

The Evolving Role of ECOWAS and the SADC in Peace Operations: A Challenge to the Primacy of the United Nations Security Council in Matters of Peace and Security?

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Abstract

This article examines the evolution of military operations by the Economic Community of Western African States (ECOWAS) and the South African Development Community (SADC) over the last three decades. By looking at constitutional (treaty) developments and organizational practice, it questions whether these sub-regional organizations have displaced the primacy of the United Nations Security Council (UNSC) in matters pertaining to international peace and security, as foreseen in Articles 24(1) and 103 of the United Nations Charter (the UN Charter). The relevance of this question is underscored by the fact that ECOWAS and SADC have engaged in various peace operations since the 1990s. The article concludes that, since all the interventions under discussion were underpinned by the consent of the recognized government, it would be premature to suggest that the practice of African sub-regional organizations amounts to the emergence of a new customary right to engage in ‘first-instance enforcement action’.

Key words

regional organizations; ECOWAS; SADC; UNSC; peace and security

I. INTRODUCTION

This article examines the evolution of military operations by the Economic Community of Western African States (ECOWAS) and the South African Development Community (SADC) over the last three decades. Since the end of the Cold War, both sub-regional organizations have engaged in peace operations in a manner that was difficult to imagine only a few years before. In addition, their constitutive documents underwent significant amendment in order to accommodate their new regional security role. These developments raise the question whether the practice of these sub-regional organizations challenges the primacy of the United Nations

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Security Council (UNSC) in matters pertaining to international peace and security, as foreseen in Articles 24(1) and 103 of the United Nations Charter (the UN Charter).

Elsewhere, the author of this article has analysed this question in relation to the relationship between the African Union (the AU) and the UNSC.¹ This question is of particular interest in relation to the AU, due to the inclusion of Article 4(h) in the Constitutive Act of the African Union in 2000.² This article determines that the organization may intervene in a member state pursuant to a decision of the Assembly of Heads of State and Government in respect of grave circumstances including war crimes, genocide, and crimes against humanity.³ The inclusion of this clause, which contains no reference to prior authorization by the UNSC, was motivated by the persistent inaction of the UNSC in the face of widespread and systematic human rights atrocities committed on the continent, including the genocide in Rwanda. The author nonetheless concluded that even if this language seemed to defy the need for prior authorization by the UNSC, Article 4(h) of the Constitutive Act has thus far not played any role in practice. It has yet to be relied on for any intervention by the AU. So far the only full-scale military intervention in the interest of the protection of a civilian population in Africa concerned the military intervention in Libya in 2011 in accordance with UNSC Resolution 1973 (2011).⁴ This operation was executed by NATO forces and took place under the overall control of the UNSC under Chapter VII of the UN Charter. In addition, all peace operations thus far undertaken under the auspices of the AU have been undertaken in conformity with the UN Charter.⁵ The practice of AU peace operations therefore would not (yet) support the conclusion that the organization is in practice challenging the primacy of the UNSC in relation to international peace and security.

¹ See E. de Wet, 'Regional Organisations and Arrangements and Their Relationship with the United Nations: The Case of the African Union', in M. Weller (ed.), *The Oxford Handbook on the Use of Force* (2014).

² The Constitutive Act of the African Union of 11 July 2000, available at http://au.int/en/about/constitutive_act (last visited on 30 April 2013).

³ A. Abass and M. Baderin, 'Towards Effective Collective Security and Human Rights Protection in Africa: An Assessment of the Constitutive Act of the New African Union', (2002) 49 *Netherlands International Law Review* 15.

⁴ Art. 4(h) of the AU Constitutive Act, *supra* note 2, has since been amended by the Assembly of Heads of State and Government to read

[T]he right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity *as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council* [emphasis added].

However, this amendment is not yet in force. It requires ratification by two-thirds of the AU member states, which has not yet occurred. See First Extraordinary Session of the AU Assembly in Addis Ababa, Ethiopia (3 February 2003) and Second Ordinary Session of the AU in Maputo, Mozambique (11 July 2003). The precise meaning of what constitutes a serious threat to the legitimate order and how it relates to the other grounds of intervention in Art. 4(h), which are all international crimes, is not clear. Neither is it clear what criteria the AU will apply in order to determine the legitimacy of a regime in an African state. See J. Sarkin, 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organisations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect', (2009) 53 *Journal of African Law* 718; A. Ferreira-Snyman, 'Intervention with Specific Reference to the Relationship between the United Nations Security Council and the African Union', (2010) 63 *Comparative and International Law Journal of Southern Africa* 157.

⁵ These concern interventions in Burundi, Sudan (Darfur), Somalia, and the Comores. See De Wet, *supra* note 1.

However, given the fact that both ECOWAS and SADC pre-date the creation of the AU and are the most well-developed sub-regional organizations in terms of military capacity, the question remains whether these two sub-regional organizations might be carving out a role for themselves that displays a legal and political independence from the UNSC in matters pertaining to regional peace and security. The relevance of this question is underscored by the fact that ECOWAS and SADC have engaged in various peace operations since the 1990s. In several of these interventions the legal basis remains controversial to this day. In the case of ECOWAS the controversy concerns the legal basis for the interventions in Liberia and Sierra Leone,⁶ while in the case of SADC the intervention in the Democratic Republic of Congo (DRC) remains a bone of contention.⁷

In its subsequent sections, this article will briefly examine the meaning of the term ‘regional organizations’, whereafter it will consider the implications of Article 53(1) of the UN Charter for regional organizations. Of importance is the question of whether and to what extent the UN Charter (still) requires prior authorization by the UNSC of a military intervention by a regional organization. Thereafter this contribution illuminates core aspects of the legal framework of ECOWAS and SADC pertaining to regional security. It also gives an overview of the respective military operations in which they have been involved to date, followed by an assessment of the legal basis for these operations and their relationship with the UNSC.

2. THE RELATIONSHIP BETWEEN CHAPTER VIII OF THE UN CHARTER AND REGIONAL ORGANIZATIONS

Article 53(1) of the UN Charter determines that:

[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

The first pertinent question raised by Article 53(1) is that of the definition of ‘regional arrangements or agencies’ (which in this article is used interchangeably with the concept ‘regional organizations’). The only point in the UN Charter that sheds light on this question is the first sentence of Article 52(1), according to which:

[n]othing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action . . .⁸

From this article one can deduce that a regional organization should have the task of taking care of the peaceful settlement of disputes within its own region.⁹ The term

⁶ See *infra* sec. 3.1.1. and sec. 3.1.2.

