require concerted and ongoing mobilization by civil society and those countries that have been at the forefront of advancing the rights of women in a practical sense. Certainly, heads of state did not appear committed to the early ratification of the Protocol, rather focussing their remarks and attention on those legal instruments that were politically more interesting.

In a related development, the Maputo Summit also adopted a decision on matters relating to the operationalization of activities of the Women, Gender and Development Directorate. To this end the Summit called on the Commission to develop an AU Policy and Declaration on Gender “to inspire, inform and provide the framework within which gender issues are to be tackled within the African Union, and guide the activities of the Commission as well as the Member States in this area” as well as “an effective strategy for the Commission to mainstream gender into the activities of the Commission as well as Member States and Regional Economic Communities (RECs) together with indicators for tracking, monitoring and evaluating progress, in order to facilitate the advancement of women as an integral part of all social, political, economic and cultural development initiatives undertaken by AU”. The Council also called on the Commission to “elaborate an implementation and coordination framework, including a gender management system, which links and streamlines gender work within the Commission, the other organs of the AU, the Member States, the RECs and the other stakeholders.”⁹¹

Protocol on the Court of Justice of the African Union

Articles 5 and 18 of the Constitutive Act of the African Union specifies the Court of Justice as one of the organs of the Union and that the statute, composition and functions of the Court will be defined in a Protocol to the Act. Article 26 further stipulates that the Court will engage with matters of interpretation arising from the application or implementation of the Constitutive Act.

The AU has inherited a plethora of legal texts from the OAU.

Following two meetings⁹² with eminent jurists, the Commission prepared a Draft Protocol that was circulated, amended and submitted to the PRC⁹³. Consensus was reached on all but one area at the subsequent Conference of Ministers of Justice that was held in Mauritius during June 2003, namely the relationship between the African Court on Human and Peoples’ Rights⁹⁴ and the Court of Justice and whether to integrate the former as a Special Chamber within the latter. This issue was referred to the Assembly, where the view of the majority prevailed and the Summit decided that: “the African Court of Human and Peoples’ Rights shall remain a separate and distinct institution from the Court of Justice of the African Union.”⁹⁵

The Protocol approved in Maputo refers to the Court of Justice as “the principle judicial organ of the Union”⁹⁶ consisting of eleven judges.⁹⁷ States Parties may bring cases before the Court and, once established, its role would largely be the interpretation of the Constitutive Act, and treaties and protocols to that Act. The Court will also deal with “Any question of international law”⁹⁸, Acts, decisions, regulations and directives of AU organs, breaches of an obligation owed to a State Party or to the Union and associated reparations, and others as conferred by the Assembly. The Protocol requires 15 ratifications to enter into force.⁹⁹

Five countries have offered to host the Court of Justice, namely Mauritius, Rwanda, Sudan, Tanzania and Nigeria.¹⁰⁰

Other legal texts

The draft Convention on the Prevention and Combating of Corruption was adopted by the Executive Council during their meeting in N’Djaména, Chad and referred for approval to the Maputo Summit where it was adopted.¹⁰¹

The AU has inherited a plethora of legal texts from the OAU, and had embarked upon a process that has seen a steady rise in the number of legal texts presented for adoption at each Summit meeting. As a result the Commission had been tasked to “review... all OAU Treaties and Conventions to determine their relevance to the African Union”¹⁰²

During the first Extraordinary Summit of the African Union in Addis Ababa on 3rd February 2003, African heads of state adopted a number of changes to the Constitutive Act. These amendments have now been included in a Protocol on Amendments to the Constitutive Act of the African Union that is now open for ratification by member states.¹⁰³ Libya had first surprised the Durban Summit in 2002 with a range of proposed amendments to the Constitutive Act, all of which were referred to the Executive Council for prior

discussion and agreement in terms of relevant procedural provisions. The amendments were subsequently discussed at two meetings of the Executive Council (in Tripoli and Sun City) prior to the Extraordinary Summit in Addis Ababa.

The changes to the Constitutive Act include the addition of three new objectives aimed at ensuring more effective participation of women in decision-making, development and promotion of common policies and encouraging participation of the African Diaspora in the AU.¹⁰⁴ More controversially, agreement was also reached on changes to Article 4.

Thus one sub-article will be amended (namely 4(h)) and two have been added, as follows:

“(h) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to the legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council

“(q) restraint by any Member State from entering into any treaty or alliance that is incompatible with the principles and objectives of the Union;

(r) prohibition of any Member State from allowing the use of its territory as a base for subversion against another Member State.”

