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Mikael Eriksson

Supporting Democracy in Africa

- African Union's use of Targeted Sanctions to deal with
Unconstitutional Changes of Government

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Titel	Demokratistöd i Afrika: Afrikanska Unionens bruk av riktade sanktioner för att hantera icke-konstitutionella maktskiften
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FOI, Totalförsvarets Forskningsinstitut Avdelningen för Försvarsanalys	FOI, Swedish Defence Research Agency Department of Defence Analysis
164 90 Stockholm	SE-164 90 Stockholm

Synopsis (abstract in Swedish)

Studien syftar till att genomföra en analys av Afrikanska Unionens (AU) möjlighet att använda sig av riktade sanktioner för att hantera politiska kriser. Studien syftar vidare till att inventera AU's mest förekommande svar på kriser och konflikter i Afrika under perioden 2002-2010. Forskningsfokus ligger dels på sanktionsverktyget, dels på AU's s.k. Freds- och Säkerhetsråd (Peace and Security Council, PSC). En positiv utveckling är att AU i skrivande stund står i begrepp att införa en institutionell mekanism, en s.k. sanktionskommitté, med uppgift att administrera och övervaka AU sanktioner. Studiens resultat kan sammanfattas med att AU har en god kapacitet att anta riktade sanktioner som ett svar på främst icke-konstitutionella kriser, men mindre så när det gäller att svara på väpnade konflikter. Därtill bör allmänt tilläggas att organisationen är mycket svag när det gäller sanktioners faktiska implementering. För att förbättra AU's sanktionsinstrument krävs således en institutionsutveckling på området, förbättrade implementerings- och kontrollfunktioner samt ökat samarbete med andra regionala och internationella organisationer såsom FN och EU. Med Freds- och Säkerhetsrådets antagande av ett antal sanktionsutvecklande mekanismer, däribland en s.k. sanktionskommitté (som ska administrera AU's alla sanktionsregimer), stärks sannolikt organisationens sanktionspolitik markant.

Ett starkare sanktionsinstrument skulle kunna förstärka möjligheterna för afrikanska länder och övriga stater i det internationella samfundet att möta politiska kriser och väpnade konflikter i ett tidigt skede syftandes till att i förlängningen förhindra blodspillan.

Nyckelord: Afrika, Afrikanska Unionen, sanktioner, väpnade konflikter, icke-konstitutionella maktskiften, icke-våld, sanktionskommitté

Abstract

The aim of this study is to conduct an analysis of the African Union's (AU) capacity to deal with political crises on the African continent by means of targeted sanctions. The goal is to take stock of AU's sanctions capacity, especially through the lens of the Peace and Security Council, PSC, to get a better sense of AU's future development in the field of peace and security. This study also examines AU's most common form of response to crisis and conflict in Africa in the period 2002-2010.

The study concludes that the PSC has a good capacity to adopt targeted sanctions against unconstitutional changes of government, but less so when it comes to responding to violent armed conflicts. The study also concludes that the AU is weak in terms of actually implementing sanctions. Thus, in order to strengthen AU's sanctions policy, better implementation and stronger sanctions monitoring capacities are needed. An increase in cooperation with other relevant regional and international bodies is also needed to ensure the policy's effectiveness. A positive development in this context is that the PSC in late 2009 decided to adopt a number of measures to strengthen its sanctions policy enforcement capacity. Notably the PSC will institutionalize a so-called sanctions Committee that will administrate AU's all sanctions regimes. Such institutional development will strengthen the impact of PSC's targeted sanctions policy significantly.

Strengthening AU's sanctions instrument means that African governments themselves, as well as other actors in the international community, may be better able to meet political crisis and armed conflicts earlier. In the end, increased political commitment will make the sanctions policy more effective and legitimate.

Keywords: Africa, African Union, sanctions, armed conflicts, unconstitutional changes of government, non-violence, sanctions committee.

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1 Introduction

Responding swiftly and credibly to political crises such as unconstitutional changes of government and armed conflicts constitutes some of the main challenges of our time. This is particularly pertinent for African governments as well as external actors interested in a healthy political and security order in Africa. While traditional responses have called for late and often acute actions in the form of hard security (e.g., military interventions), ‘new’ forms of threats to peace, security and constitutional orders nowadays necessitate, and perhaps more than ever so, a more refined and timely response to prevent a crisis from becoming more deeply rooted. For this reason, organizations like the AU and the UN have invested heavily in establishing institutions, mechanisms and programs to handle such threats, and by doing so also raised the stakes and lowered their thresholds for tolerance.

Today AU’s institutional security development – in terms of mechanisms and procedures - is centered on the idea of building a Pan-African structure to deal with contemporary armed conflict, violence and regional crises. At the core of this development lies a vision, as enshrined by the declaration by the Organization of Africa unity (OAU) at Lomé (Togo) in 2000 when the Constitutive Act of the African Union (AU) was adopted, that African governments themselves should actively promote security and stability on the continent in order to achieve durable peace.¹ The idea of a Constitutive Act was also to advance Pan-African integration, the territorial integrity of its members, and promote stability, security and peace based on principles such as good governance, human rights and sustainable development. Unlike the OAU however, the security architecture of the AU was somewhat more radical, moving from non-interference to non-indifference, inviting also its members to bear the responsibility of intervening domestically in other member states to prevent or stop war crimes, genocide, and crimes against humanity and later to deal with threats to legitimate order.

At present, AU’s security development is guided by the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSC) (of 2002) and the Common African Defense and Security Policy (CADSP) (of 2004).² Remarkable though, is that while a number of legal and institutional developments have been made with regard on how to handle hard security, an increasing number of other institutional and regime

¹ “Decision on the establishment of the African Union and the Pan-African Parliament” (2000).

² “Protocol Relating to the Establishment of the Peace and Security Council of the African” (2002); and “Solemn Declaration on a Common African Defense and Security Policy African Union” (2004); (for a scholarly analysis on this, see also Tourey, 2005); and “African Charter on Democracy, Elections and Governance” (2007).

building processes have developed to make the AU more effective in handling threats to peace and security non-violently. In this context one can for instance witness the Modalities for the Panel of the Wise³, as well as development of important legal instruments such as the Rules of Procedure of the Assembly in 2002 and the African Charter on Democracy, Elections and Governance (2007).⁴

This study will examine the African Union's capacity to use political sanctions as a mean to make strategically refined, timely and effective responses to acute political emergencies in Africa. In this context, it is worth mentioning that the emphasis is placed on formal aspects, rather than informal power-structures that usually, and as importantly, dictates much of African politics. A primary focus is placed on those sanctions measures, adopted by the Peace and Security Council, against political leaders and decision-makers, non-governmental/non-state groups, as well as commodities, in order to influence the incentives structures. Such measures include signaling dissatisfaction, causing stigmatization, undermining the risk of conflict and enticing a political change of behaviour. While the use of targeted sanctions in recent years has grown in significance both at the EU and the UN level, AU's process in this area has been much slower.⁵ Although a number of sanctions have been applied, targeted sanctions, as developed in the 1990s have not yet been applied by the AU. In general, as will also be further explained below, AU member states, as well as the AU itself, seems to be facing a number of problems regarding the ability to adopt, implement and administrate targeted sanctions. Before examining the circumstances in which these tools are being implemented, and hopefully without foregoing the analysis, a brief comment on these problems is necessary.

Firstly, the AU has a credibility problem to overcome. Although the Pan-African institutionalization of a political tool to correct and change the behavior of unaccepted policies, they themselves suffer from very dire governance and poor human rights records. In fact, a significant number of governments in the AU have many times disregarded democratic principles. Thus, the AU will most likely have to battle those critics which question the

³ See the African Union on "Modalities for the Functioning of the Panel of the Wise" (2008).

⁴ The "Lomé Declaration" (2000); "Rules of Procedure of the Assembly of the Union" (2002); and the "African Charter on Democracy, Elections and Governance" (not yet adopted by African governments). In this context, one could also mention other instruments on democracy, elections and good governance, especially the Solemn Declaration on Security, Stability, Development and Cooperation in Africa (CSSDCA), instruments under NEPAD (African Peer Review Mechanism, the African Charter on Human and People's Rights) and the OAU Declaration on Principles Governing Democratic Elections in Africa.

⁵ For more on the use of UN targeted sanctions, see Cortright and Lopez (2000).

organization's double standard in this regard (critics are obviously also vocal about US and EU double standards).⁶

Secondly, the AU suffers from the fact that few African governments have the infrastructure that is needed in order to effectively carry out sanctions policies. Monitoring, for instance to counter smuggling of commodities, or preventing targeted actors to move across borders is weak at best. Similarly, financial intelligence may exist but is not as effective as it could be with more capacity and training. These and similar factors cannot live up to a credible sanctions system. To this, one should add general problems of infrastructure in terms of information dissemination, technical expertise and competing understandings of how targeted sanctions could work.

Lastly, all sanctions regimes require political will, enforcement and operational capabilities. The capacity today to achieve impact seems weak at best. On the other hand, no systematic scientific assessment has really been made so as to know for sure. Whereas freezing assets requires mechanisms in the financial system to block accounts, the un-integrated and weak financial structures and financial institutions that currently exist in parts of Africa is a hurdle to overcome in the African context.⁷ While there exist for instance anti-money laundering laws and financial intelligence units across Africa to track funds and block accounts, such institutions are not likely to be effective for a host of reasons. For example, how are banks supposed to know which accounts to block when sanctions subjected entities may rely on informal economies for transactions of money? How are financial sanctions meant to work when targeted actors are likely to operate in the informal sectors of African economies in order to evade targeted sanctions? And how can entities subject to travel bans be prevented from travelling when bribes and corruption plague customs officials? These are some aspects that need to be kept in mind when analyzing the effectiveness of AU sanctions.

1.1 Scope and delimitations

This study departs from an interest in AU's capacity to handle political and military emergencies on the African continent. Though the AU has many different instruments at its disposal to respond to crises and violent armed conflict not least by bilateral- and multilateral peace support operations, this study primarily investigates AU sanctions as a tool of political and economic statecraft short of force (primarily targeted sanctions). These are, although

⁶ Interview 2010-05-04.

⁷ For a technical summary as well examples of some current challenges relating to financial sanctions implementation measures, but in the field of anti-terrorism financing and anti-money-laundering in West-Africa, see the annual report of the *Intergovernmental Action Group Against Money Laundering* (GIABA/ECOWAS) 2009: pp. 131-132.

not limited to: denial of transport and communications links with other member states, visa denials for the perpetrators of the unconstitutional change (travel bans); restriction of government to government contacts (diplomatic sanctions), freezing of assets and trade restrictions. According to Article 23 (2) of the Constitutive Act of the AU sanctions may also be “any additional sanction as may be recommended by the PSC”.⁸ In fact, AU sanctions could include many additional instruments. In this context it is worth considering the UN definition of targeted sanctions, which has come to include measures such as timber ban, rough diamond bans, and targeted sanctions on luxurious items, etc.⁹ Without foregoing the analysis below, it seems possible that the AU in the future will expand its targeted sanctions tool-box also to include such measures.

Although worth examining in itself, this study will not make an assessment of the effectiveness of AU’s sanctions per se, nor a technical investigation of its means to do so. Instead, the scope and delimitation of the study will outline the institutional aspects of AU’s sanctions capacity, and to analyze how the PSC, as the main deciding body of the organizations, has handled political and military challenges nonviolently.

1.2 Method

This study is a qualitative one. It is foremost an empirical analysis of the nature of AU’s sanctions policy as opposed to a theory-testing or theory-generating study. The aim is not to assess PSC’s sanctions records, but to analyze strengths and weaknesses of its overall sanctions framework. An element of process tracing is made on the developments of the AU’s use of sanctions over time and space, while some descriptive statistics are made on the basis of data collected about the patterns and frequencies of AU’s various reactions to unconstitutional changes of government and armed conflicts. Included in the report is also a case-collection of recent situations of unconstitutional changes of government. These should be seen as summaries and not a source for case-comparisons as further investigations would be needed.

⁸ “Rules of Procedure of the Assembly of the Union” 37:5 (2002).

⁹ This could be compared with the UN definition of the UN charter which defines its sanctions in the following way: “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations” (United Nations Charter VII article 41).

A systematic reading of key official documents (primary sources), secondary literature as well as (US and European based) news reports has been done. This is a deliberate delimitation. Clearly, there exist a number of qualified local newspapers in Africa, but time prevents a full investigation. In general, there is plenty of literature as well as both empirical and theoretically informed studies on sanctions, while less so on the AU targeted sanctions. Although not unique to the AU, a challenge regarding the literature is that there are few open, primary sources on PSC discussions as to why, when and for what purpose sanctions are adopted (e.g., behind closed door discussions). This makes it difficult to fully understand the rationale behind AU's sanctions policy. This also suggest that a on the ground study would have strengthened the study significantly. Nonetheless, to complement the analyses, however, a number of interviews were conducted. These interviews were open-ended and semi-structured. Last but not least, data was collected on AU's reaction to different security challenges on the African continent. This data is published separately as a work in progress document. Definitions however, are included in Appendix 1.

1.3 Outline of the report

This report is structured in the following way. Following this introduction, chapter two will outline some crucial aspects of African security. The aim is to demonstrate that different security threats require different forms of responses from security governance and how sanctions could fit these challenges. Thereafter, in chapter three, a discussion follows that defines the policy of targeted sanctions. An examination is made of what targeted sanctions currently consist of, when to use them and whom to use them against and for what reasons. Given that much literature have been written in recent years on targeted sanctions, the outline is further meant to give the reader a background when considering AU sanctions more specifically. Having outlined some definitions of targeted sanctions, a more detailed examination is made of the AU's framework to adopt and implement targeted sanctions in chapter four. Upon this institutional analysis as well as the discussion on the AU's legal framework to use sanctions, chapter five more specifically examines trends and patterns in AU's response to peace and security threats. In chapter six, a summary of six cases of AU sanctions is explored. The aim here is to give the reader a brief overview of what led the AU to adopt sanctions and in what context sanctions came into existence. Lastly, in chapter seven follows a general conclusion on future research in this area.

2 Towards an African Peace, Security and Governance Architecture

In the last few years, the Africa Peace Security architecture has become increasingly broad and multitasked. At the centre of such processes is AU's Peace and Security Council (PSC).¹⁰ The development of institutional capacities spans the entire field from conflict prevention to peace-making, peace-keeping and peace-building.¹¹ Policy tools such as AU targeted sanctions also suggest that this architecture now also includes strong security governance mechanisms. Threats to peace and security originate both from soft and hard threats. To better identify and explain the dynamics of the AU sanctions tool and how it works, it is important to look into the settings in which the PSC adopts targeted sanctions. Below follow some of the security trends that the AU currently handles.

2.1 Security and security trends in Africa

The AU has declared 2010 as the Year of Peace and Security. This is the culmination of a number of political measures taken by the AU in recent years to shore up its ability to ensure the security and stability of its members. These efforts involve establishing an architecture that meets different types of security threats across the continent of Africa. Security however is not surprisingly a multifaceted concept that puts great strain on any institution that is struggling to maintain it. Hence, creative solutions are needed to effectively address a number of security challenges.

As one would have thought, there is no simple conceptual definition of security as it depends on specific circumstances on a case-per-case-basis. Academic debates on security have also been well-researched, and different schools and paradigms have been developed to explain what it is and what it is not.¹² Generally understood though, security is a social concept meant to signify a social circumstance by attaching a conceptual and semiotic meaning to it (e.g., 'hard', 'soft', 'geo', 'ideational', 'normative', 'social', 'cultural', 'individual', 'state', etc.). This is often accomplished by means of

¹⁰ The AU is also further supported by additional mechanisms in this realm, of which some of the more important and creative ones in force are being the Continental Early Warning System, the Panel of the Wise and the African Standby Force.

¹¹ For recent updates on the African Union, its institutions and the new Africa Security Architecture, see Adejumboi and Olukoshi (2008), Williams (2009, 2007), Akokpari, Ndinga-Muvumba and Murithi (2008), Engel and Porto (2009), Söderbaum and Tavares (2009), Franke (2008) and Murithi (2006).

¹² See Carlsnaes, Risse and Simmons (2002).

a paradigmatic or critical explanation of its ontology (e.g., ‘realist’, ‘liberal’, ‘institutional’, ‘socialist’, ‘constructivist’, etc.).

Another plain way of describing security however is to refer to *soft* (typically ideational, individual and norm oriented) and *hard* security (typically ‘state centered’, ‘militarized’ and ‘geopolitical’). Both hard and soft security can be understood by actions following agents or circumstances shaped by structure. Another way is to attach the meaning of security to state security and human security. An actor such as the AU is as most security actors engaged in developing capacities to handle both state and human security.

Thus, before going more specifically into the definitions and the common understanding of targeted sanctions and how it could be applied to achieve and maintain security, this section of the report will briefly illustrate a number of trends and types of security challenges currently facing the AU. The aim is to, by specifically looking at number and the types of conflicts, frequency of political crises, as well as numbers of military spending in Africa, give a sense of the issues that are confronting the organization. The use of AU sanctions needs also be read with these challenges in mind.

