

# Subregional Agenda for Peace and Security: The Case of

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## Background

The Common Market for Eastern and Southern Africa (COMESA) is a regional integration grouping of twenty African sovereign states (Angola, Burundi, the Comoros, the Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, the Sudan, Swaziland, Uganda, Zambia and Zimbabwe). These states have agreed to promote regional integration through trade development, and to develop their natural and human resources for the mutual benefit of all their peoples.

COMESA was established in 1993 and 1994 to replace the Preferential Trade Area for Eastern and Southern Africa (PTA), which had been in existence since 1981 within the framework of the Organization of African Unity's (OAU) Lagos Plan of Action and the Final Act of Lagos. The PTA was established to take advantage of a larger market size, to share the region's common heritage and destiny, and to allow for greater social and economic cooperation, with the ultimate objective being the creation of an economic community.

COMESA (and before it the PTA), supported by its specialized financial institutions - the Trade and Development Bank for East and South Africa (PTA Bank), the COMESA Clearing House and the reinsurance company - has a proven track record. Over the past fourteen years, it has developed a large number of regional programmes, which are assisting Member States in a positive way to

attain economic recovery and sustainable economic growth.

COMESA is made up of the following:

- the Authority of Heads of State and Government, the supreme policy organ of the common market, which is responsible for general policy, direction and control of the performance of the executive functions of the common market and the achievement of its aims and objectives;
- the Council of Ministers, which takes policy decisions on the programmes and activities of COMESA, including the monitoring and review of its financial and administrative management;
- the Court of Justice, which has been established to ensure the proper interpretation and application of the provisions of the COMESA Treaty and to adjudicate any disputes that may arise among the Member States regarding the interpretation and application of its provisions;
- the Committee of Governors of Central Banks, which manages the COMESA Clearing House and ensures implementation of the monetary and financial cooperation programmes;
- the Intergovernmental Committee, which is a multi-disciplinary body composed of permanent secretaries from the Member States responsible for the development and management of programmes and action plans in all sectors of cooperation, with the exception of the finance and monetary sector;
- the technical committees, which are responsible for the various economic sectors and for administrative and budgetary matters;
- the Secretariat, which provides technical support and advisory services to the Member States in the implementation of the Treaty; and
- the Consultative Committee of the Business Community and Other Interest Groups which provides a link and facilitates dialogue between the business community and other interest groups and organs of the common market.

A number of other regional organizations operating within the region are also covered by COMESA, such as the East African Community (EAC), Intergovernmental Authority on Development (IGAD), Indian Ocean Commission (IOC) and the Southern African Development Community (SADC). COMESA has established working relations, both formally and informally, with all these regional organizations. Memoranda of Understanding have been signed with EAC, IGAD and IOC.

At the COMESA Summit in Egypt on 22 and 23 May 2000, the COMESA Authority recognized that the Secretariats of SADC and COMESA had been working together closely on a number of projects and programmes, and had reduced the degree of overlap between the institutions. The Authority also endorsed the decisions of its chairman and that of SADC to establish a joint committee to work out ways of rationalizing their activities. Reports of the joint committee, once adopted, will be submitted to the respective organs of the two institutions.

On 31 October 2001, the COMESA heads of state successfully launched a Free Trade Area (FTA). Although the heads of state had decided in 1997 that COMESA should concentrate on economic integration and leave issues of peace and security to the United Nations, OAU and subregional organizations, this was subsequently reversed at the COMESA Summit of 1999 for the following reasons:

- the COMESA FTA, soon to be launched, would be impaired by the conflicts in the subregion;
- the OAU had decided that all subregional organizations should include the issues of peace and security on their agendas;
- the Treaty already contained provisions regarding issues of peace and security;
- the linkage between peace and security and development is strong and, therefore, in the absence of peace and security, development is doomed to fail.

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

It was argued that a major motivating factor was the failure of some states in the group to benefit from the establishment of the FTA owing to conflicts prevailing in the region.

#### COMESA mandate on peace and security

The 4th Summit of the COMESA Authority of Heads of State and Government, which was held in Nairobi, Kenya, on 24 and 25 May 1999, decided that COMESA Ministers of Foreign Affairs should meet

at least once a year to consider modalities for promoting peace and security in the region. It was further decided that they should consider the modalities of promoting peace, security and stability within the framework of the Organization of African Unity (OAU) Mechanism for Conflict Prevention, Management and Resolution, and to report to the Authority.

The Summit made the above decision after a lengthy debate on the devastating impact of wars and conflicts on the COMESA integration agenda. The debate arose from a growing concern over the widespread and persistent armed conflicts occurring in more than half of COMESA Member States. One potential member of COMESA, Somalia, has been in turmoil for more than ten years.