⁷ See *infra* sec. 3.2.1. and sec. 3.2.2.

⁸ The Charter of the United Nations of 26 June 1945, available at www.un.org/en/documents/charter (last visited 30 April 2013); see also C. Walter, *Vereinte Nationen und Regionalorganisationen* (1996), at 276.

⁹ I. Dekker and E. Myjer, ‘Air Strikes on Bosnian Positions: Is NATO Also Legally the Proper Instrument of the UN?’, (1996) 9 *Leiden Journal of International Law*, at 413; Walter, *supra* note 8, at 276.

‘regional’ implies a distinctive feature about the members of the organization, which is generally understood to be of a geographic nature.¹⁰ The term can relate either to the geographic region from which all the member states come, or to the geographic area in which the organization will operate, or to a combination of these factors.¹¹ Both ECOWAS and SADC fulfil this requirement, as their respective membership is directed at countries from a particular geographic sub-region within Africa (hence the reference to sub-regional organizations). In addition, their activities are limited to their own region and to their own members – a characteristic which is also typical of regional organizations.¹²

The extent to which these sub-regional organizations acted in accordance with Article 53(1) of the UN Charter when participating in peace operations will be analysed below. Before doing so, however, it is necessary to discuss the extent to which this article requires an (explicit) authorization to the regional organization for engaging in enforcement action. The second sentence of Article 53(1) of the UN Charter explicitly determines that no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the UNSC.¹³ In 1962 the International Court of Justice (ICJ) already defined ‘enforcement action’ as coercive military action in terms of Chapter VII of the Charter.¹⁴ This in turn implies that Article 53(1) will only come into play in situations where the UNSC has made a prior determination that a threat to the peace, breach of the peace, or act of aggression exists. This fact, combined with the clear wording of Article 53(1), indicates that the legality of a mandate for enforcement action by a regional organization is dependent on an explicit, prior UNSC authorization to this effect.

Where no such authorization exists, the regional intervention would be illegal, unless it amounts to individual or collective self-defence in accordance with Article 51 of the UN Charter, or to military measures which do not amount to coercive measures and therefore fall beyond the scope of Article 2(4) of the UN Charter. These include peacekeeping (Chapter VI ½) operations performed with the consent of the affected state(s), in a neutral manner during which force is used only in self-defence.¹⁵ It also includes military action by one or more states against another at the request of the latter’s lawful government (intervention by invitation).¹⁶ One concretization of intervention by invitation is Article 4(j) of the AU Constitutive Act

¹⁰ Walter, *supra* note 8, at 40.

¹¹ Walter, *supra* note 8, at 40–1. The distinctive geographic factor can also be accompanied by cultural and historical ties such as those between the members of the Commonwealth.

¹² Walter, *supra* note 8, at 276–7; Dekker and Myjer, *supra* note 9, at 416; M. O’Connell, ‘The UN, NATO, and International Law after Kosovo’, (2000) 22 *Human Rights Quarterly* 66.

¹³ See generally S. Paliwal, ‘The Primacy of Regional Organizations in International Peacekeeping: The African Example’, (2011) 51 *Virginia Journal of International Law*, at 185 ff.

¹⁴ Certain Expenses of the United Nations (Art. 17, para. 2, of the Charter), Advisory Opinion of 20 July 1962 [ICJ Rep] 1962, 151 at 178. See R. Jennings, ‘Advisory Opinion of July 20, 1962’, (1962) 11 *International and Comparative Law Quarterly* 1173; see also E. de Wet, *The Chapter VII Powers of the United Nations Security Council* (2004), at 32–3.

¹⁵ Certain Expenses opinion, *supra* note 14, at 178.

¹⁶ For an analysis see G. Nolte, ‘Restoring Peace by Regional Action’, (1993) 53 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 635.

of 2000,¹⁷ according to which member states can request intervention from the AU in order to restore peace and security.

Some authors have persistently argued that regional organizations have a residual power to adopt enforcement measures in situations of gross and systematic human rights violations when the UNSC remains inactive.¹⁸ This argument is underpinned by the rationale that the likelihood of abuse of the military mandate by a regional organization is lower, due to the institutional and collective control provided within the regional body, as well as to the higher degree of disinterest and objectivity within an organization composed of mutually independent states.¹⁹

From a UN Charter perspective, this line of thinking would violate the second sentence of Article 53(1), which explicitly states that no enforcement action shall be taken by regional organizations without authorization by the UNSC.²⁰ Moreover, it also negates the fact that the UNSC may be deliberately refraining from action, because the major powers are not convinced that enforcement action is called for. Another problem with this argument is that it seems to assume that the UNSC could prevent the respective regional organization from intervening by adopting a Chapter VII resolution to that effect.²¹ However, any such decision could be frustrated in practice by the veto of a permanent member who is silently condoning the illegal military operation. This is a real risk where the interests of a permanent member of the UNSC coincide with those of a regional (defence) organization. It is also aggravated where the institutional structures and controls exerted by regional organizations are rudimentary in practice, enabling the enforcement action to be dominated by the interests of the more powerful nations within the regional organization.²²

The central role of the UNSC in authorizing any enforcement action, including those aimed at protecting the civilian population against gross human rights violations, was affirmed by the World Summit Outcome of 2006. This document, which was adopted by the United Nations General Assembly (UNGA), acknowledged that, where a state failed to protect its population from suffering or serious harm resulting from internal armed conflict, the international community had a residual responsibility to do so. In such circumstances the principle of non-intervention yielded to the 'international responsibility to protect' which can also include military action.²³ However, the document simultaneously underscored that any military intervention in the interest of the protection of the civilian population had to be authorized by

¹⁷ The AU Constitutive Act, *supra* note 2.

¹⁸ Walter, *supra* note 8, at 262; see also M. Herdegen, 'Der Wegfall effektiver Staatsgewalt: "The Failed State"', (1995) 34 *Berichte der Deutschen Gesellschaft für Völkerrecht*, at 76 ff., who supported humanitarian intervention by regional organizations without prior UNSC authorization in the case of a failed state.

¹⁹ Walter, *supra* note 8, at 262, 264; see Nolte, *supra* note 16, at 635; N. White and Ö. Ülgen, 'The Security Council and the Decentralized Military Option: Constitutionality and Function', (1997) 44 *Netherlands International Law Review*, at 388, 406.

²⁰ D. Sarooshi, *The United Nations and the Development of Collective Security* (1999), at 33–4.