2.1.1 Hard and soft security in Africa

Africa is not a homogenous continent when it comes to violence and threats to peace and security. Causes of war and political turmoil differ as much as there are different countries on the continent. The challenges for the AU are therefore immense, and the institutional creativity to respond effectively to these challenges requires much political will. As will be further elaborated on below, a number of dire trends suggest that the AU needs to enhance its efforts in responding to security in swift and timely ways. Below some examples of cases that one way or another either reflect or play into the security situation in Africa: 1. noting types of armed conflict, 2. structural threats to security following constitutional manipulations of African governments, 3. military spending, 4. arms flows, 5. military operations, and 6. social indicators. These aspects necessitate the AU to develop tools and capacities to handle these quite differing aspects of security. Some of these examples for instance require hard-tools while others require softer political tools.

First of all, Africa constitutes the theatre of many of the world’s bloodiest conflicts.¹³ In 2008, there were 36 armed conflicts around the world, 12 of those were located in Africa.¹⁴ In addition to classical conflicts involving

¹³ See also AU Special Session SP/Assembly/PS/RPT (1).

¹⁴ These conflicts were either of an intra- or interstate character. Some of the contemporary armed conflicts noted are located in Algeria, Burundi, Chad, Democratic Republic of Congo,

governments and rebel groups¹⁵, there are a number of violent and bloody conflicts of a non-state¹⁶ character and one-sided violence^{17, 18}. Recent figures suggest that there were 18 non-state conflicts in 2007, 8 of which were taking place on the African continent.¹⁹ In addition, 10 out of 22 organized campaigns against unarmed civilians occurred in Africa.²⁰ If translated into estimated fatalities in the above mentioned period, 23,207 (28 %) persons were killed in African conflicts, whereas 14,777 were killed (83 %) in clashes between different non-state groups and an estimated 16,520 (58 %) in killings orchestrated by governments against civilians (one-sided).²¹ These figures demonstrate both hard as well as soft security challenges to which the AU must respond differently.

Secondly, while Africa is challenged by several violent and bloody conflicts, there are also a number of structural factors causing insecurities. In particular, one could consider all instances of unconstitutional changes of government. In 2007, there were 30 countries in sub-Saharan Africa with a two-term limit for presidential rule. In the period 1990-2007, 12 countries in Sub-Saharan Africa had leaders who had not yet served two terms. Of these, 10 countries attempted to amend their constitutions to allow for another term. Eight countries did not have a two-term provision at all.²² Moreover, in the period of 2002-2010, there were 12 attempted or successful constitutional changes that abolished presidential term limits.²³ It is worth noting that a number of governments, not included in this list, held elections despite having previously abolished two-term limits.

A third example denoting the security situation in Africa is the trend in military spending. In 2008, military spending on the continent increased by 10.2 %, in comparison with the year before (mostly in North Africa).²⁴ In

Djibouti/Eritrea, Ethiopia, Mali, Niger, Somalia, and the Sudan (and possibly in Angola, Eritrea and Nigeria), Harbom and Wallensteen 2009: pp 577-585.

¹⁵ Where at least one of the actors is the government of state.

¹⁶ Where none of the actors in the conflict are the government of state.

¹⁷ Where violence is pursued "only from one side, a government or an organized group, against unarmed civilians.

¹⁸ Sundberg 2008: 166.

¹⁹ Ibid. p. 168. In comparison for the period 2002-2007, 111 out of a total of 153 non-state conflicts (almost 73 %) were located in Africa.

²⁰ Ibid. p. 175. . In the period 2002-2007, 77 of 193 such instances took place in Africa, or 40% of the total share.

²¹ Ibid. p. 181.

²² See also Vencovsky (2007).

²³ These were: Algeria (2008); Burkina Faso (2000); Cameroon (2008); Chad (2005); Djibouti (2010); Gabon (2003); Malawi (2002-2004); Namibia (1999); Niger (2009); Togo (2002); Tunisia (2002); and Uganda (1995). Two of these attempts were unsuccessful (Nigeria and Zambia).

²⁴ With regard to countries and none-state actors in the world that imported major conventional weapons it is worth noting that Egypt in the period 2004-2008 was ranked 9th of 147

all, a total USD 25.8 billion was put on such expenditure (or put differently, 1.8 % of the GDP was spent on arms in Africa in 2007).²⁵ At the same time, no country in Africa was part of the 100 arms-producing countries in 2007.²⁶ Although arms do not kill by themselves, it suggests that the entry of legal weapons in combination with an unknown, black-market influx is likely to divert money and resources from other areas that need those funds more, e.g. the health and educational sectors.²⁷ Clearly, arms proliferation could exacerbate vulnerable situations and have a negative impact on security, especially human security.

A fourth element that signifies the security/insecurity situation in Africa is the fact that international actors outside the AU also take the arms-influx important. As arms build-ups significantly contribute to an increase of both state- and human insecurity, actors such as the UN Security Council, on several occasions, have called for and implemented arms embargoes (the most common form of targeted sanctions). Such actions also represent how serious the international community takes security in Africa.²⁸ By implementing arms embargoes, AU (as well as the UN) seeks to build norms and regimes that foster a culture of responsibility and balanced security governance standard among its members.

Fifthly, the security situation in Africa has also forced the AU to respond in a traditionally 'hard' manner. In fact, the AU is today probably spending most of its attention and resources to the build up of a military capability to respond to threats to peace and security, not least by the establishment of the African Standby Forces. Troops are much needed to deal with security uncertainties. One illustration of this is that the continent is still host to half of the UN's global peace keeping operations.²⁹ Mostly though, such

countries (or 3 % of share of global arms imports 2004-2008), Algeria was ranked 13th (2 % share), South Africa 17th (2 %) and Sudan 43rd (1 % share) Wezeman, Bromley and Wezeman 2008: pp. 326-329.

²⁵ Perlo-Freeman, Perdomo, Sköns and Stålenheim 2009: 199.

²⁶ See Perlo-Freeman, Stålenheim, Petter; and the *SIPRI Arms Industry Network 2009*: pp. 288-294.

²⁷ See also Omitoogun and Hutchful (2006).

²⁸ In fact, it has recently been argued that the use of arms embargoes in Africa has gained momentum (Lamb 2007: 1). Also worth noting, a regional outlook on the implementation of mandatory UN arms embargoes in the period 1990-2006 shows a number of such arms embargoes responding to this concern: Angola (1993-2002); Côte d'Ivoire (2004); Democratic Republic of the Congo 2003-2005); Democratic Republic of the Congo (phase II, 2005); Eritrea and Ethiopia (2000-2001); Eritrea (2009); Libya (1992-2003); Liberia (1992-2001); Liberia (2001-2003); Liberia (2003-2009); Rwanda (1994-1995); Sierra Leone (1997-1998); Somalia (1992); and the Sudan (2004-2005). Data located in Fruchart, Holtom, Wallensteen, Wezeman and Strandow (2007); and Brozoska and Lopez (2009).

²⁹ For example, in the period 2009-2010, the UN deployment in Western Sahara/Morocco was 225 troop strong UN Mission force the referendum in the Western Sahara, MINURSO; the five troop strong UN Integrated Office in Burundi, BINUB; the 2,692 troop strong UN

deployments in themselves are short-term and lack long-term, structural and positive security measures; they only ensure that violence is stopped and peace restored.

Last but not least, there are signs from various scholarly projects on negative emplacements for Africans in general, thinking here of extrajudicial killings, spread of pandemics, negative climate-change impacts on societies, exacerbating social tensions, declining health standards, transparencies, corruption, etc.³⁰

In the end, targeted AU sanctions are likely to fit all of the categories reflecting both hard and soft security above mentioned. The strength of the policy is that it could both deal with state and human-security related security concerns. The policy could for example be embedded in a military strategy to bring to a halt warring parties, or as an isolated tool by itself to put pressure on actors implicit in unconstitutional changes or government or against actors that are committing grave human rights abuses (be it of state or non-state origin). Given that much emphasis lately has been given to developing the AU's capacity to deal with hard security, especially the development of peace support mission capabilities, it is not but admirable that increasing attention is given also to develop and invest resources into the AU's political statecraft capacity. Finally, it is worth noting that informal power politics of African "strong-men" decides much of African politics beyond putting in place formal institutional policies such as sanctions. This needs to be added to any serious analysis trying to understand AU security politics.

2.1.2 Other security mechanisms

In recent years, the PSC has increasingly strengthened its manner of addressing structural security problems nonviolently, by promoting democratic governance and human rights. This includes, *inter alia*, developing instruments to address governance and human rights, democratic

Mission in the Central African Republic and Chad, MINURCAT; the 7218 troop strong UN Operation in Ivory Coast, UNCOI; the 17,518 troop strong UN Organization Mission in the Democratic Republic of Congo, MONUC; the 10,164 troop strong UN Mission in Liberia, UNMIL; the 9,279 troop strong UN mission in Sudan, UNMIS; and the 14, 834 troop strong UN-AU Mission in Darfur, UNAMID. The AU has already deployed a significantly strong share of troops as well.

²⁹ *Military Balance* 2010: 282.

³⁰ In this context it is worth stating that there are regional differences across Africa with respect to these indicators. A number of these factors, without here going into the specifics, can be located in various state-failure indexes (e.g. <http://globalpolicy.gmu.edu/pitf/>). Such indexes, like any of the data included here, should be treated more as brain-teasers, rather than as given fact as they could misrepresent reality due to narrow definitions, coding practices as well as insufficient data.

principles, rules of law, institutional reforms, human security, and fighting corruption.³¹ Two important mechanisms herein are the African Peer Review Mechanism (APRM) and the African Charter on Democracy, Elections and Governance (not yet in force/ratified). The APRM was launched in 2003 and is a mechanism within the initiative of A New Partnership for Africa's Development (NEPAD), to assess the compliance of AU member states' adherence to AU's Constitutive Act (including promoting good governance, political stability, economic growth, continental integration and mapping needs for capacity building).³² AU sanctions should be read in this context. Last but not least, sanctions should be coordinated effectively with other initiatives and mechanisms of the AU, like the African Court for Human and Peoples' Rights, the African Commission for Human and Peoples' Rights and the negotiation leverage applied by the Panel of the Wise, etc. For instance, the Panel of the Wise could negotiate with coup makers using the drums of sanctions beating in the background as potential stick.³³

As there are clear signs that the AU is starting to give increasing support for instruments to deal with crises and armed conflicts by means of political statecraft, the question is what such an institutional design of the AU should look like operationally in order to achieve a forceful outcome. Similar to that of central institutional mechanism much needed for coordination of military support operations, it is clear that the AU also would require a platform for the planning and management of political and economic statecraft. In terms of sanctions, the PSC is now only capable of adopting sanctions without any ability to actually administrate sanctions.³⁴ In fact, no formal unit has been established at this moment that could make sure sanctions are being effectively monitored and implemented. While the PSC has decided to institutionalize a sanctions committee (as will be further discussed below), the absence of a sanctions implementing body so far has made sanctions less effective than what it could have been should such body be in place. After all, imposing sanctions is much more than simply pursuing random diplomatic initiatives, it is a tool which should be applied in a very refined

³¹ *General Secretariat of the EU*. Council of the European Union. *The Africa-European Union Strategic Partnership* 2008: 23.

³² The accession to APRM/NEPAD is voluntary, and in mid- 2008 and 2009, 29 countries joined this mechanism (Algeria, Angola, Benin, Burkina Faso, Cameroon, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Republic of Congo, Rwanda, Sao Tome & Principe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Uganda and Zambia). As of now, the mechanisms have been criticized for not being transparent enough.

³³ This strategy was applied by Ambassador Jan Eliasson when negotiating the Darfur crisis on behalf of the UN. See interview by author (Eriksson) with Ambassador Jan Eliasson, former Special Envoy of the UN Secretary-General for Darfur, in *Accord* (2008).

³⁴ A sanctions program here means a combination of political will, necessary recourses to implement and monitor, as well as coordination and assessment.

way to engage and put pressure on single actors of an obstructing political entity.

In sum considering the security situation on the African continent, as well as the increasing interest by the AU on engaging leadership more forcefully in various crises by means of economic and political statecraft, it seems pertinent to address three sets of puzzles: Firstly, how does the AU's institutional capacity currently look like? Secondly, when does the AU adopt sanctions measures, and thirdly for what circumstances does it ignore imposing sanctions? Consequently, in the subsequent chapter, a more careful examination will be made of these questions.

2.2 Conclusion

As discussed in this chapter, Africa is experiencing several disturbing security problems. Trends suggest that threats to security are both of a deep-rooted and a short term nature. These situations have an impact not only on state security but also on soft security. The plurality of security concerns requires institutional flexibility as well as creatively. The AU has a number of mechanisms in place to deal with these problems. Sanctions are one of them.

3 Targeted Sanctions

An increasing body of literature dealing exclusively with targeted sanctions has been published in recent years.³⁵ Much of this literature has been policy-oriented and empirically rich, while less focused on sanctions theory per se. Few scientific studies, if any at all, have been published specifically on AU targeted sanctions, although considerable literature exists on AU governance in general.

Overall, much of the academic attention to targeted sanctions since the turn from conventional sanctions during the early 1990's has been fairly technical, putting attention mostly on the actual operation of targeted sanctions rather than on theoretical foundations and rationale of its use in the first place. A common denominator in many of these studies has been the long-standing question of effectiveness. Moreover, much of the recent literature on sanctions currently meet at the crossroads of political science (international politics, conflict resolution, international relations, and security studies) and law (international law, human rights law, criminal law). Fewer studies have been made from an economic or sociological point of view. With regard to particular evaluations of various sanctions instruments, a number of such studies of particular sanctions measures have recently been made, in particular with reference to arms embargoes.³⁶ Last but not least, one could also note that the field is increasingly becoming richer on case-specific studies of targeted sanctions. These, however, have yet only concerned US, EU and UN sanctions regimes, leaving out the AU.³⁷

The aim is to describe the various understandings of sanctions and how these could be considered in the context of an AU sanctions policy. This will be done by discussing how targeted sanctions have been defined, and conceptualized, against who are they intended, what instruments exists and what ways exist to evaluate them. The discussion should be read in light of what developments one potentially could foresee at the AU level. In respect of these scholarly trends, this next section will further examine how literature on targeted sanctions has come to develop.

³⁵ Eriksson (2009), Charron (2009), Giumelli (2009) and Portela (2008). Hazelzet (2001), Cortright and Lopez (2000), (2002 a), (2002 b); Mack, A. and Khan, A. (2000); and Wallensteen. and Staibano (2005).

³⁶ Luck (1999), Rydell (1999), Brzoska (2002), Knight (2004), Tierney (2005), Vines (2007), and Fruchart et. al (2007). See in particular Brzoska and Lopez (2009).

³⁷ Eriksson (2009), Giumelli (2009) and Portela (2008), Hazelzet (2001), Anthony (2002), and Rackow and Stegmiller (2007). de Vries (2002), Wallensteen, Eriksson and Staibano (2004), and Wallensteen, Eriksson and Strandow (2006), Eriksson (2007). See also contributions in Cortright and Lopez (eds.) (2000).

3.1 Defining sanctions

Until the early 1990s, sanctions were mostly defined by the practice of comprehensive sanctions. Although, the UN Charter does not refer to sanctions explicitly, it nonetheless refers to sanctions in circumstances when peace is at danger. In such situations, the UN may call upon its members, through the UN Security Council, to interrupt necessary engagement with the particular country that poses a challenge. In this context it is worth recalling the UN definition which includes complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

In the scholarly literature, Baldwin has been the forerunner in enlightening sanctions scholars about the contour of early comprehensive sanctions. According to him, there have been at least three typical definitions or at least understandings of the term “economic sanctions”: the first understanding is a more narrow view of state-based economic measures to enforce international law; the second understanding of sanctions refers to the type of values that are intended to be reduced or augmented in the target state; and the third usage corresponds to the concept of economic techniques of statecraft. While the first two understandings refer to the goals of the policy, the third one seems to relate more specifically to the strategic means to pursue certain interests.³⁸ Sanctions, according to Baldwin, represent an inclusive form of economic statecraft. To him, however, “...the term ‘economic sanctions’ is used in so many different ways that there is much to be said for avoiding it altogether.”³⁹ As such, he does not attach a strict definition of sanctions. In later years, much of the literature on sanctions has been greatly shaped by Hufbauer’s et al. accounts of how to define economic sanctions. In their view, sanctions “...mean[s] the deliberate government-inspired withdrawal or threat of withdrawal, or ‘customary’ trade or financial relations.”⁴⁰ These authors also provided an account of different independent variables operating under such a policy and the potential effectiveness of such.⁴¹ This

³⁸ Baldwin 1985: pp. 35-36.

³⁹ Ibid.

⁴⁰ Hufbauer et. al. 1985: 2.

⁴¹ The definition offered by Hufbauer et al. is often used as the main reference point for sanctions scholars (Hufbauer, et al. 1985, 1990 and 2007). Later scholars (e.g., Drezner 1999) have also relied on this definition as well as methodology. A distinction, however, is often made between political and economic types of statecraft. For instance, Blanchard, Mansfield, and Ripsman (2000) define economic sanctions as “...actions taken by one state- the sender- to interfere with the economy of another state- the target- for the purpose of coercing its compliance with the sender’s wishes. Economic inducements, or incentives, are rewards that a sender extends to a target to secure the target’s compliance or alter its interests” (Blanchard, Mansfield, and Ripsman 2000: 3). Moreover, Tostenson and Bull define international sanctions as “...the temporary abrogation of normal state-to-state relations to pressure target states into

is done by the introduction of a thorough examination of all existing sanctions in the period 1914-1990 (with subsequent updates).