The 5th Summit of the COMESA Authority, held in Port Louis, Mauritius, on 17 and 18 May 2000, in reviewing the status of peace and security in the COMESA subregion as presented by its Bureau of the Council of Ministers, further decided that, among other factors, the COMESA Study on Peace and Security should take into account the need to identify human and financial resources; the root causes of the conflicts; the gaps that could be filled by COMESA; the lessons to be learned from other subregional organizations; and how other stakeholders such as non-governmental organizations (NGOs), parliamentarians and the business community could be involved in the development of a policy regarding peace and security.

## COMESA activities in developing a strategy

In order to comply with the decisions of the 4th Summit, the COMESA Secretariat proceeded in 1999 to set up a study team on peace and security.

The objective of the study team was to draw up a proposed programme of action outlining the role that COMESA could play in promoting peace and security in the region. Accordingly, the team examined ways in which the organization could foster peace in collaboration with the OAU Mechanism for Conflict Prevention, Management and Resolution.

The study team was supplemented by the holding of two workshops. The first, on 'The challenges to peace and security in the COMESA subregion', was held in Lusaka, Zambia, on 27 and 29 March 2000.

This workshop, which recalled the decisions of the 4th Summit of the COMESA Authority on the development of a COMESA policy and

plan of action on peace and security, laid the foundation upon which the entire study would be based. Apart from an initial survey of the root causes of existing conflicts in the subregion, the workshop, established inter alia a linkage between peace and security and development, and the need for COMESA to play a role in promoting them, although the principal objective of COMESA was that of 'development through economic and social integration'.

The second workshop, on 'The role of the private sector, NGOs and civil society in the promotion of peace and security in the COMESA subregion', was held in Nairobi, Kenya, on 19 and 21 February 2001. Its thrust was to implement the decision of the 5th Summit, on peace and security, as mentioned above, to involve other stakeholders such as NGOs, civil society, parliamentarians and the business community.

The second workshop not only established the need but also the necessary modalities for collaborative and consultative relationships between these organs and COMESA. COMESA intends to convene another workshop in the near future, to deal particularly with the role of national assemblies in the promotion of peace and security, and where allied issues such as good governance, corporate governance, local governance and other tenets of democracy will also be dealt with.

After the completion of the second round of the study, another meeting of the Ministers of Foreign Affairs was held in April 2001 to consider the study report, which highlighted several peace and security issues of concern to COMESA.

These issues included:

- the role of other subregional organizations in peace and security, particularly ECOWAS, OAU, SADC and IGAD, and ways in which the COMESA programme could interlink with them;
- the root causes of the main conflicts, and of political instability and insecurity in the COMESA region;
- the general context of conflicts in the COMESA region - particularly four areas identified by the study, which highlighted the Greater Horn of Africa and the Great Lakes Region;
- causes of insecurity in the Indian Ocean States and the Front Line States (FLS) (in which the study differentiated between those associated with colonialism and post-colonialism, and those associated with estheticism);
- the problem of refugees and displaced persons in the COMESA region (giving clear evidence that the COMESA region has the largest

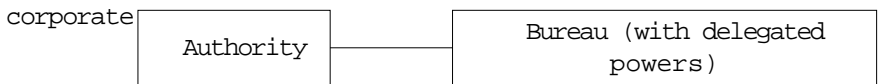
- concentration of both refugees and displaced persons in Africa);
- the proliferation of small arms and light weapons in the COMESA region;
  - an examination of best practices in peace-building, including trade-based practices and African traditional methods;
  - the possibility of introducing a levy on imports from third countries to finance peace, and security building measures; and
  - proposals for a new institutional structure, based on a draft protocol for dealing with the problems of peace and security in COMESA.

The study concluded by stating that, as it is indisputable that the maintenance of peace is a major precondition for socio-economic development in any country or region, it would be useful if the sovereign Member States of COMESA were to allow the organization to play an effective role in the promotion of peace and security through a legal mechanism or instrument.

#### Elaboration of the COMESA policy

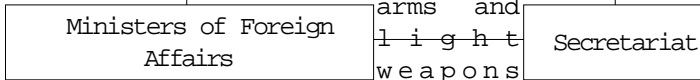
The second meeting of the COMESA Ministers of Foreign Affairs, held in April 2001, after consideration of the revised study, made fresh recommendations to the COMESA Authority on an elaborated mandate for COMESA's role in peace and security. It should be noted that, although a protocol was not adopted, the decisions of the COMESA Authority are binding on the Member States. The final revised mandate was adopted by the 6th Summit, held in Cairo, Egypt on 22 and 23 May 2001. Here the COMESA Authority made general decisions, which included the following:

- COMESA should involve the private sector, NGOs and civil society in forums where issues of peace and security are being considered. There was a need for specific procedural criteria to be adopted on the rules for the accreditation of members of the private sector, NGOs and civil society attending the forum on peace and security.
- The responsibility for collaborating with the private sector, NGOs and civil society in addressing issues of peace and security could be delegated to the competent division within the existing structure of COMESA.
- The promotion of good governance as a way of preventing conflicts in Member States should go hand in hand with the promotion of



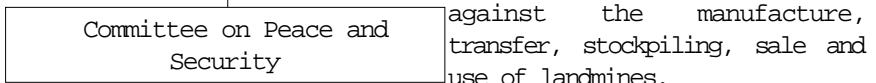
governance as a way of preventing conflicts.

