Assessing the role of the African Union in preventing and combating terrorism in Africa

Martin Ewi and Kwesi Aning*

The period after 9/11 can be characterised as the terrorism moment in world history. Every actor in international relations – the state, regional, continental and international as well as civil society organisations – has been mobilised to combat what, apparently has been conceived as a common security threat to humanity. The transformation of the Organisation of African Unity (OAU) into the African Union (AU) was a divine coincidence at a time when multilateralism and international cooperation were being challenged by the threat of terrorism. In the post-9/11 period, the main concern of the Union has been to reinforce and implement existing counter-terrorism instruments adopted at the continental level in coordination with states and regional organisations. This article discusses and appraises the endeavours undertaken by the AU and its precursor organisation, the OAU, in tackling and dealing with the threat of terrorism despite limitations to its human and financial resources. In recognition of the nature of the states in Africa and the challenges facing the Union, we argue that the role of the AU remains critical in order to fill the gaps where its member states or regional mechanisms are lacking. In this regard, we stress that the role of the AU should be complementary and serve as an interface between the continent and the international community, including the United Nations.

* Martin Ewi is a political affairs officer at the Organisation for the Prohibition of Chemical Weapons (OPCW) based in The Hague, The Netherlands. Mr Ewi previously served as an anti-terrorism analyst at the African Union. Dr Kwesi Aning is a counter-terrorism expert at the African Union Commission in Addis Ababa, Ethiopia. The views expressed in this paper are those of the authors and do not necessarily reflect those of the African Union or any of its organs.
Introduction

Terrorism has always been a threat to security in Africa, but the serious involvement of intergovernmental organisations in efforts to address the threat is a fairly recent development. The Organisation of African Unity (OAU) was active in combating mercenarism and other problems of subversion on the continent, but it was not until the beginning of the 1990s that terrorism was actually put on the agenda of the OAU. The bombing of American embassies in Kenya and Tanzania in August 1998 and the tragic terrorist attacks on America on 11 September 2001 (or what has been captioned 9/11) were vicious illustrations of the magnitude of the threat that the continent and the world at large must face in the 21st century. The international anti-terrorism campaign that emerged in response to 9/11, and particularly the unprecedented international solidarity that ensued, brought to the fore the important role that international and regional organisations could play, as agents of inter-state cooperation and coordination of regional counter-terrorism activities.

The transformation of the OAU into the African Union (AU) in the wake of the global war on terrorism (GWOT) as declared by President George W Bush was never more timely. At that moment the world was in need of unity and solidarity. The defining characteristic of the new war on terrorism was the emergence of a Manichean view of international politics divided between ‘the Coalition of the Willing’ and ‘the Axis of Evil’ – in other words, countries and people were either against or with the terrorists. Terrorism therefore represented the first global challenge to the new AU, whose foremost objectives include the promotion of collective security and common values in Africa, as enshrined in its Constitutive Act. Like rain that spares no roof, terrorism in Africa was viewed as a threat without boundaries. As President Denis Sassou N’Guesso of Congo (Brazzaville) rightly puts it: “Faced with terrorism, we are all in the same boat and under the same threat.” In this regard, the AU was, by virtue of its Constitutive Act, tasked to play a prominent and leadership role in the fight against terrorism on the continent.

A systemic viewpoint conceptualises the fight against terrorism at four levels: national, regional, international and global. The primacy of the state remains unchallenged and, indeed, central in combating terrorism at all four levels. Therefore, whatever role intergovernmental organisations play in the fight against terrorism, it is what has been relegated to them by states based on the calculus of comparative advantage.