During the 1990s, following major unintended consequences and negative side effects of comprehensive sanctions, the practice and conceptualization of comprehensive sanctions changed to that of targeted and smart sanctions. In this respect the traditional definition of comprehensive sanctions has changed. In response to this trend, Cortright and Lopez, who have worked most extensively in the field, offer one of the better definitions of targeted sanctions: “In our definition, a smart sanctions policy is one that imposes coercive pressures on specific individuals and entities and that restricts selective products or activities, while minimizing unintended economic and social consequences for vulnerable populations and innocent bystanders”.⁴² The definition suggests both an instrumental as well as an actor-specific approach with ethical undertones (ethical in the sense that it is applied on certain individuals rather than on entire states). Unlike comprehensive sanctions, targeted sanctions are more refined both in terms of relating to specific actors and specific goals. The policy also opens up for a different strategic instrumentality, i.e. to be used in specific contextual settings rather than for broader goals in general.

3.2 Who could be subjected to targeted sanctions?

Targeted sanctions could be applied on different entities such as individuals and organizations, or commodities depending on its objectives. For example, targeting specific regime members could be suitable whenever there are unconstitutional changes of government, or for use in the occurrence of armed conflict. For instance, the UN Security Council, as well as ECOWAS, targeted Charles Taylor, the former warlord of Liberia, as well as a number of officials for their involvement in the Liberian Civil War (1989-1996, 1999-2003). Another case is Zimbabwe where the EU decided to impose targeted sanctions (or restrictive measures) on members of the Mugabe government for their obstruction in not holding transparent parliamentary elections in March, 2002. In situations like these, targeted sanctions could be

changing specified policies or modifying behaviour in suggested directions” (Tostenson and Bull 2002: 374). In the same vein Chan and Drury (2000) understand sanctions as “...attempts at exercising international influence whose goal is to seek a specific change in a target country’s policy...” (Chan and Drury 2000: 8). Most definitions however remain much state-centric. This is also likely to determine the kind of success or failure, which one can attribute to the sanctions regime. See also Daoudi and Danjani 1983); Baldwin 1985, Doxey 1996: 8; Askari, Forrer, Teegen, and Yang 2003: 76-85.

⁴² Cortright and Lopez 2002 (b): 2.

imposed not only on Presidents and government officials, but also on members of the ruling elite as well as party affiliates. Sometimes associates of ruling elites could be targeted with sanctions although not for their responsibility for any political decisions, but for their mere support. For instance, targeted sanctions could subject government-sponsored news media to sanctions for its instigation in advocating violence against certain groups in society. As indicated, targeted sanctions could also be imposed on different armed groups and private companies. For instance, financial sanctions, travel bans and arms embargoes could be imposed on rebel groups for their activities in an ongoing civil war and for unconstitutional activities. As such, the AU could consider a broader range of targets. Finally, sanctions could also be imposed on so-called conflict resources. Targeting in such situations mostly involve prohibiting trade in commodities that could finance illegitimate governments, rebel groups or other paramilitary groups and informal economies.

3.3 What types of targeted sanctions could be applied?

The targeted sanctions policy is a fairly new instrument for policy makers. Its evolution is less than twenty years old. During these years, a number of sanction tools have developed, not least at the UN Security Council level of which the most frequent ones are being financial sanctions, assets freezes, travel bans, rough diamond bans, timber sanctions, arms embargoes and most recently “luxury” goods bans. In comparison, the AU nowadays mostly applies travel bans and assets freeze measures.

3.3.1 Targeted financial sanctions

One of the most widespread forms of targeted sanctions is financial sanctions and the freezing of private and public assets. Unlike comprehensive sanctions which target entire countries, targeted financial sanctions and asset freeze measures single out particular entities of a regime. In this sense they have less unintended consequences compared with comprehensive sanctions.⁴³ Characteristically, financial sanctions refer to three types of measures: 1. suspension of loans or aid withdrawal by the sender; 2. denial of access to international financial markets; and 3. bans on capital investment into the targeted state.⁴⁴ Financial sanctions often involve a sector-specific ban such as an oil ban, textile ban, or a ban on using a particular currency or engaging with particular financial operators (such as

⁴³ Cortright and Lopez 2002 (a): 93.

⁴⁴ Tostensen and Bull (2002).

banks). In this sense, targeted financial sanctions represent an impending alternative to general trade sanctions.⁴⁵ They are generally used in conjunction with other coercive measures as part of a multilateral strategy towards a target country.

Moreover, these sanctions measures are typically applied in an effort to deny or deprive particular entities, whether individuals, groups, companies or institutions, their assets or property.⁴⁶ Furthermore, sanctions either undermine the activities of the target or irritate the target by ‘naming’ and ‘shaming’ it in a more symbolic way. Usually, this measure is temporary in nature and meant to have a surprise effect.⁴⁷ It is often put in force until it has been deemed that the targeted actor has changed its political behavior or been proven innocent.

An interesting, but often overlooked issue of such sanctions is their impact. Elliott (1999) notes here that there may be many problems with targeted financial sanctions and asset freezes with regard to efficiency and impact, stating *inter alia*: “The question, of course, is whether assets freezes can inflict sufficient pain to cause regime leaders to comply with the demands of the sender or even to send a strong signal of disapproval. To have any success: regime leaders must hold assets abroad; the assets must be identifiable; and, in cases where compliance is the goal, the assets must be a large enough proportion of the targeted individuals’ total assets that the costs of defiance – the value of the blocked assets – must be perceived as being larger than the political, economic, or other costs of complying with the sender’s demands”.⁴⁸ An important remaining question that is of great importance for sanctions assessment is whether the target is vulnerable to targeted sanctions in the first place. For instance, is it really any point of let say the AU to list specific individuals with targeted financial sanctions they are not likely to be part of the global commercial network? How effective would for instance targeted financial sanctions be in Africa where the economic infrastructure is not as complex as Europe’s? Albeit there are financial taskforces and financial intelligence units across Africa, which conducts important work in connection to policies like targeted sanctions, the questions posed here address a more fundamental problem of how to deal with security in Africa and the capacity do so when there are so many

⁴⁵ Definition used by the sanctions project at Watson, Brown University:
<http://www.watsoninstitute.org>

⁴⁶ Using a military analogy Newcomb notes: “...the target must be defined with enough specificity so that those who are sent to attack it will know both what they need to attack and whether they have hit it” (Newcomb 2002: 47).

⁴⁷ The *surprise* effect has also been pointed at in some legal judgments on the imposition of EU sanctions. See “Judgment of the European Court of Justice in Joined Cases C-402/05 P and C-415/05 P, September 3”, 2008.

⁴⁸ *Interlaken* (b) 1998: 194. See also Elliot (1999) and Biersteker and Eckert (2008).

challenges and hurdles that need to be tackled at the same time in order to reach target impact. For instance, the International Governmental Action Group Against Money Laundering in West-Africa suggests that a number of problems exist in terms of effective implementation of policies following capacities constrains among member states (lack of data, lack of training of officials, inadequate coordination, poor response rates etc.).⁴⁹

3.3.2 Targeted travel bans

Over the years, travel bans have been applied with multiple goals, such as halting support to terrorism, extraditing criminals, having actors comply with peace agreements, preventing access to WMD knowledge and technology, and restoring governments suffering from unconstitutional changes of government.⁵⁰ Closely related to the travel ban are aviation sanctions. This particular measure restricts international flights in and out of a designated target country, and may include all flights or specific airlines, covering both passenger traffic and/or cargo.⁵¹

Conventionally, such measures can be applied to individuals who are either part of a regime or to entities of non-governmental character. A travel ban measure may prevent an individual from getting a visa (also referred to as a visa ban) or from entering the country of the sender. Usually such measures do not cause striking negative economic damage to the target, but are mainly an irritant and of symbolic effect.⁵² By implementing travel ban, entities (persons) could also be prevented from engaging in affairs that the sender may want to undermine. It has also been proposed that travel bans can be gradually imposed; that is, the sender takes incremental steps against putting pressure on targets over time.⁵³

Thus, there are different goals associated with travel bans. For instance, travel bans have two main operational effects: 1. creating a symbolic sense of isolation and a signal of disapproval, isolating the target from international processes in order to de-legitimize the target's behavior and/or claims to authority; and 2. making the target's policy of noncompliance costlier and difficult to sustain, in the hope that these costs reduce the benefits of noncompliance.⁵⁴ However, similar to that of targeted financial sanctions, a travel ban is difficult to enforce, as targets can evade such a measure. Thus, it is up to each member state of the 'sending' body, like the

⁴⁹ GIABA, 2009: pp. 131-132.

⁵⁰ Conroy 2002: 162.

⁵¹ Ibid.

⁵² Tostensen and Bull (2002).

⁵³ Van Brabant 1999: 3.

⁵⁴ Conroy 2000: 1.

AU, to ensure the effectiveness of the measure. This could be accomplished by deploying international observers at airfields, ports and crossing points.

To date, little investigation has been made on the travel ban and its effects are difficult to research.⁵⁵ Yet, there are several studies as well as news reports that suggest that travel-related sanctions can have both a 'direct' and 'psychological' impact on the target (i.e., being an irritant to those targeted). In this way, they could also impede on listed entities' idea of 'business as usual.'⁵⁶ It was also stated that targeted, travel-related sanctions are only meaningful when applied to individuals or categories of people who wish to travel internationally and openly, and/or who benefit from the operations of international commercial flights.⁵⁷ This is a challenge which the AU needs to answer when enforcing its own travel bans.

3.3.3 Targeted sanctions on conflict sensitive resources

Regardless of the type of political and military crisis that a sanction-sending body faces, most threats to security involve money and arms. Without these elements, more severe forms of threats are seldom in place. In order to break the process from security to insecurity, a number of measures could be taken that cut the flow of money and commodities to those actors whose behavior threatens peace, security stability and human rights. Typically, the way to do this is to directly target arms brokers or to target the trade in illicit high-value resources such as diamonds and other high-value natural resources. Over the years, the UN Security Council has imposed targeted sanctions on so-called rough diamonds (as in the case of Angola, Sierra Leone, Liberia and the Ivory Coast). Such a measure aims to block a common source of finance for rebel movements, insurgents, criminal networks and warring parties in local armed conflicts. Experience shows, from a number of civil wars in Africa during the 1990s, that in many cases, local warlords have been dependent upon securing financing in order to sustain their military machinery (paying for arms, soldiers/militia salaries, etc.).⁵⁸ One could also assume that payments aimed at keeping soldiers loyal to coup makers are paid this way as well. In general, dealing with money is often a vulnerable and difficult logistical matter. Thus, in cases where valuable natural resources exist, actors tend to deal with high-value minerals such as diamonds instead. Minerals and natural resources are usually easy to carry around, easy to smuggle, and easy to hide from the regular financial system. The many complications with preventing this kind of rough diamond trade have led

⁵⁵ Cortright and Lopez (2000).

⁵⁶ Brzoska 2002: 48.

⁵⁷ Ibid.

⁵⁸ For a good introduction to the problems and dynamics of illicit trade in rough diamonds, see Farah (2008).

collective security actors such as the UN Security Council to actively support the development of strong monitoring mechanisms to ensure that conflict diamonds are being correctly certified as is the goal of the so-called Kimberley Process. The AU has so far not applied such measures although it is not unlikely that it could do so in the future.

Besides using targeted sanctions on rough diamonds, the UN Security Council has also increased its methods to target trade in high-value timber. Like rough diamonds, timber is also considered to be a source for funding local, armed conflict, and therefore needs to be controlled and constrained. Sometimes, as was the case of the civil war in Liberia, timber became a substitute source of income when trading in conflict diamonds became more difficult.⁵⁹ Here, the export of timber provided the financial means to prolong the war. So far the AU has not applied timber sanctions.

Nonetheless, although much attention in recent years with regard to commodity-based sanctions has been given to natural resources, the oldest form of sanctions is the arms embargo. In fact today, the arms embargo is one of the most frequently used sanctions measures in terms of UN mandated sanctions regimes.⁶⁰ However, unlike previous measures, when sanctions were imposed on entire countries, arms embargoes nowadays can be implemented on specific actors and entities in a country, thus allowing some parties access to arms while preventing access to others.⁶¹

Like other targeted measures, the implementation of arms embargoes is very difficult as it entails a complex process. Not only is arms trade a lucrative market that generates much money thereby attracting many actors (legitimate as well as illegitimate), but the monitoring and implementation measures requires many resources and much political will to be completely effective. On the other hand, it should be noted that arms embargoes in general has improved in effectiveness since the mid1990s.⁶² But again, more is to be done for it to cause the necessary objectives that the sender wants it to achieve.

⁵⁹ This spurred inter alia the UN Security Council to include on the sanctions list the arms and timber trader Guus Kouwenhoven (an associate of the warlord Charles Taylor). He was brought to the District Court of The Hague on 24 April 2006. In March 2008, he was acquitted but his case is under appeal.

⁶⁰ Fruchart et. al. (2007).

⁶¹ In the period 1990-2005, 74 arms embargoes were introduced and still continue to proliferate as an important policy method in dealing with conflicts (Brzoska (2008).

⁶² Brzoska and Lopez 2009: 243.

3.4 Conclusion

As discussed in this section, targeted sanctions are currently high on the agenda of scholars and practitioners. Over the last two decades, sanctions have grown to become a well-recognized tool for policy makers in the international community. Notably, the UN Security Council as well as other actors such as the EU developed and advanced their capacities to adopt and apply sanctions. This has come with institutional as well as legal and political development. Developments are under way. The AU has established a legal foundation for sanction use and institutional developments seems to be under way. Unlike the UN and the EU, AU's sanction capacity has been (so far, and seems to remain so for some time to come) mostly devoted to responding to unconstitutional changes of government (which will be further discussed).

Having now discussed in more general terms ways to conceive of targeted sanctions, as well as areas of applicability, the next chapter will focus more specifically on AU's ability to adopt and implement targeted sanctions across the continent where soft and hard security challenges pose a constant challenge for the organizations.

4 AU Targeted Sanctions Framework

Responding effectively to different types of crises on the continent of Africa requires both institutional capacity as well as bureaucratic flexibility. During its existence, the AU has bravely developed to manage these. At present, the AU's institutional framework is built around five central institutions. These are the Assembly of Heads of State (consists of heads of states and is AU's highest decision-making body), the Executive Council (consisting of foreign ministers of each African country part of the AU), the Commission (AU's preparatory and executive body with eight commissioners including one on Peace and Security), the Permanent Representatives Committee (member state's ambassadors) and the Pan-African Parliament (265 parliamentarians formally outside the AU decision-making and executive work and works only on behalf of the member states). With regard to peace and security, the PSC as well as the AU Commissions' Peace and Security Directorate (one of eight directorates of the Commission) are the most relevant conflict managing institutions.⁶³

In this section, the focus is on AU's existing capacity to adopt sanctions. An analysis will be made of the most relevant legal frameworks that lay ground for outlining when and *how* the AU could adopt sanctions. Thereafter follows an analysis of AU's current institutional capacity to administrate sanctions as well as recent institutional developments in this context.

4.1 The use of AU sanctions

The AU is currently giving the sanctions tool a great deal of attention. This attention mostly follows in the context on how to strengthen the AU's capacity to respond to unconstitutional changes of government. In fact there is currently a policy process of enforcing AU's sanctions capacity both with regard to mandate but also with regard to institutional enforcement. Following a request by the Assembly of the Union in early 2009, the Chairperson of the Commission submitted a report on ways to strengthen the capacities of the AU to deal with unconstitutional changes of government.⁶⁴ By the end of January 2010 a number of recommendations on measures to improve the sanctions capacities were adopted. Before going into this more specifically, a review of the legal foundations for sanctions use will be made.

⁶³ See for example Adejumboi and Olukoshi (2008), Williams (2009), Akokpari, Ndinga-Muvumba and Murithi (2008), Engel and Porto (2009), Söderbaum and Tavares (2009), and Murithi (2006). See also Bogland, Egnell and Lagerström: 2008: pp. 15-19.

⁶⁴ *Assembly*. Assembly/AU/Dec.269(XIV); and *Executive Council*. Sixteenth Ordinary Session, 25-26.

4.2 AU's legal framework for adopting sanctions

There are a number of legal documents stipulating the use of AU sanctions.⁶⁵ The most important ones being: the Constitutive Act of the AU (2000), the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (Lomé Declaration (2000), the Rules of Procedure of the Assembly (2002), the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002), and the African Charter on Democracy, Elections and Governance (2007).

The Rules of Procedure for the Assembly and the Protocol on the PSC adopted by the Assembly according to the Constitutive Act operate by consensus and therefore are legally binding. The Protocol of the PSC states that all member states agree that the PSC acts on their behalf when carrying out its duties under the protocol (Article 7(2) PSC Protocol). Although all member states have not ratified the PSC Protocol, they are bound by the PSC decisions following a textual reading of the Protocol, the exception principles of the Vienna Convention on the Law of Treaties (1969) and customary international and African law.⁶⁶

The main principles of the AU, which explain when sanctions should be considered is located in the Constitutive Act, and states: "The Union shall function in accordance with the following principles: 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; condemnation and rejection of unconstitutional changes of governments".⁶⁷

With regard to the objective of AU sanctions, both the provisions for imposition and the type of measure are also set forth herein: "... any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly".⁶⁸

In practice, the AU imposes sanctions in situations where there has been an unconstitutional change of government (e.g., coup d'état). Seldom does the AU impose sanctions to regulate and resolve violent armed conflicts. With

⁶⁵ Note however that the AU does not specifically refer to that of 'targeted sanctions'.