- The promotion of trade-based practices of peace-building, which in the report refers to control of the illicit proliferation of small



and the prohibition of trade in illegal diamonds, should be extended to include the control of drug trafficking.

- COMESA, in consultation with other stakeholders, such as the private sector, NGOs and civil society, should promote the ban



- The Member States of COMESA should be urged to attend the UN 2001 Conference on the Illicit Trade in Small Arms and Light Weapons in order to participate in addressing the issue.
- The international community, and in particular the developed countries, should be urged to provide Member States with technical and financial assistance in the aim to eradicate landmines and rehabilitate their victims.

The COMESA Authority took the following decisions on the modalities for implementation of the COMESA programme on peace and security.

### Three-tier structure

The Authority reaffirmed the decision of the 5th Summit (Mauritius, May 2000), which agreed on a three-tier structure for dealing with issues of peace and security, as follows:

## The Authority

The COMESA Authority, which consists of heads of state and government in accordance with Article 8 of the Treaty, is the highest decision-making body in matters of peace and security. It has power to delegate its functions to its Bureau, which in consultation with the Central Organ of the (OAU) Mechanism for Conflict Prevention, Management and Resolution and other competent subregional organizations will carry out its functions of conflict prevention through preventive diplomacy.

Although the Authority will consider issues of peace and security at its annual Summit Meeting in the case of urgent issues, normally the Bureau will meet to consider such issues when necessary.

The Bureau, when considering any action regarding conflict prevention through preventive diplomacy, should take into account the need to avoid involvement of the Bureau member who may be affected by the matter in hand. It should also have the power to co-opt an additional member or members of the Authority to carry out a preventive diplomacy function on their behalf.

## COMESA Ministers of Foreign Affairs

Ministers of Foreign Affairs of Member States shall meet at least once a year to consider modalities of promoting peace and security in the COMESA subregion.

## Committee on Peace and Security

Under the Ministers of Foreign Affairs, a Committee on Peace and

Security has been formed. It is composed of high-level officials of the Ministries of Foreign Affairs of Member States. The committee shall meet at least once a year to consider modalities of promoting peace and security in the COMESA subregion, and make recommendations to the Ministers of Foreign Affairs.

#### COMESA Secretariat

The COMESA Secretariat, under the general supervision of the Secretary-General, shall have the responsibility to initiate actions for conflict prevention through preventive diplomacy upon receipt of an official request from a Member State.

The Secretary-General shall consult the Bureau for directions upon receipt of information from any other stakeholders.

The Secretariat shall also:

- provide administrative, logistical and technical support to the Bureau towards the fulfilment of its functions;
- take responsibility for convening meetings of the Committee on Peace and Security;
- endeavour to utilize information on states or conflicts from other regional organizations, particularly the OAU Mechanism for Conflict Prevention, Management and Resolution, and;
- establish a databank on conflicts in the subregion.

#### Cooperation with other organizations

COMESA shall coordinate its conflict-prevention activities through the development of existing cooperation instruments, which include the following:

- the UN
- the OAU; and
- subregional organizations such as the Intergovernmental Authority on Development (IGAD), Economic Community of West African States (ECOWAS), Southern African Development Community (SADC), Indian Ocean Commission (IOC), East African Community (EAC), Community of Sahel and Sahara States (CEN-SAD) and other relevant bodies.

Consultation and areas of cooperation with the private sector, NGOs and civil society

Areas of consultation with the private sector, non-governmental organizations, national assemblies and civil society shall include:

- resource mobilization;
- information-sharing;
- capacity-building;
- provision of peace workers;
- training in peace-building; and
- cooperation with other stakeholders (NGOs, civil society and members of the private sector).

The meeting recommended the following ways of collaboration with other stakeholders (NGOs, civil society and the private sector).

- The Secretariat should establish specific criteria on the procedure and rules for the accreditation of the private sector, NGOs and civil society.
- The responsibility for collaborating with the private sector, NGOs and civil society in addressing issues of peace and security could be delegated to the competent division within the existing structure of COMESA.

Human and financial resources

At the recent Summit, it was agreed that, owing to financial constraints, the COMESA Secretariat should use the existing structure and resources of COMESA to discharge its functions regarding issues of peace and security. The meeting also recommended that the Member States, especially those who are serving members of the Bureau, should utilize their national resources as far as possible.