Any intergovernmental organisation involved in the fight against terrorism in Africa must have to confront, at the practical level, the debate which emerged after 9/11 as to whether terrorism, in its current state and manifestations, constitutes a serious threat to the continent on the same scale as poverty, the health crisis and internal conflicts. Those who argue that terrorism does not constitute such a threat often claim that the ‘real’ terrorists in Africa are poverty, hunger and pandemic diseases such as HIV/AIDS, malaria and tuberculosis, which kill Africans en masse.
The essence of this article is to discuss and appraise the endeavours undertaken by the AU and its precursor organisation, the OAU, in tackling and dealing with terrorism when the issue was neither fashionable nor at the top of the political agenda of powerful states and many international organisations. Our foremost intention is to discuss some of the strengths and limitations of the AU’s capacity to deal with the threat of terrorism in Africa. In so doing, one must take into account the geo-political and economic contexts of the continent and the fact that the extent to which international organisations could act on behalf of their member states or even as autonomous entities depends on a number of factors including the level of integration and the amount of sovereignty or power that their member states are willing to yield to them.

We argue that the role of the AU is critical for preventing and combating terrorism in Africa, in order to fill the gaps where its member states or regional mechanisms are lacking. In this regard, the role of the AU should be complementary and serve as an interface between the continent and the international community, including the United Nations (UN). For the AU to perform this task efficiently it must first overcome some of its internal shortcomings and build its own financial and human resource capacities.

The AU’s fight against terrorism in Africa should not be viewed in isolation from the new strategic orientation taking place on the continent. The Constitutive Act of the AU provides a basis for preventing and combating terrorism. Article 4(o) calls for “respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities”, which is underscored in the preamble as the need to promote peace, security and stability as a prerequisite for the implementation of Africa’s development agenda. Other aspects of an emerging peace and security architecture on the continent, particularly the Peace and Security Council (PSC) of the AU, including the AU Non-Aggression and Common Defence Pact and the Common African Defence and Security Policy (CADSP), have identified terrorism as one of the common threats to Africa.

We begin with a survey of the measures adopted by the OAU prior to 9/11 and those adopted by the AU after 9/11 within the context of the GWOT. We then examine the internal AU structure responsible for combating terrorism. The article concludes with an assessment of and recommendations for strengthening the role of the AU in the prevention and combating of terrorism.

**Historical overview of the AU’s involvement in preventing and combating terrorism in Africa**

What is considered as terrorism in Africa has evolved from its permutations in the years before independence. During the struggle for independence and decolonisation,
many of the activities of the freedom fighters were labelled terrorist. This is different from what many would consider terrorism today, particularly within the context of the 1999 OAU Convention, which makes a distinction between acts of terrorism and the acts of people fighting for self-determination. Africa has long espoused the imperative to eradicate the phenomenon of terrorism. Some African states developed counter-terrorism legislations (or other measures) as far back as the 1950s. African states also took active part in the debate when the issue was first on the agenda of the UN General Assembly in 1972 and continued to play a major role in the debate. It was not until 1992, however, that these concerns began to take on concrete manifestations at the continental level. The then OAU, at its 28th Ordinary Session of the Assembly of Heads of State and Government, adopted decision AHG/Res 213 (XXVIII) on strengthening cooperation and coordination among African states to fight the phenomenon of extremism in all its forms and manifestations, particularly extremism based on religion, politics and tribalism.

An important achievement of the OAU in its early involvement in the fight against terrorism or in its general efforts aimed at promoting peace, stability, security and cooperation among its member states was the adoption of a Declaration on a Code of Conduct for Inter-African Relations, at the 30th Ordinary Session of the Assembly, held in Tunis, Tunisia, in June 1994. It denounced, among others, extremism and terrorism particularly based on political sectarianism, tribalism, ethnicity or religion as undermining the moral and human values of peoples, particularly fundamental freedoms and tolerance. Two important provisions relating to terrorism which form the nexus of Africa’s counter-terrorism regime were as follows:

We unequivocally condemn as criminal all terrorist acts, methods and practices, and resolve to step up our cooperation in order to erase this blot on the security, stability and development of our countries, which poses as much threat to us as arms racketeering and drug peddling.