⁶⁶ This explanation is also owed to Karin Förander, a FOI associate.

⁶⁷ "Decision on the Establishment of the African Union and the Pan-African Parliament" Article 4 (2000).

⁶⁸ Ibid. article 23 (2000).

reference to unconstitutional changes of government, the AU also has the right to suspend members: “Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union”.⁶⁹

The Rules of Procedure of the Assembly, which was adopted two years following the AU Constitutive Act, further specifies how the Union is preordained to decide the adoption and implementation of sanctions.⁷⁰ Here, sanctions are considered to be the denial of transport and communication links with other member states and other measures of a political and economic nature.⁷¹ Partly reiterating the AU Constitutive Act, it stipulates in ‘Rule’ 4, that the Assembly shall “...determine the sanctions to be imposed on any Member State for non payment of assessed contributions, violation of the principles enshrined in the Constitutive Act and these rules, non-compliance with the decisions of the Union and unconstitutional changes of government”.⁷² Accordingly, these measures may also be delegated to any other organ of the Union. However, it is up to the AU Assembly to approve, upon the recommendation of the Executive Council, the imposition of sanctions. Whereas the Lomé Declaration mainly refers to visa bans, diplomatic sanctions (i.e., government-to-government contact) and trade restrictions;⁷³ the Constitutive Act and the Rules of Procedure of the Assembly opens for the door to other types of sanctions upon the determination of the AU assembly or the recommendation of the PSC.⁷⁴

With regard to the timeframe for implementing sanctions, it is also up to the AU Assembly to stipulate the period for compliance and also indicate when the failure to comply with that decision should trigger the sanctions regime provided for under Article 23 (2) of the Constitutive Act and this Rule. The procedure for this is that the Chairperson of the Assembly, in the event of an unconstitutional change of government, shall condemn the action, urge for a

⁶⁹ Ibid. article 30 (2000).

⁷⁰ The PSC Protocol and the Rules of Procedure for the Assembly are more specifically regulating the power of the organs, compared to the Constitutive act. The three documents compliment each other but if there was a conflict the Constitutive Act would probably win as *Lex Superior* however since there is no law interpreting organ of the African Union this is still undecided. Another thing is that not many of the provisions providing measures against unconstitutional changes of government in these documents are forcing rules but allows the organs a great deal of discretion. This explanation is owed to Karin Förander, FOI associate.

⁷¹ Ibid. Rule 36 (2002).

⁷² “Rules of Procedure of the Assembly of the Union”. Assembly of the African Union, Rule 4 (2002).

⁷³ The Lomé Declaration is not yet legally binding. However, there is considerable political support and as such often referred to by the AU. The Lomé declaration prohibits unconstitutional changes of government.

⁷⁴ “Lomé Declaration” (2000) and the “Rules of Procedure of the Assembly of the Union”, Rule 36 (2002).

speedy return to constitutional order, warn that the act will not be tolerated or recognized, request the PSC to convene and suspend the AU Member State from participating in the activities of the African Union.⁷⁵ If the state refuses to restore constitutional order, sanctions should be immediately be applied. In reality, the imposition may take considerable time before being implemented. According to the Lomé Declaration, coup makers should be given a six month respite to restore constitutional order.

Following the decision to impose sanctions, the AU Assembly is required to involve the new regime in consultations. The Rules of Procedure state that the Chairperson of the Commission shall also: "...gather the facts relevant to the unconstitutional change of Government"; "establish appropriate contacts with the perpetrators with a view to ascertaining their intentions regarding the restoration of constitutional order in the country, without recognizing or legitimizing the perpetrators"; and "seek the contribution of African leaders and personalities in order to get the perpetrators of the unconstitutional change to cooperate with the Union". Moreover, the Assembly shall also involve any Regional Economic Community (REC) in the consultations and "enlist the cooperation of the RECs to which the concerned country belongs".⁷⁶

By ratifying the Protocol on the Establishment of the Peace and Security Council of the African Union, the AU further laid the ground for the operative side to AU's vision on how to work in order to achieve peace on the African continent.⁷⁷ The PSC Protocol states that the PSC in conjunction with the Chairperson of the Commission shall institute sanctions whenever an unconstitutional change of government occurs in a Member State.⁷⁸ In this respect, AU Member States have agreed that the PSC acts on their behalf and that PSC acts in accordance with the AU Constitutive Act. More specifically, the AU mandate to impose sanctions was made stronger by this institutional development since the PSC now can decide on sanctions after an agreement of two thirds of the 15 PSC members, whereas the AU Assembly must go through a broader discussion including all member states and make a decision based on the approval of two thirds of all of them.⁷⁹ Although it is the superior organ of the AU, there are no rules saying the Assembly has precedence on making decisions to impose sanctions before

⁷⁵ "Rules of Procedure of the Assembly of the Union" 37 (2002).

⁷⁶ "Rules of Procedure of the Assembly of the Union" 37:6 (2002).

⁷⁷ "Protocol Relating to the Establishment of the Peace and Security Council of the African" (2002).

⁷⁸ *Ibid.* Article 7 (2002).

⁷⁹ *Ibid.* Article 8 (2002).

the PSC.⁸⁰ In reality then the PSC, which has more flexibility, can better handle unconstitutional changes of government and impose sanctions.

Lately, another relevant legal framework providing for the AU's use of sanctions has been developed. This framework is called the African Charter on Democracy, Elections and Governance (2007) (also known as the African Charter on Democracy or the Addis Charter). Although it has not come into force yet, its defining principles provide a common ground on how to respond to unconstitutional changes of government. The Charter considerably toughened the sanctions language of the AU, for example by providing for the view that perpetrators of unconstitutional changes of government should not be allowed to occupy any position of responsibility in the political institution following the restoration of constitutional order. A reason for why it has not yet been adopted has partly to do with the fact that the charter introduced a broader definition of what was meant by unconstitutional change of government, by also outlawing the extension of Presidential terms (most constitutions only allow an acting president to sit for two mandates. Thus, extending the constitution to a third mandate would invoke AU sanctions.⁸¹

These documents provide a couple of different grounds for the imposition of sanctions, namely: A. Failing to comply with decisions and policies of the Union without good reason and reasonable cause; B. coming to power through unconstitutional means; C. violating the principles enshrined in the constitutive act and the rules of procedure of the assembly of the Union; D. unconstitutionally changing the government or instigating support of such in another Member State.⁸² Given the increasing significance of unconstitutional changes of governments, this issue will be given further attention below.

When considering sanctions, the AU could rely on the following measures: Visa denials for the perpetrators of the unconstitutional change; restriction of government to government contacts; trade restrictions; prohibition of actors involved in unconstitutional change of government to participate in elections held to restore democracy (perpetrators may be tried before the court of the union, although not yet in force); and denial of transport and

⁸⁰ The Assembly only meets at ordinary sessions once or twice a year and an extraordinary session requires the approval of two thirds of the member states to be held.

⁸¹ The entry into force of the Charter will happen thirty days after the deposit of fifteen instruments of ratification by AU member states. Also worth noting that the Lomé declaration (or the *Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government* (2000) is not a legally binding either but the document is aimed at influencing the conduct of the member states and this together with the wide political recognition it has gives it high status and in practice a binding function.

⁸² See especially article 25/6 of the "African Charter on Democracy, Elections and Governance" (2007).

communications links with other member states; punitive economic measures. Other measures of political and economic nature are to be determined by the Assembly or the PSC. All of this suggests that the AU has the flexibility to select the type of sanctions to implement, albeit the circumstances for imposing them in the first place are somewhat over emphasized on unconstitutional changes of government while less so on dealing with violent, armed conflict.

4.2.1 Defining unconstitutional change of government

The Rules of Procedure of the Assembly defines an unconstitutional change of government as: a) military and other coup d'état against a democratically elected government; b) intervention by mercenaries to replace a democratically elected government; c) replacement of democratically elected governments by armed dissident groups and rebel movements; and d) refusal by an incumbent government to relinquish power to the winning party after a free and fair election; and finally e) the overthrow and replacement of a democratically elected government by elements assisted by mercenaries shall also be considered an unconstitutional change of government.⁸³ While the Lomé Declaration only refers to actions taken against democratically elected government, which excludes an overthrow of any of the numerous undemocratic governments of Africa, the Rules of Procedure goes further in its definition. Not only does it introduce political coups as part of the unconstitutional change of government definition, but also includes the overthrow and replacement of a democratically elected government by elements assisted by mercenaries as part of it.⁸⁴

Lately, further definitions have been agreed upon with regard to unconstitutional change of governments. Article 23 of the African Charter on Democracy, Elections and Governance from 2007, defines an unconstitutional change of government as an instance when: “Any putsch or coup d'état against a democratically elected government; or any intervention by mercenaries to replace a democratically elected government; or any replacement of a democratically elected government by armed dissidents or rebels; or any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or any amendment or revision of the constitution or legal instruments which is an infringement on the principles of democratic change of government”.⁸⁵ Here illegal means of accessing or *maintaining* power constitute an

⁸³ An increasing number of analyses have been written on AU and unconstitutional changes of government. See Souaré (2009) and Ikome (2007).

⁸⁴ “Rules of Procedure of the Assembly of the Union”. Assembly of the African Union, 37:3 (2002).

⁸⁵ “African Charter on Democracy, Elections and Governance”, article 23 (2007)

unconstitutional change of government, which distinguishes it from all other AU instruments.⁸⁶ Moreover, an amendment to the constitution, which infringes on the principle of democratic change of government, is considered an unconstitutional change of government.⁸⁷ Hence, this Charter is the most far reaching document of its kind. But again, this charter is not binding.⁸⁸ The ratification of the Addis Charter would lay a good foundation for the AU's sanctions policy. So far, 29 countries have signed the Charter, 4 countries have ratified, and a total of 15 ratifications are needed to put it into force.⁸⁹

Following this review of the legal framework, some further emphasis will be placed on the AU's institutional and the decision-making capacity.

4.3 Institutional decision making

Much can be learned from the way the UN Security Council adopts and enforces targeted sanctions when trying to understand also AU sanctions. For example, UN sanctions regimes never go beyond the resolution itself. Sometimes, however, the national interests of the member states move directions other than what the Security Council had initially envisioned. This could also be the case of the AU. Yet there are considerable differences. In complementing the decisions of the UN Security Council, the Subsidiary Sanctions Branch has been established to follow up on sanctions implementation. For this, mechanisms such as the panel of experts and monitoring teams have been put in place. These have become powerful tools,

⁸⁶ The definition here in need also be read in the context of the original – pre-negotiated text of the Charter - that went stronger and forbid “the amendment and revision of constitutions and legal instruments in violation of the spirit and letter of constitutional provisions by the incumbent government in order to remain in power indefinitely”. See Kane 2008: 51.

⁸⁷ Ibid.

⁸⁸ According to Article 25 of the *African Charter on Democracy, Elections and Governance*, the PSC shall, when observing that there has been an unconstitutional change of government, suspend the said State Party from the exercise of its right to participate in the activities of the Union in accordance with the provisions of articles 30 of the Constitutive Act and 7 (g) of the Protocol. This suspension shall take effect immediately. It further states that “...the suspended State Party shall continue to fulfill its obligations to the Union, in particular with regard to those relating to respect of human rights”. At the same time the AU should work to maintain diplomatic contacts for the purpose of restore democracy in that State Party. The perpetrators of the unconstitutional change of government according to the Article should “...not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their State”. It states that “Perpetrators of unconstitutional change of government may also be tried before the competent court of the Union”. So far only Mauritania (28 July 2008), Ethiopia (6 January 2009), Sierra Leone (December 2009) and Burkina Faso (2010) have ratified the charter (see *Peace and Security Council Report*, no. 9, April 2010: 5).

⁸⁹ Interview 2010-05-04.

not only to name and shame entities subjected to sanctions, but also to put on record, UN members that do not take sanctions seriously. Unlike UN sanctions, the AU today does not have the capacity to implement sanctions regimes that are technical in nature and that require monitoring, logistical means and surveillance. While it is the PSC that formally decides on sanctions, member states are supposed to implement them because the AU itself cannot implement the sanctions.⁹⁰ Although it is up to member states of the UN to impose sanctions, the reality is that the UN also has well-built institutional support for monitoring and implementation. Another difference is that while UN sanctions have an element of punishment, AU sanctions are imposed more against the background of the changing behavior of the concerned actors. This is done foremost by constructive mediation and dialogue.⁹¹

The AU sanctions approach is mostly done by suspension from the AU organization. Although such policy statecraft may sound weak, especially if compared with sanctions regimes imposed by the UN Security Council or by actors such as the EU or the US, stigmatization can play an important role in changing the mindset of the targets.⁹² Although the AU enforces sanctions on its own merits and for regional purposes, the AU usually seeks the support of other actors, whether regional economic communities such as ECOWAS or SADC, or other external bodies such as the EU or the UN.⁹³ With the prospected establishment of an AU sanctions committee at the PSC, the AU could increase its external cooperation.⁹⁴

In the event of an unconstitutional change of government, the regional economic communities of that region where the crisis occurs are expected to be proactive. For instance, as stipulated in the Lomé Declaration, in the case of an unconstitutional change of government, the incumbent Chairperson and the Chairperson of the Commission must promote action at bilateral, sub-regional and international levels. This means that the chairman of the REC will draw such events to the attention of the Peace and Security Council for consideration as to what must be done. Although the AU Assembly is the highest deciding body and in principle has the right to impose sanctions, it has delegated powers and legitimacy to the PSC. Under Article 16 of the Protocol relating to the Establishment of the PSC, the PSC and the Chairperson of the Commission have the responsibility to harmonize and

⁹⁰ Interview 2010-05-06.

⁹¹ Interview 2010-05-03.

⁹² Interview 2010-05-03.

⁹³ Interview 2010-05-03.

⁹⁴ This is also in line with findings made of the Stockholm Process, where it was concluded, from a UN perspective, that in order to make targeted sanctions effective, "...much more work needs to be done in bringing regional and sub-regional organizations into a coordinated effort of sanctions implementation" (Wallenstein, Eriksson, and Staibano 2003: 30).

coordinate the activities of the Regional Mechanism in the field of peace, security and stability. Usually the chairmen of the regional economic community briefs the PSC on what is taking place in the region. However, it is up to the PSC to discuss and decide what to do once it has received enough information. The PSC makes its decisions by consensus or by a two-thirds majority. Given that the AU is fairly untransparent, little information exists on the voting dynamics when it comes to sanctions. However, the PSC has to produce a communiqué from its meeting since without it, the decision would not be put into force.⁹⁵

In the event of a serious crisis, such as situations of war crimes, genocide and crimes against humanity it is the AU Assembly that jointly makes decisions (often with advice of the PSC).⁹⁶ Albeit it could be expected that major countries have more influence on the outcome of the decision, it is commonly known that major powers also act as gentle giants and that size not only provides power but also responsibility. In general, the PSC refrains from using targeted sanctions in the initial steps, pursuing instead a diplomatic dialogue based on engaging the actors. Many times these diplomatic initiatives come with an almost automatic suspension measure. The RECs are here meant to play an important role. In this context it is worth noting that the PSC is also meant to promote close cooperation with the RECs as well as to facilitate liaison between regions and other actors such as the UN Secretariat and its different branches.⁹⁷ As soon as the PSC adopts sanctions, the AU Commission would normally send a special envoy to the region. The role of the envoy is to examine the overall situation in the country of concern, pursue a diplomatic approach and consider what could be done next. The envoy reports back to the Commission.⁹⁸

Mostly, the PSC is supported by the AU Commission and more specifically by the Peace and Security Directorate (PSD). The PSD also acts as a harmonizing party between the RECs and the PSC as well as between RECs and the international community (e.g., the UN and the EU).⁹⁹ With regard to the European Union, the AU does not have a formal sanctions information exchange mechanism. Some coordination occurs via different contact groups in different situations, but otherwise it is accomplished on a case-by-case basis.

It is not likely that the AU in the immediate near future will establish any mechanism that could ensure that AU sanctions are being effectively implemented. Whereas, the EU Court for instance may somewhat oversee

⁹⁵ Interview 2010-05-04.

⁹⁶ Bogland, Egnell and Lagerström: 2008: 22.

⁹⁷ Ibid.

⁹⁸ Interview 2010-05-03.

⁹⁹ Bogland, Egnell and Lagerström: 2008: 23.

the sanctions work of the EU Council and the Commission, the AU does not have such oversight body. In fact, neither the AU Court nor the AU parliament is able to put any pressure on the Peace and Security Council or the regional economic communities for not pursuing sanctions in a more forceful or correct manner.¹⁰⁰

4.3.1 Recent developments

Following the 13th Session of the Assembly of the Union (2009), the Chairperson of the AU Commission was requested to initiate consultations with the Regional Economic Communities (RECs), the Pan-African Parliament, the Economic, Social, and Cultural Council (ECOSOCC) and other AU organs on ways and means to strengthen the capacity of the AU to deal with unconstitutional changes of government (e.g. by means of sanctions).¹⁰¹ In this context, communications were also sent to AU partner institutions requesting lessons learned, experiences and ways to improve coordination (institutions includes the UN, the League of Arab States, the EU and the OAS). In late 2009, findings from this initiative were discussed by the PSC.