Baimu and Sturman have rightly questioned the implications of such an amendment for the promotion of human security in Africa: “Apart from the transient political desire to appease Gaddafi, it is not clear why African states had to establish the right of the Union to intervene when legitimate order is under threat. ... Whether this provision will translate into interventions aimed at protecting human rights and not retaining unpopular regimes in power remains to be seen ... [but] The amendment to article 4(h) brings back the idea of protection of regimes and not individuals. In a sense it constitutes a step backward”.¹⁰⁵

CONCLUSION

Despite the length of this paper, there are a number of key issues discussed in Maputo that it has not covered. The substantial time devoted to the threat of HIV/AIDS is probably the most important—a subject prominently referred to by President Chissano and by UN Secretary-General Annan, the theme of an interactive video conference, as well as a lengthy Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases.¹⁰⁶

When all is said and done, the Maputo Summit leaves one with two impressions: one overwhelmingly positive and the second more negative.

On the one hand there is a discernable sense of growing confidence amongst African leaders—a sense that they are grappling with their own challenges, sometimes coming up with solutions and in the process gaining control over their own destiny. Amara Essy even spoke of the emergence of a ‘second generation of founding fathers’ and noted that the “train of ‘renovated Pan-Africanism’ is ... on the rails.”¹⁰⁷ Much of the credit for that momentum falls to South Africa and the leadership of President Thabo Mbeki.

South Africa has, inevitably, emerged as the dominant power on the continent and Mr Mbeki as Africa’s leading statesman. Apart from the effusive praise for South Africa, a number of substantive proposals and requests during the Maputo Summit attest to this. For example, Ethiopian President Meles Zenawi, considered one of Africa’s intellectual leaders, requested that Mr Mbeki take the lead in African negotiations with the European Union on trade access. Rwanda called for South Africa to maintain its leadership role in the Great Lakes region, while the government of the Sudan called for the establishment of a Ministerial Committee chaired by South Africa to engage in post conflict reconstruction of the Sudan.¹⁰⁸

Not all these proposals met with universal acclaim, and there are many countries that do not welcome the leadership role of South Africa, but the effort and resources committed by South Africa to the continent is huge. How long this level of commitment can be sustained, and what happens once Mr Mbeki goes, are therefore increasingly pertinent and key considerations for the rest of the continent. But this is to question the real sense of ownership and leadership that South Africa has, and will continue to bring to the continent under Mr Mbeki’s presidency.

On the other hand there is the negative sense of unrealistic and unachievable ambition supported by flimsy structures.

At some stage African leaders will have to take stock of the affordability and practicality of the agenda that they are setting for themselves with the creation of the African Union and its manifold institutions. African continental integration is following a different path to that elsewhere in the world. Typically economic collaboration is between contiguous states with subsequent political implications. Africa has chosen the path of political integration on a grand scale in the belief that this presents a short-cut to ward off irrelevance in a globalized world where economics, not politics, dominate. With the possible exception of SACU and COMESA there is little practical benefit discernable from African economic or political integration. The simple task of seeking to transport publications from South Africa to distribute at the Maputo Summit, and the hurdles and complexities that have to be overcome in this most simple of economic functions leaves one with a distinct sense of the vast distance that separates the grand integration

schemes associated with the new doctrine of Pan-Africanism and reality.

The African Union is an amalgamation of poor and often weak states. Can Africa, from this base, create a solid Union where the constituent building blocks are brittle and porous and where sub-regional integration has made so little progress? Does the Union hold the realistic promise that it can compensate for the limited governance capacity at national level? If the answer is yes, the continent must still confront the affordability issue of the multitude of new institutions such as the Pan-African Parliament and ECOSOCC at the same time that a key continental institution such as the Commission on Human and Peoples' Rights is so bereft of resources that it delivers little more than a token service. How feasible is it that critical functions such as election observation and monitoring, conflict prevention, peacekeeping, and much more remain almost entirely dependent on donor funds? Institutions and additional layers of weak, often ineffective governance can soak up a limitless amount of donor funds, in pursuit of the belief that new structures will rectify the deficits evident in existing structures. At some point, the continent, its leaders and development partners will have to curtail the ambitions for yet more structures and may have to decide to prioritise and focus on improving capacity at a few key institutions.