Furthermore:

In this regard, we reiterate our commitment to abide by the obligation incumbent on us by virtue of international law, to refrain from organizing, instigating, facilitating, financing, encouraging or tolerating activities that are terrorist in nature or intent, and from participating in such activities in whatsoever manner, and to take necessary operational measures to ensure that Member States’ territories do not serve as training camps or indoctrination centres for terrorist elements and movements and sanctuaries for the planning and organization of terrorist and destabilization activities directed against the territorial integrity and security of Member States of their nationals.
The Declaration on the Code of Conduct, and particularly these two paragraphs, marked a turning point in responding to terrorism. It established standards and a continental agenda for preventing and combating terrorism, which was not only condemned but also criminalised in Africa. It became an offence to organise, instigate, facilitate, finance, encourage, or tolerate terrorist activities or harbour terrorist elements.

It also demonstrated early attempts at the continental level to identify and address the root causes of terrorism, providing a framework for interstate cooperation in Africa based on common standards for combating terrorism. In this regard, the declaration rejected religious and other forms of extremism and addressed specific issues relating to the promotion of human rights, equality and justice, democracy, tolerance, transparency and development.9

Towards a legislative framework

Adopting the Declaration on the Code of Conduct for Inter-African Relations should be seen as the first step in the development of an African counter-terrorism regime. Increasing terrorist activities around the world throughout the 1990s gave impetus to endeavours aimed at outlawing terrorist acts in Africa and finding the most appropriate machinery to do so. Until then, the declaration remained the foremost continental instrument for combating terrorism.10

The attacks in Kenya and Tanzania in August 1998 demonstrated the new dimension of terrorism vis-à-vis the growing trends in globalisation and innovations in science, technology and communication. It became clear that terrorism in Africa was not only dependent on internal factors, but also on the international environment: African security was also a function of global security. In view of this security paradigm and its emphasis on human security, African leaders reviewed the existing framework and adopted a more robust, proactive and binding instrument for combating terrorism. There was a general desire for a legal framework that would protect civilians against certain forms of violent offences by individuals or states, enhance state security, resolve the issue of state jurisdiction over such offences, provide a framework for extradition and interstate cooperation, as well as commit African states to common standards for preventing and combating terrorism on the continent, particularly the required legislative and executive measures to be taken at the national, regional and continental levels.

These concerns culminated in the adoption of the OAU Convention on the Prevention and Combating of Terrorism (the Algiers Convention) by the 35th Ordinary Session of Heads of State and Government held in Algiers, Algeria, in July 1999. Since much has been written on the convention and its important provisions,11 it suffices here to emphasise that it was the first continental legislative instrument on preventing and combating terrorism in Africa which provided an African definition of terrorism.12
In order to reconcile the historical ambiguities implicit in the use of the term ‘terrorism’ in Africa, it differentiated acts of terrorism from the acts committed by people in their struggle for self-determination. This was a significant achievement for a continent that had foreign control and colonialism for centuries and which was still struggling to protect the sovereignty and territorial integrity of its states. Thus the definition did not emerge from a vacuum but rather from a concrete historical context in Africa and the principles enunciated in the Charter of the OAU. Based on Africa’s unique historical experience, it was therefore necessary to separate the two concepts, not only for the sake of clarity but also for legal jurisprudence. Critical questions arising with respect to the definition relate to whether the activities of combatants including the armed forces of a state could constitute acts of terrorism and whether acts of terrorism are only committed in non-conflict areas. Although it defines terrorism, it does not define who is a ‘terrorist’ per se. If the definition were to end at Article 1 of the convention, it would be broad enough to cover acts committed in conflict and non-conflict areas. However, Article 3 prevents the application of the definition to the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts. The only restriction to the definition in Article 1 is Article 3.

The convention also identifies a number of terrorist offences and identifies areas of cooperation among member states, as well as guidelines for extradition. Indeed, as Hamid Boukrif observed, the convention was a political victory for Africa and a supplementary legal instrument for judicial and mutual cooperation, as well as a binding commitment on the part of African countries to take charge of their own security problems and to combat the phenomenon of violence and organised crime. At a time when the international community was starkly divided on the issue, the convention united African countries behind a common position for negotiating an international convention.