One of the main findings and conclusions of the meeting was that the AU and the RECs should initiate actions to facilitate the ratification of the Charter on Democracy, Elections and Governance as well as to establish a sanctions committee. This view was also further recognized during one of the retreats the PSC took i.e. in Swaziland 17-19 December 2009, when it decided on to enhance the legal framework relating to unconstitutional changes of Government. By adopting the “Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional Changes of Government in Africa”. In this context, notable principles include inter alia¹⁰²:

- *Shorten the period of up to six months (180 days) of suspension period, as provided for in the Lomé Declaration to perpetrators of unconstitutional change to restore constitutional order to a period of three months (ninety (90) days;*
- *Perpetrators of coups d'état to be prosecuted before the African Court of Justice and Human Rights (and that his Court should be given the competence to do so);*

¹⁰⁰ Interview 2010-05-03.

¹⁰¹ Executive Council, Sixteenth Ordinary Session, 25-26 (2010).

¹⁰² For a full account of the conclusions of the retreat, see Peace and Security Council, “Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional changes of Government in Africa” PSC/PR/2(CCXIII)/Assembly/AU3/XIV.

- *Perpetrators of coup d'états shall not be allowed to stand for elections conducted for return to constitutional order;*
 - *Perpetrators of coup d'états shall not constitute obstacles by negatively influencing the conduct of a transition towards the return to constitutional order;*
 - *Military/Security forces shall not interfere in the transition towards the return to constitutional order;*
 - *Conduct political engagements of the transition towards the return to constitutional order in a constructive and non-competitive manner or in such a manner as not to compromise the machinery of targeted sanctions;*
 - *Enhance coordination and cooperation between AU Organs, Regional Economic Communities (RECs) and other Regional Mechanisms, in the implementation of targeted sanctions;*
 - *Seek the support and cooperation of national parliaments, through the Pan-African Parliament in the process of implementing sanctions, in particular through the adoption of enabling national legislation;*
 - *Increase and strengthen information gathering to inform decision-making process on actions relating to sanctions against unconstitutional changes of government (in collaboration with the Committee of Intelligence and Security Services of Africa (CISSA) and the Intelligence and Security Committee (ISC) of the Commission, as well as with external actors);.*
- Effectively establishing the Committee on Sanctions as a permanent subsidiary body (as decided by the PSC at its 178th meeting held on 13 March 2009).*¹⁰³

In the discussions that followed it also was made clear that less focus should be on giving rise to new instruments to deal with UCG, as the AU was considered fairly well equipped, but rather to encourage implementation of existing legal texts and facilitate institutional implementation capacity.¹⁰⁴ In this context, proposals on ways to strengthen the capacities of the African union to manage unconstitutional changes of governments were also provided by the Chairperson of the Commission on the request of the Assembly of the Union. Most important among the proposals perhaps was

¹⁰³ Following a meeting held on 13 March 2009, the PSC decided in conformity with article 8/5 of the Protocol Relating to the Establishment of Peace and Security Council, to establish a Committee on Sanctions. See SC/PR/COMM.3(CLXXVII).

¹⁰⁴ Executive Council, Sixteenth Ordinary Session, 25-26, 2010: 5.

the suggestion that the Assembly of the Union should *reiterate* the provisions set out in Chapter VII of the African Charter on Democracy, Elections and Governance (“Sanctions in Cases of Unconstitutional Changes of Government”) and have it supplemented in respect of all what concerns the measures to be taken in the event of unconstitutional change.¹⁰⁵ This in a sense relaxed the fact that the Charter had not yet been ratified, but that central provisions of that text are still being applied whenever there is an UCG.¹⁰⁶

4.3.1.1 A sanctions committee in the making

By the Ezulwini “Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional Changes of Government in Africa” adopted at the PSC Swaziland retreat in late December 2009, it was decided that a sanctions committee should be established at the AU headquarter.¹⁰⁷ The aim of this new sanctions committee would be to supervise PSC’s sanctions policy implementation. More specifically, the mandate of the committee is to monitor and make recommendations on the implementations of sanctions.¹⁰⁸ In addition, some of the principles being adopted on the role of this committee, included, *inter alia*¹⁰⁹:

- Monitoring of sanctions;
- Collect information on member state implementation of sanctions;
- Examine information regarding alleged violations;
- Identify individuals and entities to be included on the AU sanctions lists;
- Consider exemptions form sanctions measures;

¹⁰⁵ Executive Council, Sixteenth Ordinary Session, 25-26, 2010: 6.

¹⁰⁶ The communiqué confirming the decision to adopt the so-called Framework policy for the Enhancement of Measures of the African Union in Situations of Unconstitutional Changes of Government in Africa, was issued in PSC/PR/COMM.2(CCXIII)

¹⁰⁷ Peace and Security Council, “Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional changes of Government in Africa” PSC/PR/2(CCXIII)/Assembly/AU3/XIV.

¹⁰⁸ The body would consist of five PSC members for a period of one year (reflecting regional representation).

¹⁰⁹ Peace and Security Council, “Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional changes of Government in Africa” PSC/PR/2(CCXIII)/Assembly/AU3/XIV.

- Review regularly the list of individuals and entities designated by the PSC and to encourage member states to supply any additional information;
- Report at least once a month to the PSC on its activities and on the implementation of sanctions, including on sanctions effectiveness;
- Identify non-compliance.

The PSC, during its retreat, also concluded that a sanctions manual is being drafted to facilitate speedy response to unconstitutional changes of government. The manual should provide, inter alia, for a gradual process in that application of the different categories of sanctions set out in the legal instruments relating to unconstitutional changes of government and by decisions of the PSC.

Inspiration in terms of working procedures seems to reflect many current procedures of the EU.¹¹⁰ In fact, the AU is currently in dialogue with the EU, where the latter is sharing its experiences on administrating and institutionalizing sanctions (basic documents, guidelines, etc.). Clearly, with the establishment of a sanctions committee at the PSC, the AU would be in a much stronger position to deal with sanctions, which now often yield political support but less implementation capacity. In fact the Framework adopted by the PSC also reflect how the Secretariat of the sanctions committee (i.e. the Secretariat of the PSC) should enhance implementation, e.g.: prompt widest dissemination to AU member states and international community on the sanctions policy; to elaborate detailed lists of individuals and entities to be targeted by sanctions; timely gathering of accurate and relevant information and analysis of facts on the ground for informing the decision-making process; to undertake fact finding missions and to include safeguards to reduce negative impact on the civilian population, etc.¹¹¹

Moreover, with such institutionalized mechanisms, the AU could also potentially increase its scope to enforce sanctions against countries that engage in violent armed conflict and not only in situations of unconstitutional change of governments.

Regardless if the AU becomes better off in terms of relying on its own sanctions; it is customary nowadays to seek necessary support and cooperation with the UN. First, the “blessing of the UN” provides further political legitimacy to the AU’s actions. Secondly, support of the UN is also likely to trigger some financial resources from the UN assets fund that could

¹¹⁰ Interview 2010-05-06.

¹¹¹ Peace and Security Council, “Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional changes of Government in Africa” PSC/PR/2(CCXIII)/Assembly/AU3/XIV.

support the AU in its capacity to enforce sanctions (this remains to be seen, however). Thirdly, by getting the UN onboard a particular sanctions policy, African leaders could also tie central actors of the international community into certain political and economic positions.

4.3.2 The role of regional economic and political communities (RECs)

According to the Constitutive Act of the African Union, the AU shall “coordinate and harmonize policies between existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union”. In a sense, the RECs are the founding pillars of the AU.¹¹² This was also established in a Memorandum of Understanding in July 2008 on the context of the African peace and Security Architecture. Moreover, the regional organizations come up with close on ground analysis as well as monitoring of sanctions. For example, many times it is the regional bodies, which compiles the targeted sanctions lists on who to target with visa bans as well as whom to target with asset freeze measures.¹¹³

Sometimes the RECs propose sanctions measures, and the PSC simply gives political legitimacy to these proposals. However, the PSC and the regional body are not always in line with each other. Sometimes, one body may go further than the other. For instance, in 2003 the AU condemned the coup in the Central Africa Republic, while the CEMAC accepted Bozize’s coup. With regard to Niger, ECOWAS suggested a stronger response on the crisis that erupted in that country (2009/10), whereas the AU did not follow through.¹¹⁴

Nevertheless, most regional organizations in Africa have a weak sanctions monitoring- and implementation capacity and know-how. Few resources and less technical expertise also makes targeted sanctions less effective than would be the case if there were stronger mechanisms in place. In this context, it is also worth noting that the sanctions capacities of different regional organizations seem to vary considerably where, for instance, ECOWAS is perhaps the best equipped. To compensate for the inability to enforce sanctions effectively, RECs however, seek the support, just like the AU, of key actors of the international community (e.g., UN and the EU).

¹¹² See Darkwa and Attuquayefio (2009) on the Power of Regional Economic Communities to deal with unconstitutional changes of government.

¹¹³ Interview 2010-05-04.

¹¹⁴ Interview 2010-05-04.

4.4 Conclusion

In this section an examination of AU's framework to adopt targeted sanctions has been made. As found, there are a number of steering documents that make it possible for the AU, to adopt targeted sanctions. While this possibility exists, and has already been used, there is less capacity now for the AU to actually enforce and implement its sanctions. On the other hand, there is a process of institutionalization of a sanctions body that would supervise the implementation of sanctions. The measures taken seems to reflect the kind of approach to sanctions that is currently being applied by actors like the UN Security Council as well as the EU (in fact, discussions and experience sharing between the AU and these actors is currently taking place). However, how this will eventually appear when put into practice remains to be seen. In this chapter, one could also note that the AU is fairly careful with regard to under what circumstances it chooses applies sanctions. Most of the time, the AU adopts sanctions in times of unconstitutional changes of government rather than when armed conflicts and violent situations may call for sanctions. What is problematic is the narrow definition of unconstitutional change of government that the AU takes. On the positive side, the AU is in the midst of expanding this scope.

Last but not least, the examination suggests that AU and the PSC are very dependent on the regional economic communities and their interest in pursuing sanctions. Unless there is political will, sanctions are not likely to bite. Regrettably, all RECs suffer from lack of know-how and institutional capabilities, and not least systematic thinking on how to best use sanctions, not least in connection to other tools of security governance.

With this in mind, it goes without saying that PSC is many times being analyzed in a formal way, where policy output is read on basis of rational behaviors. Yet, and as alluded to elsewhere in this study, politics are not always defined by its reason or by its formal legal boundaries but the many times irrational political content.

In the next chapter, an examination will be made of AU's reactions to violent armed conflicts and political crises. Key here is to find patterns of typical behavior, not least by the use of targeted sanctions.

5 Responding to Political Crises

Across Africa, a number of violent and nonviolent conflicts have taken place since the establishment of the AU. In order to get a better sense of what the security landscape looks like and how the AU has responded to these, an inventory of the number and types of political and military coups, unconstitutional incidents as well as war and conflicts will follow. To limit the scope of this examination, the period of investigation will be 2000 to late April, 2010. All countries in Africa will be covered. A summary of the main elements of the data collection effort is found in Appendix 2 (the actual data matrix will be published separately).¹¹⁵ Below follows data analysis on when, where, how the AU responds to such situations will be made.

5.1 Trends in AU targeted sanctions

Of particular interest here is to get a better sense of how the AU has been able to respond politically to the various security challenges it has faced. Given that the AU may respond in many different ways, three categories of political responses will be used analytically: “suspension”, “imposition of sanctions” and “strong reactions” (e.g., condemnations).¹¹⁶

In all, there were 10 political and military coups, 19 unconstitutional incidents and 89 wars or conflicts taking place across Africa during this period. As many as 38 countries in Africa were affected.

Findings from the data collection suggest that the AU has suspended six of its members (Central African Republic, Guinea, Madagascar, Mauritania, Togo and Niger) as reactions to these governments obstructive political behavior. Furthermore, the AU has imposed sanctions on six countries, five of which were also suspended, (Central African Republic, Comoros, Guinea, Madagascar, Mauritania and Togo) to what it considered situations of unconstitutional change of government. In comparison, it is worth noting that the UN has imposed sanctions on 11 countries and the EU 10 countries in Africa over the same period.¹¹⁷ Finally, the AU has reacted strongly against 13 African countries (Burundi, Central African Republic, Comoros, Ivory Coast, Guinea, Guinea Bissau, Kenya, Madagascar, Mauritania, São

¹¹⁵ See Work in Progress Report on “Data on conflicts and unconstitutional change of government has taken place in the period 2000-2010”, version 1. Eriksson, Mikael and Förander, Karin (2010).

¹¹⁶ The definitions and the operationalisation applied in the data collection are located in Appendix 1.

¹¹⁷ An interesting observation here is that the UN has mainly concentrated on actors involved in armed conflicts, while the AU has mainly imposed sanctions for political crises, mainly that of unconstitutional changes of governments.

Tomé and Príncipe, Somalia, Sudan and Togo. This could be compared to the EU and the UN who reacted strongly against 9 countries in Africa in the same period.¹¹⁸

A methodological difficulty however, in categorizing these types of reactions is that the AU may rely on the reactions of regional economic communities in its place. In this context, strong reactions have been made against at least 10 countries in total: CEMAC (Central African Republic), ECOWAS (Ivory Coast, Guinea, Guinea Bissau, Liberia, Niger and Togo), IGAD (Eritrea and Somalia), and SADC (Madagascar).¹¹⁹

Conspicuously, with regard to the AU's institutional behavior, there are only few circumstances where the AU has reacted to governments that have continuously chosen to prolong their stay in power. Up until 2007, there were 10 countries that attempted to amend their constitutions. Eight countries did not have a two-term provision at all.¹²⁰ Meanwhile, during the period 2002-2010 there were 12 constitutional changes that took place over the African continent that abolished presidential term limits in its entirety.

There are also a number of cases where the AU has not reacted to democratic deficiencies despite clear reasons for doing so. Countries that could be subjected to sanctions (although their Constitutions may allow for long-term non-democratic rule) include Algeria, Tunisia, Egypt and Libya.¹²¹ However, from the AU, the response was mostly political silence. For instance, in the Presidential election held in Egypt in September 2005, President Mubarak was reelected for a fifth consecutive time (each period lasting for six years). Libya has not experienced democracy since 1969 when Qaddafi came to power.¹²²

¹¹⁸ Burundi, Central African Republic, Chad, Guinea, Guinea Bissau, Kenya, Madagascar, Mauritania, Niger, São Tomé & Príncipe; and Togo.

¹¹⁹ Due to lack of data, the figure may be much higher.

¹²⁰ See also Vencovsky (2007).

¹²¹ However, these governments have abolished democracy altogether.

¹²² There are different explanations for this of which three are particularly relevant. First of all, the political realities may not permit such reactions. For example with regard to the Maghreb countries, acting presidents are not given political legitimacy. The second explanation is that the AU has not yet adopted any legal foundations that would allow it to respond politically to prolongations of power beyond two-term mandates by means of sanctions. Such support is likely to have been vetoed by those members that rule on such premises. The third explanation is that the AU cannot rely too much in those situations where the parliament of the particular country has decided to amend the constitution in support of the president's ambition. For instance, in 2008 a constitutional amendment was passed by the Algerian Parliament abolishing the two-term limit, paving the way for President Bouteflika's re-election. In Tunisia, the presidential term limit was abolished in 2002. In 2009 he won a fifth time in office. Zimbabwe is another case, which allowed President Mugabe to be reelected on a number of occasions (1987, 1990, 1996 and 2002). Although both regional bodies and the AU have put political pressure on both the Zanu-PF

The data on AU reactions to violence and unconstitutional changes of government also reveals that there are situations where the AU's reactions are minimal at best. For instance, Cameroon has held repeated elections since Paul Biya took office (1984, 1988, 1992, 1997, and 2004). Yet, the AU has not been able to respond in any significant way despite the fact that the elections are generally considered un-free (beyond that of an AU fact finding mission in 2007). Although the National Assembly of Cameroon voted in 2008 to change the 1996 constitution by removing the limit of two presidential terms and thus giving its approval of the President to hang on to power, no pressure is being put on the leadership by the AU in the form of sanctions. Although it might be possible to understand that the AU is not interfering in countries where elections are free or partly free, in the midst of no limitations of presidential mandate, it is less understandable why it does not react more forcefully when elections by many observers are not considered free.