²¹ As is suggested by Walter, *supra* note 8, at 261.

²² White and Ülgen, *supra* note 19, at 262, 264.

²³ World Summit Outcome, UN Doc. A/RES/60/1 (2005), at para. 79; see also In Larger Freedom, UN Doc. A/59/2005, at para. 135. See generally also C. Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', (2007) 101 *American Journal of International Law*, at 99ff.

the UNSC.²⁴ This would imply that there is no scope for states or regional organizations to engage in military action for protective purposes in the absence of a UNSC authorization.²⁵

Despite these objections, it remains to be determined whether the practice of some regional organizations may nonetheless be indicative of an emerging customary exception to the requirement that enforcement action by regional organizations be preceded by a UNSC resolution. For example, when a regional organization engages in a military operation without prior UNSC authorization, it is possible that such authorization can be forthcoming *ex post facto*, thereby retroactively legalizing the intervention.²⁶ Even though this practice would not find any textual basis in the UN Charter, it cannot be excluded that the UNSC could develop a practice of *ex post facto* authorization. The military interventions in the 1990s by ECOWAS in Liberia and Sierra Leone are often cited as examples of interventions by a regional organization that was authorized by the UNSC *ex post facto*. As this point will be revisited below in sections 3.1.1 and 3.1.2, it will suffice here to say that in order for such an authorization to be convincing, it has to be given in unambiguous terms. Otherwise regional organizations (or states) could attempt to justify unauthorized, unilateral interventions on the basis of obscure language in subsequent UNSC resolutions which were not intended for that purpose.

3. MILITARY INTERVENTIONS BY ECOWAS AND SADC

3.1. ECOWAS

Founded in 1975, ECOWAS comprises 15 member states.²⁷ It was originally concerned with economic co-operation and integration among member states, but the proliferation of conflicts in the region and its impact on economic development resulted in a restructuring of its objectives in order to focus on regional security challenges.²⁸

The founding treaty was first complemented by the Protocol on Non-Aggression of 22 April 1978 which was based, *inter alia*, on the consideration that the organization could not attain its objectives without the establishment of a peaceful atmosphere and harmonious understanding between the member states. This protocol also contained a clause on the peaceful settlement of disputes.²⁹ Thereafter, the security dimension of ECOWAS was extended by an additional Protocol Relating to the

²⁴ World Summit Outcome, *supra* note 23, at para. 79; In Larger Freedom, *supra* note 23, at para. 135.

²⁵ UN Doc. S/RES/1973 (2011), at para. 4 is an example of where such authorization was indeed obtained by NATO, for the protection of the civilian population under threat of attack in Libya.

²⁶ Herdegen, *supra* note 18, at 76; Walter, *supra* note 8, at 308.

²⁷ These currently include Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. See Treaty of the Economic Community of West African States of May 1975, at Art. 2, reprinted in (1975) 14 *International Legal Material*, at 1200; Paliwal, *supra* note 13, at 207. See generally I. Sampson, 'The Responsibility to Protect and ECOWAS Mechanisms on Peace and Security: Assessing Their Convergence and Divergence on Intervention', (2011) 16 *Journal of Conflict & Security Law*, at 507.

²⁸ Sampson, *supra* note 27, at 507–8.

²⁹ Protocol on Non-Aggression of ECOWAS of 22 April 1978, reprinted in P. Gonidec, *Les organisations internationales africaines* (1987), at 275–6; see also Nolte, *supra* note 16, at 613.

Mutual Assistance on Defence, signed on 29 May 1981.³⁰ This treaty provided for the establishment of a collective self-defence agreement in the case of external aggression, or conflict between member states that could not be settled in terms of the non-aggression protocol, or internal armed conflict engineered and supported actively from outside that would be likely to endanger security and peace in the whole region.³¹

The revised Treaty of ECOWAS of 1993 consolidated the framework for the member states to collaborate towards the maintenance of peace, stability, and security within the region. Article 58(2) commits member states to co-operate with the Community in establishing and strengthening appropriate mechanisms for the timely prevention and resolution of intra-state and inter-state conflicts.³² This commitment was concretized through the adoption of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of 1999 (hereinafter the ECOWAS Peacekeeping Protocol) that established an elaborate regional peace and security mechanism, including peacekeeping forces that could also be deployed in instances of internal conflict.³³

The formal relationship of ECOWAS with the United Nations in relation to military intervention is ambivalent. The revised ECOWAS Treaty merely states that the organization will ‘cooperate’ with the United Nations system in the pursuit of its objectives.³⁴ The Peacekeeping Protocol for its part states that in accordance with Chapters VII and VIII of the UN Charter, it will inform the United Nations of any military intervention undertaken in accordance with the ECOWAS Peacekeeping Protocol.³⁵ The term ‘inform’ suggests that ECOWAS foresees the conduct of future interventions without prior UNSC authorization and that it will merely keep the United Nations up to date about a particular military operation.

However, the military operations thus far undertaken by ECOWAS illustrate that in practice ECOWAS is dependent on logistical, financial, and military support from, notably, Western countries within the United Nations system. This was perhaps less evident during the first two ECOWAS interventions in the 1990s, namely in Liberia and Sierra Leone. The military presence of Nigeria during these operations enabled their performance without direct support by the United Nations. In fact, some still regard these operations as the first clear instances where the United Nations’ role was limited to authorizing the operations *ex post facto*, a point that will be revisited below.

³⁰ Protocol Relating to the Mutual Assistance on Defence of 29 May 1981, A/SP3/5/81 in (1970–1990) 4 *Nigeria's Treaties in Force*, at 898.

³¹ A. Ofodile, ‘The Legality of ECOWAS’ Intervention in Liberia’, (1994) 32 *Columbia Journal of Transnational Law*, at 411.

³² Economic Community of West African States (ECOWAS) Revised Treaty of 24 July 1993, at para. 58(2), reprinted in S. Ebovrah and A. Tanoh (eds.), *Compendium of African Sub-Regional Human Rights Documents* (2010), at 184; See also E. Birikorang, ‘Lessons Learned and Best Practice from a Troubled Region: ECOWAS and the Development of the ECOWAS Standby Force’, in U. Engel and J. Gomes Porto (eds.), *Towards an African Peace and Security Regime* (2013), at 89.

³³ Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of 10 December 1999, at Art. 3, reprinted in S. Ebovrah and A. Tanoh (eds.), *Compendium of African Sub-Regional Human Rights Documents* (2010), at 205; Paliwal, *supra* note 13, at 206–7; Sampson, *supra* note 27, at 508.