**Post-9/11 and the African Union’s counter-terrorism activities**

The development of the AU’s counter-terrorism activities in the post-9/11 period was shaped by a number of both continental and international events. At the international level, two significant developments merit attention. The first was the adoption on 28 September 2001 of the landmark UN Security Council Resolution 1373 based on Chapter VII of the UN Charter and the establishment of a Counter-Terrorism Committee (CTC). As part of the follow-up to that resolution the CTC convened a special meeting with international, continental and regional organisations on 6 March 2003 to define their roles and to strengthen international cooperation in the global campaign against terrorism.
One of the major concerns of the AU, particularly at the advent of the GWOT, was to protect and maintain Africa’s focus on development and to reduce or prevent any adverse effect that such a war may bring to bear on African development. This was explicitly expressed at the first summit of African leaders in response to 9/11, held in Dakar (Senegal), which adopted a Declaration Against Terrorism on 17 October 2001. An extraordinary session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution, at ministerial level, met in New York on 11 November 2001, in a follow-up to the Dakar Summit.

The first major activity undertaken by the AU in the post-9/11 period was the convening of the First High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, in Algiers, Algeria, from 11 to 14 September 2002, in follow-up to the two preceding meetings mentioned above.

Putting in place an anti-terrorism unit

One of the initial activities of the AU Commission in response to 9/11 was to recruit an anti-terrorism officer in December 2002 to serve as a focal point within the AU Commission on counter-terrorism matters. The focal point was an initial step towards the establishment of an anti-terrorism unit within the commission that would provide technical capacity to pursue terrorism systematically.

The Protocol to the Algiers Convention

Following concerns that the convention has inherent weaknesses which could impair implementation, the Second High-Level Intergovernmental Meeting requested the AU Commission to prepare an additional protocol to the convention. The main concerns were that the convention did not provide for an implementation mechanism and adequate measures for the suppression of terrorist financing, and was insufficient in its provisions for human rights protection and the risks of terrorists acquiring weapons of mass destruction.

It was in recognition of these shortcomings of the 1999 OAU Convention that the 3rd Ordinary Session of the Assembly held in Addis Ababa in July 2004 decided unanimously to adopt the Protocol, to supplement the 1999 OAU Convention.

The Plan of Action on the Prevention and Combating of Terrorism in Africa

The purpose of the Plan of Action on the Prevention and Combating of Terrorism (the Plan of Action) was to provide a concrete expression to the commitments and obligations
of African countries, to combat terrorism and to enhance their access to appropriate counter-terrorism resources. It sought to provide robust guidelines and strategies for collective and individual state action against terrorism by incorporating continental and international standards for combating terrorism with particular attention to the provisions of Resolution 1373. The Plan of Action was conceived as a handbook or an elaborate document of strategies for African counter-terrorism endeavours. It built on the conviction that the eradication of terrorism requires joint action and a firm commitment by member states to pursue common objectives and coordination particularly in the areas of border surveillance, illicit import/export and stockpiling of arms and explosives. It also assumed that “severe conditions of poverty and deprivation experience by large sections of African population provide a fertile breeding ground for terrorist extremism”.

An innovative contribution of the Plan of Action is its provision for the establishment, in Algiers, of an African Centre for the Study and Research on Terrorism (ACSRT), as discussed below.

The establishment of the African Centre for the Study and Research on Terrorism

Pursuant to paragraphs 19 to 21 of the AU Plan of Action, the AU Commission officially launched the African Centre for the Study and Research on Terrorism (ACSRT), headquartered in Algiers, Algeria, on the occasion of the Second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, held from 13 to 14 October 2004. The declaration adopted by the meeting underscores the significance of the ACSRT as an achievement in collective efforts in Africa to outlaw and eradicate the scourge of terrorism in Africa.