Operationalization of the COMESA model

Although the COMESA model is relatively recent, the experience gained in the economic integration arena should be easily adaptable to issues of peace and security. In addition, the implementation of the model will be supported by the COMESA Court of Justice, which is

already in existence.

## COMESA Court of Justice

This court was established under Article 7 of the COMESA Treaty. The court replaced three judicial bodies that existed under the PTA. The court has been operational since 1998, and has already received about four cases, two of which relate to state rights and obligations.

The jurisdiction of the court as contained in the Treaty falls under several categories, including general jurisdiction; jurisdiction under arbitration clauses and special-agreements; jurisdiction of national courts; advisory opinions of the court; jurisdiction over matters of peace and security; and advisory opinions on peace and security.

### General jurisdiction

Article 23 of the Treaty provides for the general jurisdiction of the courts, which is to adjudicate on all matters that may be referred to it pursuant to the Treaty. Article 19 further provides that the court shall ensure adherence to law in interpretation and application of the Treaty. A superficial reading of the articles may make one think that they are in conflict. What Article 19 does is to qualify the general jurisdiction given in Article 23. The general jurisdiction under these two articles is to adjudicate as well as to give advisory opinions.

Matters brought under the court's jurisdiction according to Article 24 of the Treaty may be brought by a Member State which considers that another Member State or Council has failed to fulfill an obligation under the Treaty or has infringed one of its provisions. On the other hand, a Member State may also apply for a determination by the courts if the legality of any act, regulation or decision is ultra vires or unlawful or an infringement of the provisions of this Treaty or any rule of law relating to its application. Article 26 also makes the provision that legal or natural persons resident in a Member State may apply to the court for the determination of the legality of any act, regulation, decision or directive of council as unlawful or an infringement of the provisions of the Treaty. However, when the matter for determination relates to any act, regulation or decision by a Member State, such person shall not refer the matter for

determination under Article 26 of the Treaty until he or she has first exhausted local remedies in the national court or tribunals.

The court also has the power to hear a matter brought by the Secretary-General against a Member State or Member States which have failed to fulfill an obligation or obligations under the Treaty. This provision comes under Article 25.

#### Jurisdiction under arbitration clauses and special agreements

Under Article 28 of the Treaty, the court has jurisdiction to hear and determine the following matters:

- a matter arising from an arbitration clause contained in a contract which confers such jurisdiction to which the common market or any of its institutions is a party; and
- a matter arising from a dispute regarding the Treaty between the Member States if the dispute is submitted to it under a special agreement between the Member States concerned.

#### Jurisdiction of national courts

Article 29 of the Treaty provides that decisions of the court on the interpretation of the provisions should defer to decisions of national courts. Except where jurisdiction is conferred on the court by or under the Treaty, disputes to which the common market is a party shall not on that ground alone be excluded from the jurisdiction of national courts.

#### Advisory opinions of the court

The court also has jurisdiction to give an advisory opinion upon request to the Authority, the Council or a Member State regarding questions of law arising from the provisions of the Treaty affecting the common market under Article 32. In the exercise of its advisory function, the court is governed by the Treaty and the rules of court relating to references of disputes to the extent that the court considers appropriate.

## Jurisdiction over matters of peace and security

Article 23 as read together with Article 19 of the Treaty gives the court general jurisdiction to adjudicate matters referred to it pursuant to the Treaty with regard to adherence to law in its interpretation and application. As the mandate for COMESA to address issues of peace and security is derived from the Treaty under Article 163 as read with Articles 3 and 6, the court has jurisdiction to determine issues of peace and security. However, it is important to note that this jurisdiction is confined to adherence to law in interpretation and application of the COMESA Treaty. According to the Treaty, issues for determination by the court can be brought by any Member State under Article 24 or by the Secretary-General under Article 25.

## Advisory opinions on peace and security

Another way in which the court can be used to address issues of peace and security is the provision of advisory opinions to the Authority in its function of conflict prevention (Article 32). This Article provides that the Authority, Council or any Member State may request the court to give an advisory opinion regarding questions of law arising from the provisions of the Treaty affecting the common market. In this case, with the delegated powers of the function of conflict prevention, the Bureau or Authority can seek advisory opinions from the court.

## Conclusion

It is quite clear from the COMESA example that several lessons are to be learnt for regional integration groupings in Africa. These lessons include:

- Issues of economic development and integration cannot be dealt with in isolation from peace and security issues, both aspects have to be addressed hand in hand.
- There is a need for all subregional groupings to cooperate in addressing issues of peace and security in order to avoid duplication of effort. In this respect, COMESA recognizes the efforts of institutions such as IGAD and SADC.