³⁴ Revised ECOWAS Treaty, *supra* note 32, at Art. 83(2).

³⁵ ECOWAS Protocol, *supra* note 33, at Art. 52; Sarkin, *supra* note 4, at 25.

However, since the turn of the century Nigeria has limited its military involvement in ECOWAS operations and in doing so exposed the organization's financial and logistical co-dependency on the United Nations. Its operations in Guinea-Bissau and Côte d'Ivoire were heavily dependent on the support of the United Nations and, in the latter instance, the operation was ultimately subsumed into a United Nations operation.³⁶

3.1.1. *The intervention in Liberia*

On 7 August 1990 ECOWAS created the ECOWAS Ceasefire Monitoring Group (ECOMOG), with a mandate to restore law and order and create the necessary conditions for free and fair elections in Liberia.³⁷ ECOMOG forces landed in Liberia on 27 August 1990.³⁸ There was no prior UNSC resolution that authorized this intervention. Instead, some attempted to see this intervention as evidence of an *ex post facto* UNSC authorization.³⁹ Even if one were to accept the possibility of a retroactive authorization, it is doubtful whether the ECOMOG intervention would be of precedential value in this regard, as the legal basis for the intervention remains controversial.

Some justify the ECOMOG intervention on invitation by the Liberian government by the then President Doe.⁴⁰ Those who argue in favour of *ex post facto* UNSC authorization dispute the legitimacy of the invitation, due to the lack of effective control by President Doe at the time the invitation was extended.⁴¹ The statements issued by the president of the UNSC on 22 January 1991 and 7 May 1992 'recognized' the ECOMOG action.⁴² Thereafter the UNSC adopted Resolution 788 of 19 November 1992, which determined that the situation in Liberia constituted a threat to peace and security in West Africa as a whole. It also imposed an arms embargo on Liberia in terms of Chapter VII of the Charter.⁴³ In addition, it 'commended' ECOWAS for its efforts to restore peace, security, and stability in Liberia.⁴⁴ According to the preamble of UNSC Resolution 866 of 22 September 1993, ECOMOG had the primary responsibility for supervising the implementation of the military provisions of the peace agreement. The United Nations Observer Mission in Liberia (UNOMIL), on the other hand, was to verify and monitor this process.⁴⁵

This division of powers between ECOMOG and UNOMIL, combined with the fact that the latter would not be engaging in enforcement measures,⁴⁶ has been

³⁶ Sarkin, *supra* note 4, at 26; Paliwal, *supra* note 13, at 208.

³⁷ N. Wallace-Bruce, 'Of Collapsed, Dysfunctional and Disoriented States: Challenges to International Law', (2000) 47 *Netherlands International Law Review*, at 62.

³⁸ Ofodile, *supra* note 31, at 384.

³⁹ Herdegen, *supra* note 18, at 76; I. Österdahl, 'The Continued Relevance of Collective Security under the UN: The Security Council, Regional Organisations and the General Assembly', (1999) 10 *Finnish Yearbook of International Law*, at 57.

⁴⁰ Nolte, *supra* note 16, at 634; see also Birikorang, *supra* note 32, at 92.

⁴¹ Herdegen, *supra* note 18, at 75–6; Österdahl, *supra* note 39, at 57; Walter, *supra* note 8, at 237.

⁴² See UN Doc. S/22133 (1991) and UN Doc. S/23886 (1992).

⁴³ At para. 8.

⁴⁴ At para. 1; see also UN Doc. S/RES/813 (1993), at para. 2; UN Doc. S/RES/856 (1993), at para. 6.

⁴⁵ At para. 3.

⁴⁶ UN Doc. S/RES/866 (1993), at para. 3.

interpreted as implying that ECOMOG was engaged in enforcement action.⁴⁷ It is nonetheless open to question whether the vague language used in the UNSC resolutions would amount to an *ex post facto* authorization of military enforcement action. First, the language is broad and vague enough to apply only to those aspects of the intervention that constituted classic peacekeeping (consented to by the government and rebel groups, at least initially).⁴⁸ In addition, the fact that UNOMIL was not to engage in enforcement action does not necessarily lead to the conclusion that ECOMOG was indeed authorized to do so, as one could also argue that such support resulted from the very fact that *no* enforcement operation was authorized. One should also keep in mind that in the post-Cold War era, the Security Council has always referred explicitly to Chapter VII when authorizing military intervention.⁴⁹ In essence, therefore, the language of the resolutions combined with the ambiguous circumstances under which they were adopted does not lend convincing support to an argument of *ex post facto* ratification of the ECOMOG intervention.⁵⁰

3.1.2. *The intervention in Sierra Leone*

The involvement of ECOMOG in Sierra Leone was surrounded by similar ambiguities to those in Liberia, including subsequent praise by the UNSC which some interpreted as an *ex post facto* authorization of the continued military intervention.⁵¹ The ECOMOG involvement followed a military coup in Sierra Leone on 25 May 1997, during which the democratically elected government of President Kabbah was overthrown. By 20 June 1997 the foreign ministers of the ECOWAS countries had agreed to work towards the reinstatement of the legitimate government by a combination of dialogue, the imposition of sanctions, and the use of force.⁵² On 29 August 1997 the ECOWAS countries adopted an oil and arms embargo and authorized its troops to use all necessary means to ensure its enforcement.⁵³ In the wake of this decision there were several violent incidents between ECOMOG troops and those attempting to undermine the embargo.⁵⁴

Although the UNSC supported the mediation efforts initiated by ECOWAS and supported their objectives to reinstate the legitimate government in a Presidential

⁴⁷ Walter, *supra* note 8, at 304.

⁴⁸ *Ibid.*, at 298; Cf. Ofodile, *supra* note 31, at 412, who submitted that ECOWAS did not receive the consent of all the contending parties in Liberia.

⁴⁹ Nolte, *supra* note 16, at 633–4.

⁵⁰ The adoption of NATO's broad security mandate in UN Doc. S/RES/1244 (1999) in relation to Kosovo also resulted in submissions that this resolution would serve as an *ex post facto* authorization of the (unauthorized) military air campaign that was waged before the adoption of this resolution. However, the wording of the resolution is of a prospective nature and makes no reference to support for the preceding air campaign. For different views on the issue see R. Wedgewood, 'NATO's Campaign in Yugoslavia', (1999) 93 *American Journal of International Law*, at 830; B. Simma, 'NATO, the UN and the Use of Force: Legal Aspects', (1999) 10 *European Journal of International Law*, at 11.