The ACSRT, established as a structure of the AU Commission and the Peace and Security Council, is the technical arm of the Union on matters relating to terrorism and the implementation of the AU counter-terrorism programme. The mandate of the Centre is to centralise information, studies of and analyses of terrorism and terrorist groups, as well as to initiate research and develop training programmes by organising training schedules, meetings and symposia with the assistance of international partners, with the view to raise maximum awareness, prevent and eliminate the threat of terrorism to the continent. As a centre of excellence, it was conceived to provide the AU with the necessary technical expertise for realising its counter-terrorism objectives, as well as translating the continental and international commitments of member states into concrete actions.

Since its inauguration in 2004 the centre has organised two meetings of focal points and is currently working on a network programme that would link all the ACSRT focal points in the 53 AU member states and regional economic committees (RECs).
Organs of the African Union responsible for preventing and combating terrorism

Terrorism is a cross-cutting issue. As such, all the agencies and organs of the AU, including the Assembly, Executive Council, and Pan-African Parliament, are expected to contribute to the efforts of the Union. The role being played by the AU in preventing and combating terrorism, as contained in the legal instruments of the Union, is divided among the Peace and Security Council (PSC), the AU Commission and the RECs.

The PSC is the supreme organ of the AU charged with the responsibility to prevent and combat terrorism in Africa. Article 7(i) of the Protocol Relating to the Establishment of the PSC gives it the power to ensure the implementation of the Algiers Convention and other relevant international, continental and regional conventions and instruments, as well as to harmonise and coordinate efforts at the regional and continental levels to combat international terrorism.

With regard to the AU Commission, Paragraph 17 of the Plan of Action and Article 5 of the Protocol specify the responsibilities of the Commission, which include, inter alia:

- The provision of technical assistance on legal and law enforcement matters, including matters related to combating the financing of terrorism;
- The preparation of model laws and guidelines to help member states to formulate legislation and related measures for preventing and combating terrorism; and
- Follow-up with member states and with regional mechanisms on the implementation of decisions taken by the PSC and other organs of the AU on terrorism-related matters.

The PSC Protocol refers to RECs as part of the overall security architecture of the AU. Article 6 of the Protocol to the Algiers Convention outlines the role of RECs in implementing the AU counter-terrorism programme. It stipulates, among other things, that RECs shall:

- Harmonise and coordinate national measures to prevent and combat terrorism in their respective regions;
- Establish modalities for information sharing; and
- Assist member states to implement regional, continental and international instruments for preventing and combating terrorism.
Assessing the role of the African Union in preventing and combating terrorism in Africa

In the period before 9/11 the OAU played a very limited role in preventing and combating terrorism. It served mainly as a political platform for expressing collective will. While the OAU was able to adopt a common legal framework for combating terrorism as embodied in the 1999 OAU Convention, it was unable to implement its decisions and instruments. It lacked a follow-up mechanism and its secretariat in Addis Ababa was given no specific role or mandate to coordinate activities of member states relating to counter-terrorism. The actions of the OAU, however, helped define the political direction of the continent on terrorism and counter-terrorism matters.

In the post-9/11 period, the AU has acted mainly as a catalyst to empower states and RECs to meet their obligations under continental and international counter-terrorism instruments. The systemic stratification of actors and the distribution of responsibilities in the GWOT compelled the AU to redefine its role and situate its activities within the global and continental realities in Africa. Consequently, the Union has increasingly seen its role as a clearinghouse for norms and standards setting for the fight against terrorism in Africa, as well as the interface between the continent and the international community. The adoption of the Plan of Action, the Protocol to the 1999 OAU Convention and a number of counter-terrorism decisions including ongoing efforts to prepare a Comprehensive African Anti-Terrorism Model Law, confirm the role of the Union as a standard setter.

Since its inception in July 2002, the central functions of the AU as far as terrorism is concerned have been to coordinate and harmonise the activities of states and of the RECs, as well as to promote interstate cooperation in Africa in the area of counter-terrorism. In performing this role the Union has been organising fora of intergovernmental experts and senior government officials, such as the serialised High-Level Intergovernmental Meeting. The Chairperson of the Commission has also utilised his regular reports to the policy organs of the AU to inform the Union on the status of terrorism in the world and in Africa in particular, and to seek policy directions for the AU counter-terrorism programme.