ENDNOTES

- 1 Progress report of HE Chief Olusegun Obasanjo, President of the Federal Republic of Nigeria and Chairperson of the NEPAD Heads of State and Government Implementation Committee (HSIC) to the Second Ordinary Session of the Assembly of Heads of State and Government of the African Union, Assembly/AU/Rpt (II), p 2.
- 2 Letter from the President in ANC Today, Volume 3, No. 26, 4–10 July 2003, entitled 'High hopes for AU Maputo Assembly'.
- 3 Commissioners had to be nationals of a member states, at least 35 years old, with at least a first degree, and be competent with proven experience in their relative field.
- 4 The 11 Members of African Commission on Human and Peoples' Rights were elected by the Executive Council and appointed by Assembly for 6 years. There were 3 vacancies for which 13 candidates had been short-listed. The successful candidates were Ms Sanji Monageng (Botswana), Mr Mohamed Abdellahi Ould Babana (Mauritania) and Mr Bahame Tom Mukirya Nyanduga (Tanzania). Members of the Commission were first elected in 1987. EX.CL/Dec.34 (III) and Assembly/AU/Dec.18 (II).
- 5 The 11 Members of African Committee of Experts on the Rights and Welfare of the Child are elected by the Executive Council and appointed by the Assembly for a term of 5 years each. There were 4 vacancies for which 5 candidates were short-listed in Maputo. The successful candidates were Prof. Peter Onyekwere Ebigbo (Nigeria), Dr Asseffa Bequele (Ethiopia), Mr Jean Bapiste Zoungnan (Burkina Faso) and Ms Nakpa Polo (Togo). Members of the Committee were first elected in 2001. EX.CL/Dec.35 (III) and Assembly/AU/Dec.19 (II).
- 6 See Jakkie Cilliers, Peace, security and democracy in Africa? A summary of outcomes from the 2002 OAU/AU summits in Durban, Paper no 60, Institute for Security Studies, Pretoria, August 2002.
- 7 The problem that the Commission faces is that countries under sanctions never stick to their debt repayment plans. Report of the Second Ordinary Session of the Sub-Committee on Contributions, Executive Council, Third Ordinary Session, 4–8 July 2003, Maputo, Mozambique, EX/CL/27(III), Par 20.
- 8 Sanctions on Niger were lifted, a temporary and exceptional exemption was granted to Sierra Leone. EX/CL27 (III).
- 9 Report of the Second Ordinary Session of the Sub-Committee on Contributions, Executive Council, Third Ordinary Session, 4–8 July 2003, Maputo, Mozambique, EX/CL/27(III), par 7. This improved situation was only partly due to the fact that Mali, in the race to fill the post of chairperson to the Commission with the candidacy of Alpha Konare, had gone so far as to prepay an amount of \$16,833 of its membership contribution. Ibid, Par 7.
- 10 PRC/RPT(VI), par 50 and EX/CL/26 (III).
- 11 EX/CL/39 (III). The ten commissioners of the AU would get an additional percentage on top of the top scale within SADC.
- 12 Salaries are to be reviewed every five years. EX/CL/Dec.39 (III).
- 13 Actually the decision was taken by the OAU at its Summit meeting in Lusaka, Zambia in July 2001.
- 14 Report of the Sixth Ordinary Session of the Permanent Representatives' Committee, Permanent Representatives' Committee, Sixth Ordinary Session, 4–5 July 2003, Maputo, Mozambique, PRC/RPT(VI), par 38.
- 15 PRC/RPT(VI), par 41 and EX/CL24(III).