⁵¹ T. Franck, 'Rethinking Collective Security', in M. Schmitt and J. Peije (eds.), *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein* (2007), at 25; U. Villani, 'The Security Council's Authorisation of Enforcement Action by Regional Organisations', (2002) 6 *Max Planck Yearbook of International Law*, at 555.

⁵² See their final communiqué of the meeting in UN Doc. S/1997/499, Annex, at 3. See also G. Nolte, *Eingreifen auf Einladung* (1999), at 427.

⁵³ UN Doc. S/1997/695, at Annex I and Annex 2; Nolte, *supra* note 52, at 428.

⁵⁴ Nolte, *supra* note 52, at 428.

Statement,⁵⁵ it did not authorize them to use force to realize these objectives. The only authorization to this extent concerned the enforcement of a United Nations arms and petroleum embargo against Sierra Leone, which was imposed by Resolution 1132 of 8 October 1997.⁵⁶ After determining that the situation in Sierra Leone constituted a threat to international peace and security in the region, the UNSC adopted the embargo in order to persuade the military junta to relinquish power and make way for the restoration of the democratically elected government.⁵⁷

In addition, the UNSC authorized ECOWAS (i.e. ECOMOG) under Chapter VIII to ensure a strict implementation of the embargo. This included the halting of inward shipping where necessary in order to inspect and verify the cargoes.⁵⁸ This reference to Chapter VIII clarified that the UNSC authorized the regional organization to use force for these limited purposes only. After the return of the democratically elected president on 10 March 1998, the UNSC terminated the petroleum embargo in Resolution 1156 of 16 March 1998.⁵⁹ It finally terminated the arms embargo against the government in Resolution 1171 of 5 June 1998.⁶⁰

The ECOMOG enforcement action that extended beyond this mandate – and which effectively continued until early 2000 – was not authorized by the UNSC, even though the UNSC praised ECOMOG action on several occasions. For example, UNSC Resolution 1162 of 17 April 1998 commended ECOMOG on its important role in support of the objectives to restore peaceful conditions in the country.⁶¹ This was reiterated in UNSC Resolution 1181 of 13 July 1998, in which the Security Council also noted the role of ECOMOG in assisting the implementation of disarmament⁶² and welcomed its commitment to ensure the security of United Nations personnel in Sierra Leone.⁶³ Subsequent resolutions also commended the role of ECOMOG for its role in restoring security and stability in Sierra Leone, the protection of civilians, and the promotion of a peaceful settlement of the conflict.⁶⁴ However, none of these statements were made under Chapter VII or VIII, or contained language that would *ex post facto* authorize ECOMOG to engage in enforcement action.⁶⁵

As in the case of the ECOMOG intervention in Liberia, one can argue that a UNSC mandate was superfluous, as the ECOMOG intervention in Sierra Leone occurred on the invitation of the democratically elected government.⁶⁶ Even though this government had been overthrown and was not in effective control of the country, it was still almost universally recognized as the legitimate government of Sierra

⁵⁵ UN Doc. S/PRST/1997/36; Nolte, *supra* note 52, at 427.

⁵⁶ UN Doc. S/RES/1132 (1997), at para. 6.

⁵⁷ *Ibid.*, at paras. 1 and 19.

⁵⁸ *Ibid.*, at para. 8.

⁵⁹ UN Doc. S/RES/1156 (1998), at para. 2.

⁶⁰ UN Doc. S/RES/1171 (1998), at para. 1.

⁶¹ UN Doc. S/RES/1162 (1998), at para. 2.

⁶² *Ibid.*, at para. 6.

⁶³ *Ibid.*, at para. 9.

⁶⁴ UN Doc. S/RES/1260 (1999), at para. 3; see also UN Doc. S/RES/1231 (1999), at para. 10; UN Doc. S/RES/1270 (1999), at para. 7; UN Doc. S/RES/1289 (2000), at para. 2.

⁶⁵ As was asserted by Villani, *supra* note 51, at 555.

⁶⁶ Nolte, *supra* note 52, at 427.

Leone, which could invite military support from ECOMOG.⁶⁷ In essence, therefore, the complex context in which the UNSC statements concerning the ECOMOG involvement in Sierra Leone were made makes claims of *ex post facto* UNSC authorization tenuous.⁶⁸

3.1.3. *The intervention in Guinea–Bissau*

Following the threat of a mutiny against President Bernardo Vieira in 1998, the UNSC adopted Resolution 1216 of 21 December 1998, resulting in an ECOMOG interposition force for the purpose of maintaining security along the border between Guinea–Bissau and Senegal. The ECOMOG interposition force was also required to take military action to ensure the security and freedom of movement of its personnel in the discharge of its mandate.⁶⁹

Although no mention of Chapter VII or Chapter VIII was made, the ECOMOG deployment was explicitly requested by President Vieira and was also agreed to by the leader of the mutiny.⁷⁰ The deployment, consisting of troops from Benin, Gambia, Mali, Niger, and Togo, could therefore be regarded either as a classic peacekeeping mission or as intervention by invitation. The ECOMOG forces were, however, not able to prevent President Vieira from being forced from power in May 1999 and were withdrawn shortly afterwards.⁷¹ Key factors that undermined the success of the mission included the fact that the ECOMOG force was undermanned and heavily dependent on French and Portuguese logistical support. The absence of Nigeria – the military and economic powerhouse of the region – further undermined its capacity.⁷²

3.1.4. *The intervention in Côte d'Ivoire*

ECOWAS deployed its first mission in Côte d'Ivoire (ECOMICI) in October 2002. This occurred at the request of the then President Laurent Gbagbo, after he was ousted by a coup in September 2002.⁷³ Subsequently in Resolution 1464 of 4 February 2003 the UNSC welcomed the deployment of ECOWAS as well as French troops in Côte d'Ivoire and authorized them under Chapters VII and VIII of the UN Charter to

⁶⁷ Ibid., *supra* note 52, 428–9; A. Orakhelashvili, 'The Legal Framework of Peace Operations by Regional Organisations', (2007) 11 *International Peacekeeping*, at 131–2.

⁶⁸ Subsequently to the adoption of UN Doc. S/RES/1289 (2000), ECOMOG was incorporated in the United Nations Mission in Sierra Leone (UNAMSIL). This mission was authorized to use force under Chapter VII of the UN Charter in order to perform functions such as providing security for the governmental buildings and key locations, and guarding the disarmament sites and surrendered weapons and ammunition. See also Orakhelashvili, *supra* note 67, at 133.