The establishment of the ACSRT has been the major achievement of the AU with respect to the concrete implementation of its counter-terrorism regimes. The ACSRT gives the AU a technical capacity to implement its regimes. With its research capacity, the ACSRT can be proactive in preventing terrorism in Africa.

The establishment of a committee for intelligence and security in Africa (CISSA) within the Commission to coordinate intelligence activities of member states is indicative of the progress being made to enhance cooperation and information-sharing at all levels.
Through its advocacy role, the AU also facilitates technical assistance delivery to its member states, by acting as an interface or a go-between for African states and technical assistance providers such as the UN Office on Drugs and Crime (UNODC), the International Monetary Fund (IMF), the Counter Terrorism Committee (CTC) and other international institutions. In this regard, almost all member states of the AU were, either directly or indirectly, part of a technical assistance delivery programme offered by these institutions between September 2001 and December 2004. Ongoing efforts within the commission to draft a Comprehensive African Anti-terrorism Model Law will further contribute to efforts to consolidate and harmonise national legislations relating to terrorism.

**Challenges and shortcomings**

The experience of the AU in preventing and combating terrorism in Africa has shown some limitations in its role. First, the AU is yet to overcome a legacy of the OAU, namely a tendency to adopt landmark decisions and make pronouncements without ensuring effective and appropriate follow-up. Thus, the main challenge remains the full operationalisation of the counter-terrorism instruments and relevant decisions of the AU policy organs.

The AU still lacks the capacity to develop a list of perpetrators of terrorist acts as provided for in the Plan of Action. This is compounded by the lack of a regional or continental arrest warrant which could permit the AU to investigate, arrest and detain persons accused or suspected of terrorist acts.

The AU is also unable to verify which member states are complying with or actually implementing the AU and international counter-terrorism regimes and which ones are not. Though member states are required to report to the chairperson of the commission on their activities, many are still reluctant to do so, complaining of reporting fatigue.

The AU’s capacity to deal with human rights issues arising from states’ counter-terrorism activities has also been inadequate. Although there are some human rights provisions in the AU regimes, the Union is yet to take action to ensure compliance. This problem is also due to the lack of coordination between the AU Commission in Addis Ababa and the African Commission on Human and People’s Rights based in Banjul, Gambia. Though not explicitly concerned or mandated, the latter could contribute significantly to the prevention and combating of terrorism, particularly with respect to the protection of human rights in states’ activities.

One of the major challenges encountered by the AU in implementing its counter-terrorism agenda is the lack of adequate human and financial resources. While this
problem is not peculiar to counter-terrorism, it is, however, a severe stumbling-block to fully and timely realising the AU’s counter-terrorism objectives, especially if the Union is to be proactive in its response to terrorism.

**Conclusion and recommendations**

This article has examined the origin of the AU’s counter-terrorism policy, its main tenets and activities in the past three years as well as its achievements and shortcomings. For a young organisation faced with enormous challenges, particularly in the security sector, the achievements recorded so far are commendable. Nonetheless, much is expected from the Union, more than ever before, to fully and effectively convert into reality the commitment and ideals of its member states vis-à-vis the continental and international instruments. This remains the biggest challenge that the Union will face in the years ahead.

It would be premature, however, to draw any solid conclusions about the strengths and weaknesses of the AU’s role in preventing and combating terrorism. What has been provided so far in continental counter-terrorism instruments remains largely to be translated into action, and the AU is still to fully establish its own *modus operandi*. One thing is predictable – whatever role the AU plays in the coming years, its strength and weaknesses will be based on its resource capacity.

For the AU to play its expected role as the premier African organisation with the primary responsibility for the maintenance of peace and security, it must be able to establish adequate human and financial capacity to reach out to its member states and RECs. The AU must be well organised and build an active network of information-sharing with member states, RECs and international organisations, including the UN.