5.2 Conclusion

In conclusion, the data discussed here brings the question of how far the AU is currently prepared to go politically in responding to cases of violent armed conflict and political crises. One could consider two avenues. On the one hand, the AU could respond to any challenges that threatens the stability of peace and security on the African continent. On the other hand, one could concentrate only on responding to unconstitutional changes of government. Clearly, the AU has chosen the latter. As concluded previously, the most relevant charters on AU practices have not yet allowed the organization to react more strongly to situations of armed conflict, for instance by means of targeted sanctions. This absence of stronger political response should be read in light of the fact that the AU Charter does invite the organization to respond also to war crimes, genocide and crimes against humanity. Thus, the AU is in position to interpret what situations are constituted as such. The inability to respond could raise questions of double standards or at least lack of political interest. On the other hand, the AU is increasingly widening its responses to unconstitutional changes of government. Not only when and how to respond, but also how such circumstances are to be defined and on what conditions actions are to be taken. However, given the political realities, it is not likely that the AU will be in a position to impose targeted sanctions on political leaders that have abolished presidential term limits.

and the MDC, the AU has never gone as far as to impose targeted sanctions like the US and the EU.

6 Six cases of AU Sanctions

This section makes an overview of the main political developments leading to the adoption of six cases of AU sanctions. The following cases are studied: the Central African Republic, Togo, Guinea, Comoros, Mauritania, and Madagascar. These cases constitute the only cases where AU has adopted sanctions so far.¹²³ The aim is to display the main political dynamics that took place and that led the AU to adopt sanctions.

6.1 Central African Republic

The imposition of sanctions against CAR in 2003 represents the first sanctions regimes of the AU. As such, it became a test case of how the AU should deal with unconstitutional changes of government on the African continent. Compared to the other cases examined below, the Peace and Security Council had not yet been institutionalized at time of the eruption of the crisis. In fact, the dynamics taking place may not really be comparative to the use of sanctions applied by the AU almost ten years later. Yet, as will be seen, there is still much resemblance.

The AU decided to impose sanctions following the events on 15 March 2002, when about 1,000 troops loyal to General François Bozizé entered Bangui, the capital of the Central African Republic in a classic form of the Coup d'état. Taking control of central government buildings, an announcement was almost immediately made that Bozizé was suspending the constitution and dissolving Central African Republic parliament. Claims were made that his forces had taken power 'because of mismanagement of the country and the ruling government's inability to carry out its domestic responsibilities'. The new government, Bozizé declared, was one 'of peace and national reconciliation'.¹²⁴

In the days following these events, the AU condemned the coup on repeated occasions. For example, on March 17 2002, the Interim Chairman of the AU Commission, Amara Essy, strongly condemned the 'coup d'état' that had taken place.¹²⁵ The same day, the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution subjected the coup-makers to strong condemnation.¹²⁶

¹²³ At the time of writing another case involving the use of AU sanctions was adopted against Niger. Given that the case is currently unfolding, it was purposely left out from this study.

¹²⁴ Cornwell (2003).

¹²⁵ *BBC Monitoring Africa*. 2002-11-13.

¹²⁶ Ninetieth ordinary session of the Central Organ of the Mechanism for Conflict Prevention, 17 March (2003).

During a two-year transitional period that followed, Bozize stayed in power. During this period, he promised to put the country back on track and to ensure a democratic and constitutional rule. Although some diplomatic initiatives were made by the AU to have the coup-makers follow through on their declared intentions, any stronger diplomatic isolation did not take place. In March 2003, the political standpoint of the AU was stepped up by sanctions (which at this time meant a suspension from all AU activities). Contrary to the critical view of the AU, the regional Economic and Monetary Community of Central Africa (CEMAC) declared their political support of Bozizé.¹²⁷ In the year to come, 2004, a referendum was held in which the republic received a new constitution.

Despite the opposition's criticism of the mistreatment of governmental power, free and fair parliamentary and presidential elections were held in March and May 2005. Bozize won the presidential election. Because of what at the time was considered to be an encouraging election management, the AU declared its support for the election's outcome, stating that the PSC was very satisfied with the way the elections were run in the Central African Republic. Thus in a PSC decision on 24 June 2005 the AU lifted the sanctions it had imposed two years earlier.¹²⁸

Although it is difficult from this brief overview to say something about the effectiveness of sanctions, it seems that the tool came in handily in putting pressure on the coup-makers in forcing them to embark on a path for the restoration of free elections. The case also highlights the role for the regional economic community of CEMA in putting pressure on the coup-makers. Perhaps most important in this particular case was the fact that the coup-makers did not give in to the enforced AU sanctions but instead hung on to power. However, allowing the coup-makers to run in the elections, an in this sense auto-legitimizing them, is contrary to the spirit of the, yet to be adopted, Charter on Democracy. Rather than coup-makers taking a step back, the AU stepped back with sanctions giving full legitimacy to the coup-makers. This obviously put the AU into a difficult position when it came to lifting sanctions.

6.2 Togo

Similar to CAR, Togo is a small African country and with sanctions imposed in 2005, it is also one of the first test cases for AU sanctions. Unlike the case of CAR, Togo was subjected to sanctions with a much more firmly established AU Peace and Security Council in place.

¹²⁷ *Africa Confidential*. 2003-03-21, vol. 44, no. 6.

¹²⁸ *Peace and Security Council*, 33rd meeting, 24 June (2005).

For several decades, Togo was headed by the authoritarian regime of General Gnassingbé Eyadéma (1967-2005). Closer to his exit from the political life, Eyadéma's son was set to take over political leadership. However, following a sudden heart attack of Gnassingbé Eyadéma, the political future of Togo was to change sooner than planned.

Following the death of his father, Faure Gnassingbé was swiftly installed as president by support of the Togolese army. In so doing, however, the army overrode the stipulations of the Togolese constitution, which entitled the Speaker of Parliament to take over if the president died while in office. At the time of Eyadéma's death, the Speaker was abroad. This 'fait accompli', would, according to the army, be tolerated by the international community, a reasoning that led them to pursue their intention to install Faure Gnassingbé.¹²⁹

There were, however, a number of reactions to the shift of power. For instance, the chairperson of the AU Commission, Alpha Oumar Konaré, described the events in Togo as a 'military coup' which he was not prepared to simply accept.¹³⁰ Moreover, the PSC made public a statement that it was determined to impose sanctions according to cases of unconstitutional transfers of power, 'unless rapid action is undertaken by the authorities to restore the constitutional order'.¹³¹ Also, ECOWAS Executive Secretary Mohamed ibn Chambas commented on the takeover by stating that 'ECOWAS could not tolerate any unconstitutional regime change and so the situation created in Togo cannot be accepted'.¹³² The threat of ECOWAS sanctions were also repeatedly made in the following weeks.¹³³ Last, but not least, one should add Nigeria's Obasanjos own strong reaction and involvement in opposing the take-over.

After reviewing the situation in the days that followed, the ECOWAS decided that it had no other options than to impose sanctions on Togo. Concretely, this meant suspending the country from the regional bloc, banning its leaders from travel and imposing an arms embargo.¹³⁴ A week later, the AU, by a decision of the PSC followed ECOWAS' sanctions move

¹²⁹ Simon (2005).

¹³⁰ Ibid.

¹³¹ *Agence France Presse*: 2005-02-07.

¹³² *Reuters News*: 2005-02-08.

¹³³ Acting most far reaching at the early stage was the Francophone organization that decided to suspend the participation of all Togolese representatives in the organization's organs according to the 'Bamako Declaration' that established norms in matters of democracy, liberty, and the rule of law. The organization also decided to suspend all forms of multilateral cooperation with the country, with the exception of programs that involved Togo's population (*BBC Monitoring Newsfile*: 2005-02-10).

¹³⁴ *Reuters News*: 2005-02-19.

and also to imposed sanctions. In this context it is worth nothing that the AU also asked the UN to support its decision.

After continued intense diplomatic pressure, Gnassingbé eventually stepped down from power and arranged for elections according to the terms of the Togolese constitution. Accordingly, elections were to be held in within 60 days. Accepting this move, ECOWAS assured its support to make the election as fair and as transparent as possible.¹³⁵ In this context, it also decided to remove the sanctions it had imposed.¹³⁶

Yet, despite these constructive steps taken, the time-table that Gnassingbé presented would soon turn this tide away. In fact, the opposition parties objected the short timeframe that would not allow for any serious campaigning, which would benefit the incumbent government. In addition, the opposition objected to the disorder of the existing electoral rolls.¹³⁷ In a surprising move, the Interior Minister Francois Esso Boko supported this view that more time was needed as well as that a transitional government should be set up with representatives from the opposition. Unless the election was delayed, the country was likely to head into a civil war. In this context Boko also stated: 'Passions are running high. The political conditions for an election that reconciles Togo with itself are far from being fulfilled...'¹³⁸ However, his public position on this led to Togo's interim President Abbas Bonfoh to suspend Boko from power on 22 April 2005.

Despite criticisms by opposition parties, the election process was pursued and thus following the 24 April election, the Togolese Electoral Commission proclaimed that 60.8 % of the votes had been given to Faure Gnassingbé with only 38 % for his main opponent, Bob Akitani. The results, however, were suspected of being marred by fraud, and according to one analyst, the presidential poll that took place in Togo on 24 April 2005 'was certainly not a model of transparency.'¹³⁹ Not surprising, the outcome of the election led the opposition out to the street claiming election fraud. The street demonstrations were met with one-sided violence, in which nearly 100 people died and tens of thousands fled Togo.

ECOWAS in this context took the election process with relative ease, describing it as essentially being a fair one. The EU Commission and the US on their part called on the new government to begin a dialogue with the opposition in order to bring about national reconciliation.¹⁴⁰

¹³⁵ Simon (2005).

¹³⁶ *Agence France Presse*: 2005-02-26.

¹³⁷ Simon (2005).

¹³⁸ *Agence France Presse*: 2005-04-22.

¹³⁹ Simon (2005).

¹⁴⁰ *Ibid.*

On 19 May, a summit was organized by the AU together with the ECOWAS to discuss the way forward and in particular with regard to the post-election crisis. One political path was to have the AU further involved in Togo. This intention to engage AU also led the PSC on 27 May to lift its sanctions.¹⁴¹ Although the human rights situation in Togo remained bad and the political situation was still troublesome, the AU underlined that the sanctions imposed had initially followed the installment of Faure Gnassingbé. Accordingly, the former AU Commissioner for PSC, Saaid Djinnit motivated the AU's move 'because the PSC believes the situation in Togo can no longer be considered anti-constitutional and that the AU no longer could challenge the legality and constitutional nature of the regime in Togo.'¹⁴² A number of ensuing diplomatic initiatives followed, including the appointment of Zambian president Kenneth Kaunda as mediator. Togo would later be able to hold its first relatively free and fair legislative elections in October 2007.¹⁴³

In the case of Togo, as opposed to the political developments in the CAR, the unconstitutional change of government took place in a somewhat different way. Whereas CAR experienced a more classical coup d'état, Togo's unconstitutional change of government was more refined in the sense that it involved a long-term planned velvet coup, albeit a misjudged one. Given the diplomatic pressure and the sanctions imposed, it is not unfair to attribute the stepping down of Gnassingbé as a result of their enforcement. Although this could be seen as a success in itself, the sanctions policy in retrospect also became problematic as revocation also gave a blessing to Gnassingbé to pursue his rein of power. Had the AU stipulated in its definition of unconstitutional change of government, as suggested in the yet to be ratified Charter on Democracy, that any one involved in coup-making should not be allowed to participate in national politics whatsoever (i.e., despite being a former contestant of a free election), Gnassingbé would not have been able to continue in office. The case of Togo also brings to surface the importance of the regional hegemon (in this case Nigeria). The political attitude of the hegemon is likely to effect also the regional economic community's position.

6.3 The Comoros

Ever since its independence on 6 July 1975, Comoros has experienced considerable political instability. Over the decades, a number of political leaders have come and gone in coups and counter-coups. Connected to

¹⁴¹ *Agence France Presse*: 2005-05-27.

¹⁴² *Ibid.* 2005-06-01.

¹⁴³ Background information extracted from the Uppsala Conflict Database 2010-05-05.

claims over government there have also been a number of territorial disputes which have shaken the country. For example, in 1996 the then newly elected president Mohamed Taki delimited the autonomy of the two smaller islands, something that led the MPA (Mouvement Populaire Anjouanais, Anjouan People's Movement) to launch an armed struggle for the independence of Anjouan in 1997. In this period, the Comorian army did not manage to defeat the rebels and was eventually forced into negotiations with the MPA. The result of the negotiations paved the way to a new constitution in 2001 that would provide for a federal structure and a presidential rotations system between the three islands Grande Comore, Anjouan and Moheli.¹⁴⁴

On 14 May 2006, Comoros was the scene of a presidential election. The AU dispatched nearly 500 troops to ensure that the elections were free and fair as some unrest between various groups occasionally took place.¹⁴⁵ An AU mission was also dispatched to monitor and facilitate the election (“African Union Mission for Support to the Elections in the Comoros”, AMISEC).¹⁴⁶ The election was won by Ahmed Abdallah Mohamed and his subsequent inauguration marked the first peaceful transfer of power in the history of the Comoros. Following the elections, international observers monitoring the election described the process as legitimate, despite allegations of fraud by some candidates.¹⁴⁷

Yet, a diplomatic crisis prevented the election process from embarking with complete order. Following a ruling of the Comorian Constitutional Court on 26 April 2007, the presidential candidate of the Anjouan Island, Abdourahim Said Bacar, was prevented from participating in the presidential race that would take place on the Anjouan Island.¹⁴⁸ Bacar had come to power in Anjouan already in August 2001 following a military coup. Bacar, however, refused to step down and declared his intention to follow through with the election. In an effort to solve the political crisis, the AU dispatched an envoy to negotiate the crisis prior to Anjouan elections. The resolve by Bacar, to holding a separate election, made the AU express its concern over the situation on the Island. This concern was further exacerbated by a number of attacks on the Comorian army by supporters of Bacar. This caused additional worries for the AU.¹⁴⁹ Complicating the situation further, the central government of Comoros appointed an interim president for Anjouan, a move that would lead to an open conflict with Bacar. Ignoring pressure both from within Comoros, and international diplomatic initiatives, such as public

¹⁴⁴ Ibid.

¹⁴⁵ *BBC Monitoring Africa*: 2006-03-17.

¹⁴⁶ *Peace and Security Council*, 47th meeting, 21 March (2006).

¹⁴⁷ *Agence France Presse*: (2006-05-16).

¹⁴⁸ *Reuters News* (2007-05-08).

¹⁴⁹ *Peace and Security Council*, 77th meeting, 9 May (2007). Also confirmed in *BBC Monitoring Africa*: 2007-05-10.

warnings by the AU, the Anjouan authorities, on 10 June 2007, pursued with its election despite it being unauthorized by the federal authorities.¹⁵⁰ Bacar later declared himself the winner of the Presidential race.

Following this unilateral declaration of victory, the African Union Commission chairman strongly condemned the election in Anjouan and considered it being null and void.¹⁵¹ Moreover, given the open defiance of Anjouan, the government of Comoros threatened to intervene militarily in Anjouan. The day after this threat of military action, on 14 June 2007, Bacar was sworn in as president.¹⁵² In the ensuing months, the situation remained locked. Various diplomatic initiatives were taken to resolve the crisis. The AU repeatedly called for new elections.

Loosing temper with Bacar, AU began in late September to call for sanctions.¹⁵³ A number of public threats were issued, but without much political result. As a result, on 10 October 2007, the AU decided to imposed economic sanctions and travel restrictions on the leaders of Anjouan.¹⁵⁴ The AU also began to patrol the waters of Anjouan, keeping a tight naval blockade of the Island.¹⁵⁵

A month later, on 26 November 2007, the AU met to discuss whether to impose further sanctions on the Comoros island of Anjouan.¹⁵⁶ The AU would soon make public a travel ban as well as assets freeze lists on 145 Anjouanais officials.

In a final move to convince the authorities of Anjouan, the AU paid public support to a delegation led by South Africa (SA) in order to convince the Anjouan authorities to hold fresh elections under international supervision in February 2008. It was well understood that if the diplomatic mission would prove unsuccessful, i.e. without a behavioral change, the Comorian authorities would launch a military operation against Anjouan. The AU would support the military operation. The SA initiative however did not achieve as much as was at the time expected, and the military preparation for Operation Democracy got under way.¹⁵⁷ On March 25, 2008, the AU launched a military intervention.¹⁵⁸ The operation was short lived, as the AU was quick in taking military control of the central position of the Island.

¹⁵⁰ *Peace and Security Council*, 78th meeting, 9 June, (2007).

¹⁵¹ *BBC Monitoring Africa*: 2007-06-13.

¹⁵² *Agence France Presse*: 2007-06-13.

¹⁵³ *Reuters News*: 2007-09-19.

¹⁵⁴ *Peace and Security Council*, 95th meeting, 10 October (2007).

¹⁵⁵ For further details from the period of the election to this particular point, a good source is the *Peace and Security Council*, 87 meeting, 13 August, (2007).

¹⁵⁶ *BBC Monitoring Africa*: 2007-11-27.

¹⁵⁷ *Agence France Presse*: 2008-02-19.

¹⁵⁸ See Svensson (2008).

Bacar and his men fled but were later captured. On June 15 2008, a new election was held in Anjouan.

In sum, the case of Comoros represents a situation where targeted sanctions are successfully mixed with other forms of diplomatic pressure. In fact, AU targeted sanctions have to be read in light of the African Union Electoral and Security Assistance Mission to the Comoros and the Operation Democracy in Anjouan. Although there were several diplomatic attempts to put the political order back on its feet before further steps were taken, targeted sanctions along with mediation attempts and military pressure were enforced as a final step to put coup-makers out of office. While sanctions did not successfully bring down the coup makers from power by themselves, they did help the central government to mount pressure on the regime of Anjouan.