⁶⁹ UN Doc. S/RES/1216 (1998), at paras. 3, 4, 6; Paliwal, *supra* note 13, at 2011.

⁷⁰ Paliwal, *supra* note 13, at 211.

⁷¹ C. Obi, 'Economic Community of West African States on the Ground: Comparing Peacekeeping in Liberia, Sierra Leone, Guinea Bissau, and Côte D'Ivoire', in F. Söderbaum and R. Tavares (eds.), *Regional Organizations in African Security* (2010), at 60.

⁷² Obi, *supra* note 71, at 60.

⁷³ D. Zounmenou and R. Loua, 'Confronting Complex Political Crises in West Africa: An Analysis of ECOWAS Response to Niger and Côte d'Ivoire', (2011) 230 *Institute for Security Studies (ISS) Paper*, at 10, available at www.iss.co.za (last visited 30 April 2013); Paliwal, *supra* note 13, at 212.

guarantee the security and freedom of movement of their personnel in order to ensure the protection of civilians.⁷⁴

The combined efforts of ECOWAS and the French troops were complemented by the establishment of the United Nations Mission in Côte d'Ivoire (MINUCI) in UNSC Resolution 1479 of 13 May 2003.⁷⁵ This mission was, however, not adopted under Chapter VII of the UN Charter. In the following year, the UNSC did take action under Chapter VII in the form of Resolution 1528 of 27 February 2004, which established the United Nations Operation in Côte d'Ivoire (UNOCI). This mission resulted in the integration of MINUCI and ECOMICI in a hybrid force (UNOCI) which co-existed alongside the ever-present French forces.⁷⁶

The initial mandate of UNOCI included the monitoring of the ceasefire, as well as the assistance to the government of national reconciliation in maintaining law and order and disarmament of armed factions, humanitarian assistance, and the protection of United Nations personnel.⁷⁷ The French forces, for their part, were authorized to contribute to general security, intervene against belligerent factions at the request of UNOCI, and also use force beyond the deployment of UNOCI.⁷⁸ This mandate was extended and refined continuously between 2004 and 2011.⁷⁹

With the outbreak of the post-electoral violence in 2011, during which the incumbent President Gbagbo refused to concede victory to the current President Quattara, the UNSC adopted Resolution 1975 of 30 March 2011. This resolution authorized UNOCI under Chapter VII of the UN Charter to use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence, including the prevention of the use of heavy weapons against the civilian population.⁸⁰ Although this operation was supported formally by ECOWAS, it was carried out under the auspices of the United Nations with the strong backing of the French troops, culminating in the capture of former President Gbagbo in April 2011.⁸¹

3.2. SADC

The South African Development Coordination Conference was established in 1980 by the so-called frontline states with the purpose of pursuing economic policies that would reduce their dependency on apartheid South Africa. In 1992 it was transformed into SADC, a regional economic community in which post-apartheid South Africa was subsequently integrated.⁸² SADC is currently composed of

⁷⁴ UN Doc. S/RES/1464 (2003), at preamble and paras. 8, 9; Orakhelashvili, *supra* note 67, at 133.

⁷⁵ UN Doc. S/RES/1479 (2003), at para. 2.

⁷⁶ Zounmenou and Loua, *supra* note 73, at 10; Obi, *supra* note 71, at 61.

⁷⁷ UN Doc. S/RES/1528 (2004), at paras. 1, 6; Paliwal, *supra* note 13, at 212.

⁷⁸ UN Doc. S/RES/1528 (2004), at paras. 16 and 17; Orakhelashvili, *supra* note 67, at 134; Obi, *supra* note 71, at 61.

⁷⁹ E.g., UN Doc. S/RES/1600 (2005), at para. 5; UN Doc. S/RES/1603 (2005); UN Doc. S/RES/1739 (2007), at paras. 1 and 2; UN Doc. S/RES/1795 (2008), at para. 4; UN Doc. S/RES/1826 (2008), at para. 1; UN Doc. S/RES/1865 (2009), at paras. 15 ff.; UN Doc. S/RES/1880 (2009), at para. 19; UN Doc. S/RES/1911 (2010), at para. 14; UN Doc. S/RES/1924 (2010), at para. 1; UN Doc. S/RES/1933 (2010), at para. 16; UN Doc. S/RES/1946 (2010), at para. 1.

⁸⁰ UN Doc. S/RES/1975 (2011), at para. 6.

⁸¹ Zounmenou and Loua, *supra* note 73, at 12–13.

⁸² Treaty of the Southern African Development Community of 17 August 1992, available at www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/sadc/8SADC_Treaty.pdf (last visited 30 April 2013).

14 member states.⁸³ The membership of the DRC, which only joined SADC in 1997, remains contentious due to its geographic position.⁸⁴

The 1992 SADC treaty only contained general references to regional peace and security issues. Article 5(1)(c) determined that it was an objective of SADC to promote and defend peace and security. Article 21 further determined that politics, diplomacy, international relations, and peace and security were areas of co-operation.⁸⁵ In 1996 the security framework was complemented by the adoption of the Botswana Communiqué by the SADC Heads of State and Government. The communiqué added the principle that any sort of military intervention should be decided only after all possible political remedies have been exhausted in accordance with the Charter of the (then still existing) OAU and the United Nations. It further established the SADC Organ of Politics, Defence and Security (hereinafter the SADC Organ), which *inter alia* had the aim of protecting the people of the region against instability arising from the breakdown of law and order, inter-state conflict, and external aggression.⁸⁶

Problematic was the fact that the SADC Organ operated at the highest level of the organization, namely the Summit of Heads of State and Government, and functioned independently of other SADC structures.⁸⁷ Its chairperson rotated on an annual basis and was different from that of the Summit, which rotated on a three-year basis. At the time Zimbabwe was elected to chair the SADC Organ, South Africa held the chair of the Summit. Whereas Zimbabwe regarded the Organ as operating independently from the rest of SADC structures, South Africa was of the opinion that it had to operate in line with the Summit, to whom it had to report. This difference of opinion as to who had the leading role in relation to security matters culminated in their different approaches to the intervention in 1998 in the DRC, which will be illuminated in section 3.2.1.⁸⁸

Lengthy debates on the position of the SADC Organ continued until 2001, when a revised legal framework was introduced. The revised SADC Treaty, the Consolidated Text of the Treaty of the Southern African Development Community, expanded the former Article 5(1) in order to determine that consolidating, defending, and maintaining democracy, peace, security, and stability were SADC objectives.⁸⁹

⁸³ These include Angola, Botswana, the DRC, Lesotho, Madagascar (currently suspended until the constitutional order has been restored), Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. See C. Hendricks and T. Musavengana (eds.), *The Security Sector in Southern Africa* (2010), at 12.