- 16 The countries that would pay 0,25% are: Comoros, DR Congo, Djibouti, Equatorial Guinea, The Gambia, Guinea-Bissau, Liberia, SADR, Sao Tome and Principe, Seychelles, Sierra Leone.
- 17 The countries that would pay 0,75% are: Benin, Burkina Faso, Burundi, Cape Verde, CAR, Chad, Congo, Eritrea, Lesotho, Malawi, Mali, Mauritania, Niger, Rwanda, Somalia, Swaziland, Togo and Zambia.
- 18 Following an appeal based on the recent earthquake disaster, Algeria received an exemption to continue to pay its existing level of 7,5% for the next five years. EX/CL/40(III). Egypt reserved its position, despite a very public appeal by Mbeki for the top five countries to meet the 8,25% level.
- 19 EX/CL/39(III).
- 20 Nigerian President Obasanjo, the chairperson of the NEPAD Heads of State and Government Implementation Committee (HSIC), left Maputo to meet with US President George Bush who decided to visit four African countries slap-bang in the middle of the AU Summit.
- 21 EX/CL/39(III).
- 22 Assembly/AU/Decl.5 (II).
- 23 The members of the Bureau are: Mozambique (chair), Rwanda, Gabon, Burkina Faso, Tunisia, Zimbabwe, Mauritius, Cameroon, The Gambia, Egypt, Botswana, Tanzania, Ghana, Niger and Congo. As outgoing chair South Africa will also be a member of the Central Mechanism.
- 24 There is no incoming chair because the 2004 Summit will be held in Addis Ababa.
- 25 Declaration of the Assembly of the Heads of State and Government on the Establishment, Within the OAU, of a Mechanism for Conflict Prevention, Management and Resolution, par 15.
- 26 A meeting that itself ran into many difficulties due to the fact that the EU wanted to invite Morocco – the only African country that is not a member of the Union.
- 27 Possibly to be increased to €57 million. Thus the Maputo Executive Council: "**EXPRESSES SERIOUS CONCERN** at the grossly inadequate financial and logistics resources which have considerably delayed the deployment of the African Mission, and **REITERATES** African Union's urgent appeal to member states, the United Nations and the international community at large to provide the requisite financial and logistics support for the deployment and operationalization of the African Mission in Burundi, thereby consolidating the tremendous progress achieved in the peace process in that country;" EX/CL/42 (III).
- 28 Assembly/AU/Dec.16 (II).
- 29 Central Organ at its 92nd ordinary session at Ambassadorial level, held on 12–13 June 2003.
- 30 Proposed Structure, Human Resource Requirements and Conditions of Service for the Staff of the Commission of the African Union and their Financial Implications, Executive Council, Third Extraordinary Session, 21–25 May 2003, Sun City, South Africa, Ext/EX/CL/6 (III), pp. 86 & 89.
- 31 Article 2(1) of the PSC Protocol.
- 32 Assembly/AU/Dec.11 (II).
- 33 See Article 5 of the PSC Protocol for the composition and criteria for membership.
- 34 Article 3(a) of the PSC Protocol.
- 35 Article 3(f) of the PSC Protocol.
- 36 Including, for example, the Chairperson of AU; any member of the PSC; any member state; the Chairperson of the Commission; a Regional Mechanism for Conflict Prevention, Management and Resolution (through the Chairperson of the Commission); the Chair of the PAP; or the Chair of African Commission on Human and Peoples' Rights .