6.4 Islamic Republic of Mauritania

Following a number of coup and counter-coups since independence in 1960, a military junta led by Ely Ould Mohamed Vall ousted the acting President Taya in 2005. Under the government of Mohamed Vall Mauritania embarked on a path leading to the free and fair presidential election in 2007. The election was won by Sidi Ould Cheikh Abdallahi.¹⁵⁹

On 6 August 2008 however, another military coup took place in Mauritania. The army intervened against the newly elect Abdellahi after months of political turbulence.¹⁶⁰ The coup was lead by General Mohamed Ould Abdel Aziz. The day after taking power, Aziz vowed to involve the international community until a transition to full democracy was completed. The AU, the EU, the US, and the Organization of the Islamic Conference condemned the coup along with regional powers such as Nigeria.¹⁶¹ Most actors called for a return to 'constitutional order' and on 9 August the AU declared its intention to suspend Mauritania from the body until democracy was restored.¹⁶² Yet, only some weeks following the coup, Abdel Aziz began to hold meetings with the AU, the Arab League, the UN as well as the donor community to discuss how the country could get back on political track again.¹⁶³

On 25 August 2008, the head of the AU Commission held direct talks with Aziz as well as the opposition in a bid to overcome the political difficulties. During these talks, the AU's position was clear in that the AU wanted to see

¹⁵⁹ Background information extracted from the Uppsala Conflict Database 2010-05-05.

¹⁶⁰ Zounemenou 2008-08-15.

¹⁶¹ *Reuters News*: 2008-08-06.

¹⁶² *Ibid.* 2008-09-09.

¹⁶³ For instance, he was invited to attend the AU summit in Egypt. In the process of handing over power, elections were set for the following summer.

a return to normality in Mauritania, which was defined as "...going back to a situation where the constitution plays a role".¹⁶⁴ A month later, on 23 September 2008, the AU indicated that it was considering imposing sanctions on the coup leaders. With this threat also came an ultimatum stating an unreserved restoration of power to the ousted Abdallahi no later than 6 October 2008 should take place.¹⁶⁵ Pressure mounted when on 17 October, the US decided to impose a targeted travel ban on Abdel Aziz's regime.¹⁶⁶ The same day, the EU also made a threat of targeted sanctions.

In a move to convince the EU not to impose sanctions, the coup makers held closed meetings with EU officials. Following this meeting, the EU gave Aziz and his men one month to restore constitutional order.¹⁶⁷ However, in the weeks that followed, little progress was seen. This led a number of organizations, including the AU, and EU to openly discuss the imposition of targeted sanctions (read: *threat* of sanctions). Such meetings were held on separate occasions (in late November 2008 and late January 2009). In the midst of these talks, there were various last minute negotiations, not least of which were mediation attempts led by France.

Nonetheless, on 5 February 2009, the PSC decided that targeted sanctions would be imposed. The sanctions included the denial of visas, travel restrictions and the freezing of assets belonging to all individuals, both civilian and military, whose activities maintained the "unconstitutional status quo." The AU also repeated its demand for a return to constitutional order.¹⁶⁸

Following the AU's decision to impose sanctions, Libya, then head of the AU, dispatched a delegation to meet with the Mauritanian authorities, aiming to get the coup makers to pronounce a date for the elections. If declaring their intent to pursue with elections, the idea was that the imposed targeted AU sanctions could be lifted. On 14 March 2009, the government did declare their intentions to hold elections in June. Although there was no sign that the AU was about to lift its sanctions, Aziz declared on 8 April that he would step down as president, ahead of the planned elections. The move in this case laid forward his candidacy in the democratic process. The political move by Aziz, did not reconcile the opposition. On the contrary, further oppositional street protests followed. The crisis evoked the AU and the acting Libyan chair to meet and mediate between the parties of the forthcoming elections.

¹⁶⁴ *Reuters News*: 2008-08-25.

¹⁶⁵ *Agence France Presse*: 2008-09-23.

¹⁶⁶ *Ibid.* 2008-10-17.

¹⁶⁷ *BBC Monitoring Newsfile*: 2008-10-20.

¹⁶⁸ See the *Peace and Security Council*, 168th meeting of the African Union.

Following mediation attempts, mainly focusing on the roadmap to general elections, the parties, under AU supervision managed to enter into an agreement whereby the election planned for 6 June would be delayed into 18 July 2009. The Transnational agreement, as the agreement was named, was signed by the ousted President Sidi Mohamed Ould Cheikh. Under this agreement, a Transitional Government of National Unity (TGNU) was formed under the auspices of the Mauritanian constitution.¹⁶⁹ Consequently, on 30 June, the AU lifted its sanctions against Mauritania.

As a result of the agreement, about one year after the August Coup in 2008, on 5 August 2009, Mauritians chose Aziz as their new President. While most observers recognized the outcome of the election held on 18 July, a number of observers found several imperfections worth noting. With the outcome of the election, the August Coup General Mohamed Ould Abdel Aziz sized 52.47 percent of the voters. Souaré, an analyst of the region, understood the political processes leading up to this point as being troublesome: “This raises the question as to whether the African Union (AU) and the rest of the international community is, by accepting the outcome, perpetuating the trend of auto-legitimization of coup-makers in Africa, whereby authors of unconstitutional changes of governments decide to organize elections in order to “constitutionalise” their unconstitutional enterprise.” He stated further that, “Whereas the ideal political outcome and AU’s initial position was to refuse the auto-legitimization of Abdoulaziz and all other coup-makers on the continent, neither the Lomé Declaration nor the Constitutive Act talks to this issue. It is only the Addis Charter that deals with this...”¹⁷⁰

While the situation of the legitimization of coup-makers resembles that of Togo, it is not easy to say that the targeted sanctions were a strategic failure. On the contrary, sanctions it seems, contributed to keeping pressure on the coup makers. In Mauritania, perhaps more so than previously, the threat and the actual use of sanctions (and suspension) was implemented in light of other diplomatic initiatives and in effective coordination with other stakeholders.

6.5 Guinea

For most of its existence, Guinea has experienced authoritarian political rule. It was not until the early 1990s when Guinea, under Lansana Conté, began to embark on a more democratic path. Despite initial promises, the lane towards civilian rule was hampered by difficulties. It soon became fairly

¹⁶⁹ *BBC Monitoring Africa*: 2009-06-28.

¹⁷⁰ Souaré 2009-08-14.

clear that, following a number of subsequent elections, Conté would continue an authoritarian political style just as his predecessor. Facing growing opposition, Conté met growing opposition to his political rule. In 2000, the RFDG (Rassemblement des forces démocratiques de Guinée, Rally of Democratic Forces of Guinea) launched an insurgency in south-eastern Guinea. The declared aim of the armed attacks was to topple Conté and his regime. Although political stability had remained in the country for most of the last years of his rule, domestic opposition groups as well as foreign governments and human rights organizations complained about abuse, corruption, and summary killings, etc.¹⁷¹ This was also demonstrated by the many riots and strikes that took place. However, on 22 December 2008, the political scene changed dramatically in Guinea as Conté's rule came to an end by natural death.

In light of Conté's sudden departure from power, there were several political figures with ambition to take over the political authority over Guinea. According to the Guinean Constitution, however, the President of the National Assembly was to assume the Presidency of the Republic in the event of a vacancy, and a new presidential election was to be held within 60 days. Consequently, the head of the National Assembly called upon the President of the Supreme Court of Guinea to open the possibility for electoral contest of presidency. Nonetheless, only a few hours after the announcement of Conté's death, a coup d'état took place. The coup was led by Captain Moussa Dadis Camara, a leader of the National Council for Democracy and Development (CNDD). Camara dissolved the acting government while suspending the constitution.

In the immediate hours that followed the coup, AU Commissioner for Peace and Security told the press that if the army coup is confirmed, it is a flagrant violation of the constitution and of African legality which absolutely forbids unconstitutional changes of government. Soon after, the AU convened an emergency meeting to discuss ways to respond to the Guinean crisis.¹⁷² Meanwhile key actors of the international community, including the UN, the US, France and the EU condemned the coup and called for a speedy return to constitutional order. Striking, however, was the response of most of Guinea's neighbors. They were conscious of the risk of instability spreading across shared borders, and were quite affirmative of in their response, with for example Senegalese President Abdoulaye Wade openly endorsing the coup.¹⁷³ A week after the coup, on December 29, the AU decided to suspend Guinea from the body. ECOWAS followed a week later, and also suspended Guinea.

¹⁷¹ Background information extracted from the Uppsala Conflict Database 2010-05-05.

¹⁷² *Agence France Presse*: 2008-12-23.

¹⁷³ *International Crisis Group* 2009: 3.

In the immediate months that followed the unconstitutional takeover of power, little progress was made by the coup leaders to put Guinea back in constitutional order. On 30 January 2009, a joint declaration by the AU and ECOWAS called for a further transition process, stating:

"In this regard, the participants endorsed the terms of the communiqué adopted by the Extraordinary Session of the Assembly of Heads of State and Government of ECOWAS held in Abuja on 10 January 2009, especially regarding the modalities for the return to constitutional order, namely:

- the establishment of a National Transitional Council (CNT), as a deliberative body including civilians and military, to achieve the objectives of the transition;*
- the establishment of a consultative forum comprising all the components of civil society in Guinea, which will serve as a framework for dialogue to allow Guineans to work towards the strengthening of national cohesion;*
- the completion of the transition process through the organization of free, fair and transparent elections in 2009;*
- the non-participation of the members of CNDD, as well as the Prime Minister of the Transitional Government and members of his Government in the elections to be held in 2009; the commitment of the transitional authorities to respect human rights and the rule of law and to fight against impunity and trafficking of drugs".¹⁷⁴*

The demands by the AU were further reiterated in June 2009.¹⁷⁵ By late September 2009, the military regime faced increasing domestic opposition, protesting the slow return to constitutional order as well as setting a deadline for national election. These actions, together with Dadis intents to be a presidential candidate, triggered violent street protests, which resulted in more than 150 persons being killed by government forces. In response to the killing of civilians, what some would call a 'massacre', the AU and the ECOWAS (acting as chair of the International Contact Group), as well as other actors of the international community, including the EU began consultations on the adoption and implementation of targeted sanctions.¹⁷⁶ Some weeks into October, various actors such as the UN Security Council as well as the International Criminal Court on their part also began to call for independent probes into the killings that had taken place in September.

¹⁷⁴ *Ecowas Consultative meeting on the situation in the Republic of Guinea, 30 January (2009).*

¹⁷⁵ *Peace and Security Council, 192th meeting, 10 June (2009).*

¹⁷⁶ *BBC Monitoring Africa: 2009-09-30.*

Stepping up its pressure, ECOWAS on 18 October 2009 decided to impose an arms embargo on Guinea. This arms embargo was also supported by the AU.¹⁷⁷ Towards the end of the month, the EU (on October 27) and the AU (October 30) also agreed respectively to adopt targeted sanctions. As stated by Ramtane, the AU commissioner for peace and security: “These sanctions are targeted at the civilians and military personnel that are perpetuating these unconstitutional acts in Guinea. It is not intended to target the people of Guinea.”¹⁷⁸ The targeted sanctions imposed included both travel bans as well as asset freezes.

Towards the end of 2009, politics in Guinea changed quickly as Camara in December was subject to an assassination attempt. Following discussions headed by the President of Burkina Faso, a formal declaration of 12 principles on a speedy return of Guinea to civilian rule was declared. Accordingly, Guinea is meant to hold elections within six months. On 21 January, Jean-Marie Doré was appointed new Prime Minister of the transitional government.

Like most previous cases of AU sanctions, sanctions, or at least threats of sanctions came about quick. In the case of Guinea, it is particularly clear that the AU used sanctions as a mean to force the coup makers into negotiations and into a transition of holding a free election. Yet as seen, it took almost 10 months before sanctions were actually adopted and implemented against the leadership. The threat of sanctions was thus used as leverage to keep the junta in dialogue and committed to elections. The threat of sanctions should also be read in light of the previous UN targeted sanctions adopted against actors in Liberia and Sierra Leone which received much political attention, stigmatization and isolation. Like the previous cases, it is hard to read out in more detail how sanctions were meant to be enforced in practice once adopted politically.

6.6 Madagascar

Madagascar is currently the most recent example where the AU has adopted targeted sanctions. The decision to adopt sanctions against the coup makers in Madagascar should be read in light of having tried the policy for nearly 10 years. Thus, the effectiveness of the sanctions regime should therefore not be compared with the experiences when it implemented sanctions the first time.

Following a long reign of Didier Ratsiraka (1975-2001), Marc Ravalomana won the Madagascar presidential election of 2001. After growing popular street protest by the opposition in the years to come, escalating in 2009, not

¹⁷⁷ *Agence France Presse*: 2009-10-18.

¹⁷⁸ *Reuters News*: 2009-10-29.

least by Andry Rajoelina (a former mayor of Antananarivo), who rallied his supporters against Ravalomanana's autocratic leadership style, the AU increased its pressure on all parties to come to terms with the political future of the country. In fact, the political deadlock as well as the intensity of street violence led to a mix of diplomatic initiatives by AU and concerned actors. Yet, the myriad of mediation attempts lacked coordination which made most efforts unrewarding.¹⁷⁹

Seeing worrisome signs of escalating political tension and political obstruction, the AU on separate occasions, warned against using unconstitutional means to address the situation in the country. For example, in late January 2009, the AU Chairperson of the Commission Jean Ping addressed the media, stating that any unconstitutional change in Madagascar will be condemned:

"We have clear principles which never change, meaning that it is prohibited to take power through unconstitutional means. If the accession to power is done constitutionally, there is nothing to say. However, if it is done unconstitutionally, the response will remain the same as usual. If by any chance, due to internal reasons, the army took power, it is an unconstitutional accession to power. If a mob grabs power unconstitutionally, the response will be similar".¹⁸⁰

After the culmination of a three-month long standstill between Ravalomanana and Rajoelina, the killing of nearly hundreds street protesters Ravalomanana on 17 March 2009, decided to step down as president. The decision to step down from power also followed growing opposition by the Army. The AU however, noted with concern this "resignation by decree" under pressure from the opposition and the army, and demanded that the "Malagasy parties comply scrupulously with the provisions of the Constitution of Madagascar on interim arrangements in the event of resignation".¹⁸¹ Already the day before Rajoelinas installment, the AU made the decision to suspend Madagascar from the body, stating:

"Decides, in accordance with the Lomé Declaration on Unconstitutional Changes of Government and the Constitutive Act of the AU, to suspend Madagascar from participating in the activities of the AU until the restoration of constitutional order in this country. Council also expresses its determination to impose all the measures provided for by the Algiers Decision of July 1999, the Lomé Declaration of July 2000, the Constitutive Act of the AU and the Protocol Relating to the Establishment of the Peace and Security

¹⁷⁹ Maunganidze (2009a).

¹⁸⁰ *BBC Monitoring Africa*: 2009-02-01.

¹⁸¹ *Peace and Security Council*, 108th meeting 17 March (2009).

*Council, including sanctions, on the perpetrators of the unconstitutional change and on all those who contribute to the maintenance of the illegal status quo, if constitutional order is not restored”.*¹⁸²

The basis for AU’s planned suspension decision was Article 30 of the Constitutive Act of the AU which stipulates: ‘Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.’ This was also in line with the 2000 Lomé Declaration on Unconstitutional Changes of Government. Consequently, the AU thus demanded that the new administration take concrete steps to return the country to constitutional order as speedily as possible in accordance with the Malagasy Constitution. At the time, also the Southern African Development Community (SADC),¹⁸³ the European Union (EU) and individual donor countries, including the United States and Norway, had already officially condemned his coming into power as having been unconstitutional.¹⁸⁴ Nonetheless, Rajoelina was sworn in as president on March 21.

The Malagasy transitional Prime Minister, Monja Roindefo (in power between March and October 2009), commented the move by the AU with ‘sadness’, saying that it had along with the AU charter, and the people of Madagascar, only defended itself from dictatorship.¹⁸⁵ A number of diplomatic initiatives ensued with the objective of finding a common ground for solution to the political crisis in Madagascar.¹⁸⁶ In particular, two important rounds of negotiations were held during the fall of 2009. The first round of negotiations, chaired by former President Joaquim Chissano, Head of the SADC, was successful in bringing the key protagonists to the table, leading to the adoption of the Charter of the Transition, the Maputo Political

¹⁸² *Peace and Security Council*, 181st meeting, 20 March (2009).

¹⁸³ As one analyst puts it: “While SADC was vocal about the unconstitutional change of government, it did not do much to alleviate the political crisis in the country before Rajoelina took over. There was, however, little SADC could have done and the prospects of success at the time were slim even if they had actively engaged. This is because none of the two protagonists seemed disposed to make meaningful compromises, particularly at the height of the political standoff” (Maunganidze 2009: 5). A few days later, on March 30, SADC decided that it would suspend the country from the body (*Agence France Presse*: 2009-03-30).

¹⁸⁴ Maunganidze 2009: 1.

¹⁸⁵ *BBC Monitoring Africa*: 2009-03-20.