⁸⁴ See also M. Schoeman and M. Muller, 'Southern African Development Community as Regional Peacekeeper: Myth or Reality', in Söderbaum and Tavares, *supra* note 71, at 113.

⁸⁵ 1992 SADC Treaty, *supra* note 82.

⁸⁶ Communiqué, Summit of Heads of State or Governments of the Southern African Development Community of 28 June 1996, cited in Institute for Security Studies (ed.), *Building Security in Southern Africa* (1999), available at www.iss.co.za/pubs/monographs/no43/SADCOrgan.html (last visited 30 April 2013).

⁸⁷ SADC Communiqué, *supra* note 86, at para. 4.3.1.

⁸⁸ M. Malan and J. Cilliers, 'SADC Organ on Politics, Defence and Security: Future Development' (1997) 17 *Institute of Security Studies Paper*, available at www.issafrica.org/pubs/Papers/10/Paper10.html (last visited 30 April 2013).

⁸⁹ Consolidated Text of the Treaty of the Southern African Development Community, as Amended of August 2001, at Art. 5(1), reprinted in S. Eboobrah and A. Tanoh (eds.), *Compendium of African Sub-Regional Human Rights Documents* (2010), at 341.

Article 9 further established the Organ on Politics, Defence and Security Cooperation, leaving its detailed regulation to the Protocol on Politics, Defence and Security Co-operation.⁹⁰ This instrument integrated the former SADC Organ into the main structure of SADC, reducing the possibility of contentious deployment of troops in future.⁹¹

The Protocol on Politics, Defence and Security Co-operation also expanded on the substantive jurisdiction of SADC in relation to security matters. Article 11(2) granted the organization jurisdiction over inter-state conflicts (where at least one of the parties to the conflict is a member state); intra-state conflicts concerning large-scale violence between sections of the population or between the state and sections of the population including genocide, ethnic cleansing, and gross violation of human rights; military coups or other threats to the legitimate authority of a state; and conditions of civil war or insurgency.⁹²

Furthermore, Article 11(3)(d) Protocol on Politics, Defence and Security Co-operation explicitly states that enforcement action has to be ‘in accordance with Article 53 of the United Nations Charter, only with the authorization of the United Nations Security Council’.⁹³ This clear commitment to prior authorization by the UNSC before engaging in enforcement action distinguishes SADC from ECOWAS (and for that matter also the AU).⁹⁴ It also raises the question whether SADC members would be willing to engage in enforcement action on behalf of the AU without a clear, prior UNSC authorization to do so. As was indicated in section 1 above, Article 4(h) of the AU’s Constitutive Act does not seem to require (prior) UNSC authorization where enforcement action is directed at protecting the civil population from grave violations of human rights. However, the SADC’s clear commitment to the UN Charter in relation to all enforcement action undertaken by its member states (including regarding large-scale human rights violations within a state)⁹⁵ may pose a legal obstacle for those AU members who are also SADC members to engage in an enforcement operation under AU auspices that has not also been authorized by the UNSC. This would in particular be the case where the military intervention is directed at another SADC member state. For the time being this question, however, remains academic, as Article 4(h) of the Constitutive Act of the AU has not yet been put to use, nor is this likely to happen in the near future.

On paper the current SADC security architecture appears sophisticated.⁹⁶ However, the formal structures have yet to be utilized in practice, as the organization lacks

⁹⁰ Protocol on Politics, Defence and Security Co-operation of 14 August 2001, at Arts. 3–9; reprinted in Ebobrah and Tanoh, *supra* note 89, at 407–9.

⁹¹ Hendricks and Musavengana, *supra* note 83, at 16.

⁹² Protocol on Politics, Defence and Security Co-operation, *supra* note 90, at Art. 11(2)(a)–(2)(b). See also Art. 11(1) that reaffirms the right to self-defence in accordance with the UN Charter; Sarkin, *supra* note 4, at 29.

⁹³ See also Paliwal, *supra* note 13, at 215.

⁹⁴ See De Wet, *supra* note 1.

⁹⁵ Protocol on Politics, Defence and Security Co-operation, *supra* note 92, at Art. 11(2)(b).

⁹⁶ The SADC system also allows for a SADC regional brigade, which would be part of the broader African standby force. See SADC, Strategic Indicative Plan for the Organ on Politics, Defence and Security Co-operation objective of 5 August 2004, available at www.sadc.int/index/browse/page/116 (last visited 30 April 2013); Sarkin, *supra* note 4, at 29.

the political and financial capacity to translate complex objectives into reality.⁹⁷ The only two instances in which SADC did intervene in member states concerned the DRC and Lesotho. Both interventions occurred in the late 1990s, namely before the adoption of the Protocol on Politics, Defence and Security Co-operation.⁹⁸

3.2.1. *The intervention in the DRC*

The military intervention in the DRC in August 1998 by Angola, Namibia, and Zimbabwe was not authorized by SADC in advance. Instead the three countries argued that they were relying on collective self-defence in support of President Kabila, who requested assistance against Congolese Tutsi rebels supported by Uganda and Rwanda.⁹⁹ Subsequently in September 1998 the SADC member states adopted a joint declaration that commended the troop-providing countries for assisting the government and the people of the DRC. Despite this formal gesture, the legal basis for the military intervention remains controversial within the organization. South Africa in particular was opposed to the military intervention, which has contributed to deep divisions within the sub-regional organization. The operation was also never formally endorsed by the UNSC.¹⁰⁰

Parallel to this military involvement, SADC also attempted to broker a ceasefire agreement in the DRC.¹⁰¹ This ultimately resulted in the Global and All-Inclusive Agreement of the Transition of the DRC in December 2002 in Pretoria.¹⁰² This was followed by a memorandum of agreement that provided for the deployment of a United Nations peacekeeping mission (MONUC). However, despite these efforts and the conduct of elections in 2006, the war in the eastern part of the country is continuing.¹⁰³

In essence, both the legal basis for the intervention by three SADC members in the DRC and the wisdom of its subsequent endorsement by the organization remain questionable. Given the complexity of the conflict consisting of international and non-international components, the logistical challenges in the territory, as well as the limited resources at SADC's disposal, it is unrealistic to have expected the organization to constitute a meaningful military presence in the DRC.¹⁰⁴

3.2.2. *The intervention in Lesotho*

After a large election victory by the ruling party in Lesotho in 1998, opposition parties rejected the results, due to dissatisfaction with the first-past-the-post electoral system

⁹⁷ Schoeman and Muller, *supra* note 84, at 121.