- 37 According to the subsequent Assembly Decision, the outstanding issues are “to prepare a Memorandum of Understanding on the relations between the AU and the Regional Conflict Prevention, Management and Resolution Mechanisms and the establishment of the Early Warning System provided for under the Protocol.” Assembly/AU/Dec.11 (II).
- 38 The mismatch between the African ambition of five standby brigades, ready to deploy within 30 days by 2010 (a task beyond that of NATO) and that of the G8, upon which much of the capacity development and funding would rely, is an issue that influenced the Sun City meeting to only ‘note’ (as opposed to ‘adopt’) the document on the standby force and military staff committee and recommended that further consultations be undertaken “... to consolidate the proposals...” These reservations appear to have fallen away by the end of the Maputo Summit.
- 39 The Meeting proposed the following military advisory functions for the MSC: To advise and assist the PSC in all questions relating to military and security requirements for the promotion and maintenance of peace and security in Africa; to keep the Chiefs of Defence Staff (CDS) of member states serving on the PSC and MSC well informed of all decisions of the PSC, and their implications on peace and security in Africa, in order to facilitate their deliberations and decisions during MSC meetings at the level of ACDS; to ensure that policies and actions in the fields of conflict prevention, management and resolution are consistent with sub-regional mechanisms; to enhance co-operation in the fields of early warning, conflict prevention, peacemaking, peacekeeping and post-conflict peace-building through consultations with the PSD (PSOD); prior to submission of plans to the Chairperson, to coordinate with the PSOD; subject to the decision and authorization of the PSC, to participate in or undertake visits to ASF missions, and other peacemaking and peace-building functions for the resolution of conflicts; and to carry out any other functions, which the PSC may entrust to it. Policy Framework for the Establishment of the African Standby Force and the Military Staff Committee (Part I); adopted by the 3rd Meeting of African Chiefs of Defence Staff, 15–16 May 2003, Addis Ababa, par 4.5
- 40 Assembly/AU/Dec.11 (II).
- 41 One per region for a maximum of two terms of three years each. Selected by the Chairperson of the Commission after consultation with member states and subsequently appointed by a decision of the Assembly of Heads of State.
- 42 Assembly/AU/Dec.11 (II)
- 43 Article 14.
- 44 See Assembly/AU/Dec.12 (II).
- 45 The Speaker of the South African parliament and chairperson of the Steering Committee representative of African Parliaments that aims to coordinate efforts aimed at accelerating the ratification process and the operationalization of the Protocol.
- 46 The discussion was terminated on a technical note to the effect that the proposal had not been considered by the Executive Council and should be referred there.
- 47 The discussion was mercifully cut short by deft chairing on the basis that this was a national issue as required by Article ?? [need to insert relevant art.]
- 48 The Libyan resolution on this item was similar to one introduced during the Lusaka Summit called for the change of ‘the Day of the African Union’ from 2 March to 9 September (or 9.9.99, as Libya prefers).
- 49 Sirte Declaration, 9.9.99, par 8(a)(i)
- 50 Libya had introduced a similar proposal to the Durban Summit in 2002 that was subsequently discussed the extraordinary Summit in Addis Ababa in 2003 where member states agreed to change the term of office the Chairperson of the Assembly in exceptional circumstances “for a period not exceeding one term.”
- 51 The other is the NEPAD Short-Term Action Plan on Infrastructure (STAP).
- 52 Assembly/AU/Dec.5(II).
- 53 Assembly/AU/Dec.5(II). Noting that agriculture supports 70 per cent of the people of Africa, the head of the UN Food and Agriculture Organization (FAO), Director-General Jacques Diouf, called on the continent’s leaders to give greater priority and allocate adequate resources to the sector in order to develop their economies and reduce poverty and hunger when he addressed the conference of Ministers of Agriculture of the African Union in Maputo,. Mr. Diouf urged swift implementation of NEPAD’s Comprehensive Africa Agriculture Development Programme (CAADP), which calls for investment in water control and land management, expansion of rural infrastructure such as roads and storage facilities, an increase food supply through competitive production, and adoption of technologies for long-term productivity. He compared the \$19.3 billion annual cost of implementing CAADP to the \$19.6 billion Africa spends annually to import agricultural products.
- 54 Assembly/AU/Decl.4(II).
- 55 Assembly/AU/Dec.5(II).
- 56 Assembly/AU/Dec (unnumbered).
- 57 Ass/AU/Dec.8 (I).
- 58 In Randburg, South Africa from 27–29th March 2003 and in Sun City, South Africa, on 19th May 2003.
- 59 Ext/EX/CL/Dec.2 (III).
- 60 Assembly/AU/Dec.8 (II).
- 61 The fact that no time limit was set reflects the lack of enthusiasm and it will probably first be considered by the PRC, the Executive Council before being submitted to the Assembly EX/CL/51(III). Also see Assembly/AU/Dec.10 (II).
- 62 The Secretary General, Address to the African Union Summit, Maputo, 10 July 2003, p 3.
- 63 EX/CL/35(III).
- 64 Assembly/AU/Dec.6(II).
- 65 EX/CL/46 (III), Report of the Interim Chairperson on the First Ministerial Conference of the African Union on Human Rights in Africa, Kigali, Rwanda, 5–9 May 2003, par 5.
- 66 Sixteenth Annual Activity Report of the African Commission on Human and Peoples’ Rights 2002–2003, Assembly of the African Union, Second Ordinary Session, 10–12 July 2003, Maputo, Mozambique, Assembly/AU/7 (II) par 23.
- 67 EX/CL/38 (III) Part 1, page 51.
- 68 EX.CL/Dec.26 (III).
- 69 ‘High hopes for AU Maputo Assembly’, Letter from the President in ANC Today, Volume 3, No. 26, 4–10 July 2003.
- 70 The Development of the Diaspora Initiative within the Framework of the OAU/AU, Rev.2, no date.
- 71 Article 3, Protocol on Amendments to the Constitutive Act of the African Union.
- 72 See K Sturman and J Cilliers, ECOSOCC – bringing people’s power to the Union, in African Security Review, vol 12, no 1, Institute for Security Studies, 2003. This section also borrows from a presentation done by K Sturman to a conference hosted by IDASA in Cape Town on with the title ‘Civil society’s advocacy function through the structures of the African Union’, 19–20 June 2003.
- 73 Centre for Policy Studies, Civil Society in South Africa, Johannesburg, 2002.
- 74 Peace and Security; Political Affairs, Infrastructure and Energy; Social Affairs; Human Resources, Science and Technology; Trade and Industry; Rural Economic and Agriculture; Economic Affairs; Women and Gender; and Cross-cutting Programs.