¹⁸⁶ For instance, the AU coordinated its mediation and involvement with mediators representing the Indian Ocean Commission (IOC), the Organization of French Speaking Countries (OIF), and the influential Malagasy Christian Council of Churches (FFKM) and France (Maunganidze 2009: 1). Yet, by early June 2009 the political crisis remained unsolved. This led the Common Market for Eastern and Southern Africa (COMESA) to threaten to solve the issue militarily, condemning in strongest terms what they saw as unconstitutional change of government in Madagascar (*Agence France Presse*: 2009-06-08).

Agreement, the Charter of Values and related agreements (the Maputo Agreements). They agreed, in particular, on a neutral, inclusive, peaceful and consensual transition of the government which should not exceed 15 months starting from the date of the signing of the Maputo Agreements (i.e., laying out a roadmap for elections to be held in October 2010).¹⁸⁷ The second round, however, being a failure as it ended without any consensus on who would lead the transitional government until the elections was held.

Following the newly stalled talks and the political reconciliation, the AU PSC expressed at the time what it saw as a 'sudden rise of tension'. Concerns were further expressed when the de facto authorities unilaterally declared to establish a 'Government of National Unity without the participation of other political parties. According to the PSC, this decision went against the Charter of the Transition and subsequent Agreements, and Charter of Values signed on 9 August 2009 which it considered to be the consensual framework for ending the crisis.¹⁸⁸ Consequently, when on September 4, Rajoelina named Monja Roindefo as prime minister the crisis deepened. Days later, Prime Minister Roindefo unilaterally formed a government without the support of African governments.

To resolve the political urgency, the Chairperson of the AU Commission convened a third round of negotiations on 6 October 2009. The talks went successfully in so far as some consensus emerged with regard to which candidates would occupy certain political positions, but stumbled on who was eligible to stand in the post-transition government election. The problems were overcome by new negotiations and in early November 2009, Madagascar's top four political figures, including ousted President Ravalomanana were able to sign a power-sharing agreement ahead of planned elections. Meanwhile, the AU reiterated its position to keep Madagascar suspended from the union.

Following several failures by the parties to come to terms with the agreed transition as well as the election, the AU Council at its 211th meeting held on 7 December 2009, expressed deep concern over the situation in Madagascar.¹⁸⁹ Nonetheless, the day after Ravalomanana, Ratsiraka and Zafy agreed to press ahead with the formation of a unity government. Rajoelina however, blocked their return to Madagascar.

After consultations with all the concerned players, the chairperson of the AU Commission on 6 January 2010 organized an extra meeting of the

¹⁸⁷ Maunganidze 2009: 5.

¹⁸⁸ Peace and Security Council, 202nd meeting, 10 September (2009).

¹⁸⁹ *Peace and Security Council*, 216th meeting, 19 February 2010, Addis Ababa, Ethiopia, PSC/PR72 (CCXVI). Report of the Chairperson of the Commission on the Situation in Madagascar.

International Contact Group which had been set up to promote dialogue and a settlement of the political crisis (this was in fact the 4th meeting). The purpose of the meeting was to re-launch the process for a way out of the crisis in Madagascar and to agree on the measures to be taken in this regard”.¹⁹⁰

Following the absence of concrete steps to improve the political situation, the PSC, in late February 2010, publically threatened to impose targeted sanctions. Sanctions were meant to be imposed if, by 16 March 2010, the de facto authorities borne out of the unconstitutional change had not complied with the full and timely implementation of the Maputo Agreements and the Addis Ababa Additional Act.

Following the failure to adequately meet the AU’s political demands, AU targeted sanction measures came into force on 17 March 2010.¹⁹¹ This followed as the de facto President Rajoelina continued to push the scheduled election forward in time.¹⁹² The AU targeted sanction measures included:

*- Travel ban against all members of the institutions set up by the de facto authorities borne out of the unconstitutional change and all other individual members of the Rajoelina camp whose actions impede the AU and SADC efforts to restore constitutional order.*¹⁹³

*- Freezing of funds, other financial assets and economic resources of all individuals and entities contributing, in one way or another, to the maintenance of the unconstitutional status quo and impeding the AU and SADC efforts to restore constitutional order.*¹⁹⁴

- Diplomatic isolation of the de facto authorities borne out of unconstitutional change, through concerted action by Member States to challenge the participation of the representatives of these de facto authorities in the activities of non African international organizations, including the United Nations and its agencies and other concerned bodies.

Along with this decision, the PSC also requested that the AU Commission establish, in close collaboration with SADC, a list of the individuals and entities to be targeted with sanctions. In addition, it requested the Chairperson of the Commission, in close collaboration with the Head of the

¹⁹⁰ Ibid.

¹⁹¹ Peace and Security Council, 216th meeting PSC/PR/COMM.1 (CCXVI), 19 February 2010.

¹⁹² *Reuters News*: 2010-02-17.

¹⁹³ In this respect, Council decides that these measures shall be without prejudice to exemptions that it may decide to grant, on a case by case basis, at its own initiative or upon request, on humanitarian grounds.

¹⁹⁴ Ibid.

SADC Mediation Team, to monitor and ensure the implementation of all aspects of this decision.¹⁹⁵

In sum, unlike some of AU's other cases, the AU sanctions against Madagascar were adopted in the midst of long-standing political turmoil and numerous attempts to seek a political solution to the crisis between two contending parties. Sanctions were used as drums beating in the background. As can be seen, the AU put forward thresholds and criteria for its application, putting further burden on the coup makers to change their behavior. It is yet to be determined how effective sanctions have been in bringing the country back on its feet as the country is still in a constitutional limbo.

6.7 Conclusion

Although the case summaries displayed were considerably more complex than shown here, there are a number of aspects to be noted. To begin with, each case bears its own political dynamic, leading to the use of sanctions. While some cases were outright coups, other situations were less clear in terms of marking an unconstitutional change of government. For example, in some cases, the AU adopted sanctions when the military stepped in to take power, as was the case in CAR, or in situations where political contenders opposed the constitution entirely, putting it out of order, as was the case in Madagascar. Secondly, AU sanctions had, as expected, different impacts in each of the cases. For instance, in some cases, the leadership subjected to sanctions continued with politics as usual – as in Comoros. This was common in a majority of cases. In none of the cases did coup plotters step down from power entirely because of sanctions. However, in the case of Guinea, Camara's agreement to remain out of the country following the assassination attempt was partly to be explained by external pressure, including sanctions. Moreover, in at least two situations did the actors involved in unconstitutional change of government step down, but only to return again at a later stage (Togo and Mauritania). This should be read against the ambitions expressed in the Charter on Democracy that bans coup makers from this practice. A third aspect worth noting from this case collection is that the AU always adopt sanctions in midst of other governance initiatives, be it in the form of classical mediation or under threat of full-scale military action. Most sanctions regimes were similarly well-coordinated with other actors having stakes in the ensuing conflicts. This is encouraging for making PSC's sanctions regimes more effective. Yet, it does not suggest by itself that a behavioral change of those targets subjected to

¹⁹⁵ Peace and Security Council 216th meeting, PSC/PR/COMM.1 (CCXVI), 19 February (2010).

sanctions as a result was much more effective. Finally, it is worth noting that although it seems that targeted sanctions played an important role in determining the outcome of the different crises, it is difficult to say how much is owed to sanctions per se. As in any rigid research projects, one would need a control-group with similar conditions that did not experience sanctions and to examine how these unfolded. Another element to consider in such a study would also be to include a variation of size and economic power of such cases. All six countries subjected to AU sanctions were minor in political and economic terms (e.g., if compared to other countries being members of the AU such as Nigeria, South Africa, DRC, etc.). All of this calls for further studies on the topic.

7 Conclusion and future research

Following an analysis of both scope and the actual use of AU sanctions during the last ten years, the general observation to be made is that the AU, by the establishment of the PSC and its sanctions committee mechanism, has taken a significant step to engage itself in matters of peace and security on the African continent.

Compared with AU's predecessor, the OAU, the PSC has become more operational and flexible with regard to its engagements for peace and security. Not only does it engage in more traditional diplomatic ventures along side of military peace support operations, it also uses targeted sanctions to put pressure on leaders on the continent of Africa, which operates against the spirit of the AU. Another sign of this is that the PSC is increasingly coordinating its sanctions policies with regional economic communities across Africa, as well as with other members of the international community, notably the EU, the UN and US. All these efforts seem to be made to put teeth behind its sanctions actions.

As observed in this study, the reliance on AU targeted sanctions nowadays mostly come in the form of travel bans, restriction of government-to-government contacts, asset freezes, trade restrictions and denial of transport and communications links with other member states. Although these are the most typical forms, the AU assembly could also recommend any other form to the PSC. This however, is yet to be determined.

An important lesson to be learned from this review is that the use of targeted AU sanctions has to be understood contextually. Unless this is done, there is little chance of understanding the utility of the tool and how it can be used. Following the dire security situation in many parts of Africa in terms of levels of human and state insecurity as opposed to other regions of the world, the AU needs to be able to handle both hard and soft security situations. Targeted sanctions can meet both types of situations if further efforts are put into the design of an institutional mechanism and carefully planned sanctions regime. Given the lack of infrastructure, targeted sanctions are not that easily enforced (especially not so in the Africa setting).

Another finding of this study is that although the PSC is increasingly gaining experience in policy dynamics of targeted sanctions, there is much yet for the AU to do in order to achieve better implementation and sanctions impact. After all, it is very unrewarding for those policy makers that believe in the tool and want to use it in a credible way, to find that there is not much substance to the tool once enforced on ground. In the end, imposing targeted sanctions does not only have to be symbolic as seems to be the case many times. In fact, credible sanctions require the sender to be able to ensure that

policies are maintained in an effective way. Adopting travel bans and asset freezes require AU member states to actively prevent and block money and entities from traveling. Today, the AU does not have the capacity to ensure this. This leaves AU sanctions as the strongest methods in terms of stigmatizing parties whose behaviors obstruct the organizations. Stigmatization and isolation could nonetheless work in an uncomplicated matter without actually having a sanctions implementation infrastructure.

Moreover, the AU needs to establish necessary legal grounds as well as relevant institutional mechanisms if it wants to have targeted sanctions bite harder. Although the AU Charter and the PSC protocol gives such framework, there needs to be legal and political means also to ensure that bodies that are being tasked with operating sanctions are also themselves quality checked and held accountable. This requires an institutional regime within the AU that could monitor, inspect and qualify AU's entire sanctions implementation system, and that ensure that AU's member states do their best to implement the adopted decisions. As seen from the analysis above, the PSC has recently made a request to the AU Commission to look into the modalities of institutionalizing a sanctions committee. Although no formal outcome of this process have yet come, it is envisioned that such a committee would be a subcommittee to the PSC that would be tasked with administrating PSC's sanctions enforcement (i.e. to make sure implementation, monitoring and evaluations are being made). Currently the PSC has established a manual and is soon about to detail the committee guidelines. If established, the AU could considerably augment its sanctions capacity.

A finding in this study also relates to the importance of the regional economic communities in Africa. These bodies remain important components of a credible AU sanctions policy, which could easily be overlooked in any sanctions assessment study. In the end, AU/REC relationship is based on 2008 MoU expectations that: "...the parties shall institutionalize and strengthen their cooperation and closely coordinate their activities towards their shared goals of ridding the continent of the scourge of conflict and laying the foundation for sustainable peace, security and stability". As seen, from the examination in this study the AU also cooperates regularly with the RECs and their interest to purse and implement targeted sanctions matters a great deal for the overall effectiveness of the sanctions regimes being established. Therefore, it seems crucial that the sanctions capacity at the regional level is developed and that increased cooperation is made with respect to decisions made at the PSC.

Overall, however, imposing targeted sanctions is not an easy form of security governance. In a sense, the sanctions tool is a design probably meant to work most effectively when targets as well as commodities are well

integrated in the international system. The more dependency there is between targets and the system, as well as 'traces' that targets leave behind, the more pressure the sender is likely to be able to achieve. In the end, such pressure could lead to behavioral modification. Adopting targeted sanctions in Africa poses perhaps more challenges than elsewhere because the much needed infrastructure for making targeted sanctions may not be that strong. Many activities occur on the informal and untraceable side of society. Targets could, therefore, easily evade and escape sanctions. In this context, as also highlighted in this study, the role of targeted sanctions to stigmatize targets becomes important.

Last but not least, data analyzed in this study suggests that the AU has mainly been pursuing targeted sanctions as a mean to respond to unconstitutional changes of government. This follows the mandates of the AU charter. However, there have also been some recent steps to expand the notion of unconstitutional changes of government, not least by the endorsement of the Assembly of the reiteration of the provisions set out in Chapter VIII of the African Charter on Democracy, Elections, and Governance on sanctions in cases of unconstitutional changes of government. The reinforcement of the Charter also followed in the context of the new policy titled the Framework for the Enhancement of Measures of the AU on Situation of Unconstitutional Change of Government in Africa (in which a host of policy measures to strengthen sanctions was agreed).

What is apparent, however, is that the AU framework has not yet allowed the organization to react more strongly to situations of armed conflict or against leaders that occupy presidential office for lifetime. This is a weakness. For instance with regard to responding to armed conflict, the AU Charter invites the organization to respond also to war crimes, genocide and crimes against humanity. Given that sanctions are mostly dependent on political will, the PSC should be prepared to be more bold in its decisions; it must care more for the well-being of the people and not only the legitimacy of governments.

7.1 Future use of AU sanctions

Trends suggest that the AU will continue to use targeted sanctions and that this mechanism will be strengthened by the institutionalization of an AU sanctions committee. Increasing experiences will make AU sanctions bite more as the organization learns how to handle the political dynamics. However, there is a risk that the AU will fall into political blasé and react with instinct as opposed to well-planned and carefully thought-through goals and benchmarked policies. This type of laissez-faire attitude however, risks undermining the entire sanctions policy of the AU.

It is not likely that the AU, in the near future, will have much direct impact on targeted entities (and commodities) unless its implementation and monitoring capacities are increased. Yet, if fully implementing the “Ezulwini Framework for the Enhancement of the Implementation of Measures of the African Union in Situations of Unconstitutional Changes of Government in Africa” as concluded in the PSC retreat in late December 2009, then the AU is well on its way to be a strong sanctions actor.

At the moment though, the PSC is not very transparent, at least not publically speaking, with regard to how it operates its various targeted sanctions regimes. This risks undermining PSC’s credibility. For instance, how are targets subjected to sanctions chosen? How are sanctions lists being disseminated across the continent? What is the legal status of the sanctions lists? Who makes sure that sanctions lists are being disseminated to banks and customs officials that in the end should make sure that travel bans and asset freezes come into effect? How does the PSC respond to targeted entities behavior?

The AU sanctions system could also be made more effective if further experiences were shared by other sanction-prone actors like the EU, the UN and US. These actors have over the last two decades developed their capacities to make sanctions more effective. Such experiences could be shared by strengthened contacts and routine-based coordinated meetings. Training workshops with policy makers and desk officers is another way to sharpening the policy.

7.1.1 Future research

Overall, targeted sanctions continue to be very high on the scholarly agenda and research into the use and effectiveness of targeted sanctions continues to tease scholars. Still, there has been little investigation regarding the AU’s capacity to impose sanctions.

In this study, a more general approach on AU’s sanctions capacity has been examined. Any subsequent study should look further into how separate established sanctions regimes worked in practice. Some of the future research questions to be examined should include: How effective has the sanctions committee been to administrate targeted AU sanctions? What implementation challenges does the PSC have in terms of making targeted sanctions effective? How were sanctions lists established, and did they have any impact on those targeted? How does the PSC assess sanctions effectiveness and what criteria are being applied? These and many others related questions will help us understand the AU and it’s strived to become a more active peace maker.

Appendix 1. Definitions and criteria applied when collecting data on conflicts and unconstitutional change of government that took place period from 2000 to 2010

Country – Any member of AU unless noted otherwise

Type of incident – Unconstitutional change of government or conflict

UN reaction – United Nations official statement, military, observatory or political mission sent, sanctions implemented or negotiation efforts

EU reaction – European Union official statement, military, observatory or political mission sent, sanctions implemented or negotiation efforts

Regional Organization reaction – Official statement, military or political mission sent, sanctions implemented or negotiation efforts by any Regional African Organization (‘REC’)

AU reasoning – Deviating positions within the AU, countries that are more politically active than others

AU reaction – African Union official statement, military, observatory or political mission sent, sanctions implemented, fact finding teams or negotiation efforts

Type and duration of AU measure – The formal action; sanctions and what kind of sanctions, condemnation, missions sent and starting and stopping point of the action

Background – Short information to complement the “Type of incident”-category about the situation in the country

President – Acting president

Status of election – See database definition at <http://africanelections.tripod.com/terms.html>

Conflict – At least 25 battle-related deaths in a year but fewer than 1000. Definition according to Department of Peace and Conflict Research, Uppsala University terminology (see website)

War – At least 1000 battle-related deaths in a year

Appendix 2. Number and types of conflicts or unconstitutional change of government in Africa taking place since 2000 (38 countries in total).

Year	Political and military coups	Unconstitutional incidents	War and conflicts
Prior to 2000		12	
2000		1	11
2001		1	12
2002	1	2	12
2003	3	3	7
2004			8
2005	2	2	5
2006		1	8
2007		2	9
2008	2	3	8
2009	1	3	5
2010-04-21	1	1	
Total	10	31	89

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