⁹⁸ Protocol on Politics, Defence and Security Co-operation, *supra* note 92.

⁹⁹ In 1999 Angola, Namibia, Zimbabwe, and the DRC concluded a defence pact; see Schoeman and Muller, *supra* note 84, at 113–14.

¹⁰⁰ Schoeman and Muller, *supra* note 84, at 113; F. Söderbaum and B. Hettne, 'Regional Security in a Global Perspective', in U. Engel and J. Gomes Porto (eds.), *Africa's New Peace and Security Architecture* (2011), at 25; Sarkin, *supra* note 4, at 28.

¹⁰¹ Schoeman and Muller, *supra* note 84, at 113.

¹⁰² Global and Inclusive Agreement on Transition in the DR Congo: Inter-Congolese Dialogue–Political negotiations on the peace process and on transition in the DRC of 16 December 2002, available at <http://reliefweb.int/node/410903> (last visited 30 April 2013).

¹⁰³ Schoeman and Muller, *supra* note 84, at 113.

¹⁰⁴ *Ibid.*, at 118.

that facilitated the large victory. As a result of the fear for a *coup d'état*, mounted troops from Botswana, South Africa, and Zimbabwe intervened in the country in September 1998.¹⁰⁵ The intervention was carried out under the auspices of SADC and at the request of the Lesotho government.¹⁰⁶

However, South Africa's motive for intervention was questioned, as it appeared to be driven by concern for the future of the Lesotho Highlands water scheme which was crucial to providing water to South Africa's most densely populated province (Gauteng).¹⁰⁷ Moreover, the Lesotho intervention came at the time when Zimbabwe together with Namibia and Angola had sent troops to the DRC to support the Kabila regime, also formally claiming that it was a SADC intervention. The intervention thus came across as a political trade-off between member states pursuing their national interests at the expense of the organization.¹⁰⁸ However, from a military perspective the intervention in Lesotho was a success, despite a difficult start that resulted in several casualties. It succeeded in restoring order, a coup was prevented, and SADC assisted Lesotho in reforming its electoral system.¹⁰⁹

4. CONCLUSION

The above analysis reflects a marked distinction between the formal policy of sub-regional organizations in Africa regarding regional security and the practical reality. The revised legal framework and official policy initiatives of ECOWAS and SADC reflect ambitious security goals and a proactive approach to peace operations which would have been difficult to imagine before the turn of the century. In the case of ECOWAS this approach also reflects a formal willingness to operate independently from the UNSC. However, ECOWAS's recent practice pertaining to peace operations reflects the organization's dependence in fact on the (Western members of the) United Nations for logistical, financial, and military assistance. This reality makes any full-scale military intervention by ECOWAS without a UNSC authorization unlikely.

Since the adoption of the Protocol on Politics, Defence and Security Co-operation in 2001,¹¹⁰ SADC for its part explicitly acknowledges the need for a UNSC resolution in instances of enforcement action. Thus far the organization has only engaged in two military operations, both of which occurred during the late 1990s. The intervention in the DRC exposed the fact that SADC faced logistical, military, and financial constraints similar to those of ECOWAS. As a result, any comprehensive future military operation in the region would only be likely to become a reality if – in addition to a formal authorization by the UNSC – material support was forthcoming from the United Nations.

¹⁰⁵ A. Van der Vleuten and A. Ribeiro Hoffmann, 'Explaining the Enforcement of Democracy by Regional Organizations: Comparing EU, Mercosur and SADC', (2010) 3 *Journal of Common Market Studies*, at 752.

¹⁰⁶ Sarkin, *supra* note 4, at 28; Schoeman and Muller, *supra* note 84, at 116.

¹⁰⁷ Schoeman and Muller, *supra* note 84, at 112.

¹⁰⁸ *Ibid.*, at 116.

¹⁰⁹ *Ibid.*, at 116; Van der Vleuten and Ribeiro Hoffmann, *supra* note 105, at 752.

¹¹⁰ Protocol on Politics, Defence and Security Co-operation, *supra* note 92.

As far as the legal bases for past ECOWAS and SADC peace operations were concerned, it is important to underscore that all these operations were carried out on the invitation of the recognized government and sometimes also with the consent of rebel groups. This would imply that the principles of intervention by invitation or even classic peacekeeping would constitute the primary legal bases for these interventions. Both principles are well established in international law and do not amount to a violation of Article 2(4) of the UNSC. This in turn would imply that a UNSC authorization, whether prior or *ex post facto*, would not have been necessary in these instances – if and to the extent that the scope and duration of the mandate remained in line with the consent given.

Moreover, even if a consensual military mandate evolved beyond the consent given by the respective government, this would first and foremost amount to a violation of the mandate in question, rather than to a shift in the legal benchmarks for enforcement action. The practices of both ECOWAS and SADC are too nuanced to serve as clear examples of an emerging independence of regional organizations vis-à-vis the UNSC in relation to enforcement action. The above analysis of the ECOWAS interventions in Liberia and Sierra Leone revealed that the complex contexts in which these peace operations took place make them unsuitable as convincing examples of an *ex post facto* authorization practice by the UNSC. Furthermore, in the case of ECOWAS, the intervention in Côte d'Ivoire, a UNSC authorization under Chapter VII subsequently complemented the consensual basis of the ECOWAS mandate. This UNSC resolution paved the way for the integration of the ECOWAS mission into a United Nations mission. This division of labour, in accordance with which ECOWAS handed over the mission to the United Nations, was based on practical considerations rather than on any new legal basis for military intervention.

In essence, therefore, it seems premature to suggest that the practice of African sub-regional organizations amounts to the emergence of a new customary right to engage in 'first-instance enforcement action'.¹¹¹ Given the socioeconomic realities within the ECOWAS and SADC regions and the continent as a whole, they will remain dependent on the financial and logistical support of the United Nations during peacekeeping operations for some time to come. This makes it unlikely that these organizations will contribute to any military practice that creates or confirms the right of regional organizations to engage in peace enforcement independently from the UNSC.

¹¹¹ As suggested by Paliwal, *supra* note 13, at 220, 221.