- 75 At the same time ECOSOCC would not have the exclusive right to be heard since each individual sub-structure or organ of the Union will inevitably retain the right to engage or call on submissions and hearings from whom it may desire.
- 76 The Conference was also part of the efforts to implement the programme of reform and renewal that the Secretary-General of the OAU submitted to the Sessions of the Council of Ministers and the Summit in Harare, Zimbabwe, in 1997, which included the strengthening of OAU-Civil Society collaboration.
- 77 The framework for AU-Civil Society Cooperation was adopted at the 74th Ordinary Session of the OAU Council of Ministers, held in Lusaka, Zambia, in July 2001.
- 78 Three representatives from each region of Africa, two from the African Diaspora and three sectoral representatives. In 2004 a more formalized Steering Committee will be elected.
- 79 Decision AHG/192(XXIX).
- 80 EX/CL/Dec.2 (III).
- 81 Report of the Interim Chairperson on the Operationalization of the Economic, Social and Cultural Council (ECOSOCC), EX/CL/23 (III), p. 1.
- 82 Assembly/AU/Dec.14 (II).
- 83 The African Charter on Human and Peoples' Rights (1981) entered into force in 1986 and has been ratified by all countries. The African Charter on the Rights and Welfare of the Child (1990), entered into force in 1999 and has been ratified by 30 countries.
- 84 AHG/Res.240 (XXXI).
- 85 AHG/Res.126 (XXIV).
- 86 In Banjul, Dakar and in Kigali.
- 87 In Addis Ababa during November 2001 and March 2003.
- 88 Article 2.1(a).
- 89 Article 5(b).
- 90 Articles 6(a), (b) and (j), 7(d), 8, 9, 13(b) and (d), 14(1)(a) and (c).
- 91 EX.CL/Dec.44 (III).
- 92 In May 2002 in Addis Ababa and in October 2002 in Tripoli.
- 93 In April 2003 in Addis Ababa and in June 2003 in Mauritius.
- 94 The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights was adopted by the OAU in 1998 and requires 15 instruments of ratification to enter into force. By the time of the Maputo Summit, five years later, only 11 African countries had ratified the Protocol and only 26 had signed it.
- 95 EX/CL/Dec.58 (III).
- 96 Article 2(2).
- 97 A minimum of 2 per region with equal gender representation who are elected by a two-thirds majority by the Assembly.
- 98 Article 19(1)(c).
- 99 Article 60.
- 100 Apparently Rwanda withdrew in favour of Mauritius during June. See Reuters, Mauritius confident of hosting new African court, Port Louis, 3 July 2003.
- 101 Assembly/AU/Dec.22 (II).
- 102 EX/CL/36(III).
- 103 Assembly/AU/Dec.21 (II).
- 104 "(i) ensure the effective participation of women in decision-making, particularly in the political, economic and socio-cultural areas; (p) develop and promote common policies on trade, defence and foreign relations to ensure the defence of the Continent and the strengthening of its negotiating positions; (q) invite and encourage the full participation of the African Diaspora as an important part of our Continent, in the building of the African Union."
- 105 E Baimu & K Sturman, Amendment to the African Union's right to intervene – a shift from human security to regime security?, in African Security Review, vol 12, no 2, 2003, Institute for Security Studies, Pretoria, pp 43–44.
- 106 Assembly/AU/Dec.3 (II)
- 107 Press Release by Amara Essy, Interim Chairperson of the Commission, 8 July 2003, Maputo, Mozambique.
- 108 The subsequent decision by the Assembly was therefore grudging: "**DECIDES** to establish a Ministerial or Presidential Committee, if necessary, under the Chairpersonship of South Africa to follow-up on the post conflict reconstruction in The Sudan and to determine membership of the Committee in consultation with South Africa, The Sudan and the Commission of the African Union." EX/CL/42 (III).
- 109 To avoid complexity this paper will use the term Commission to include the previous names of Interim Commission of the AU and General Secretariat of the OAU.

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