The belief that RECs are the building blocks of the AU is still far from being translated into reality. Though some progress has been made with some regions, much remains to be done to bring the RECs closer to the AU so that they can effectively be part of the continental counter-terrorism programme, particularly with respect to the role expected of them in the protocol to the 1999 OAU Convention. The programmes of the AU should directly contribute to the programmes of the RECs and vice versa, so that the activities of each complement the other’s. In this context, the counter-terrorism programmes of RECs must draw from the overall AU’s counter-terrorism programme. In particular, RECs should design programmes that contribute to, if not strengthen, the implementation of decisions and instruments adopted by the AU’s policy organs.

In the meantime the AU should focus on ensuring the effective functioning of the ACSRT and endow it with the necessary human and financial capacity. The ACSRT will
play an important role in building the capacity of the AU Commission in preventing and combating terrorism in Africa, particularly by complementing the activities of member states and RECs by providing training, dissemination of information and strategies for addressing the multifaceted problems posed by terrorism and other conventional threats to security and national defence. The finalisation and adoption of the Model Anti-terrorism Law will bring added value to AU’s efforts to harmonise member states’ anti-terrorism legislations.

A future agenda for the AU should be to develop and establish an active and updated list of terrorist acts, elements, individuals, groups or organisations and their movements in Africa. The AU should also seek to establish a continental warrant to facilitate the tracking, investigation and arrest and detention of persons suspected of terrorist acts. The AU should devise a mechanism by which to verify member states’ implementation of the continental instruments, and a mechanism or device to standardise machine-readable passports and visas in Africa. In order to draw lessons learnt and determine the best way forward, the AU should compile best practices on the prevention and combating of terrorism in Africa through reports from member states.

**Notes**

1. Samuel M Makinda, for example, argues that the “terrorist actions, and the various responses to them have had considerable significance for international law, democracy and human rights. In other words, the ‘war on terror’ has had a strong impact on international norms and institutions.” See S Makinda, Global governance and terrorism, *Global Change*, 15(1), 2003.
2. The African Union (AU) was officially launched in Durban, South Africa, in July 2002.
3. See, for example, Articles 3 and 4 of the Constitutive Act of the AU.
5. See paragraph 9(d) of the Declaration on a Common African Defence and Security Policy, adopted by the 2nd Extraordinary Session of the Assembly of the AU held in Sirte, Libya, in February 2004.
6. See, for example, E S Efrat, *Terrorism in South Africa*, in Y Alexander (ed), *International terrorism: National, regional and global perspectives*, Praeger, New York, 1976, pp 194–208. According to Efrat, “the basic trait of South African terrorist movements is that they are territory based, non-ideological (in the primary sense), and non-internationalist. Their common denominator is their aim to evict governments consisting primarily of whites of European origin and substitute themselves, that is, black Africans.” Efrat further identified the OAU based in Addis Ababa as the organisational headquarters of the South African terrorist movements (see p 194). He also identified freedom movements in the then Rhodesia and South West Africa as terrorist movements. Compare Efrat’s definition of terrorism in 1976 with the current definition of terrorism in the Algiers Convention.
7. See, for example, the Ethiopian Anti-Terrorism Law of 1954. The Penal Code No 85 of the Arab Republic of Egypt, developed in 1937, also contained anti-terrorism provisions in Articles 86–102.
8. See the Declaration on the Code of Conduct for Inter-African Relations (AHG/Decl 2 (XXX)) adopted by the 30th Ordinary Session of the Assembly of Heads of State and Government, held in Tunis, Tunisia, from 13 to 15 June 1994, paragraphs 10 and 15.
9. See paragraph 4 of the declaration.
10. It had many weaknesses as a non-binding...
instrument. For example, it provided no definition of terrorism and failed to address the issue comprehensively. It also failed to provide any monitoring or implementation mechanism or punitive measures in the case of defects.


12 See Articles 1 and 3 of the OAU Convention on the Prevention and Combating of Terrorism, adopted in July 1999.

13 See 10 above. One is often confronted by the view that the definition is controversial by condoning certain forms of violence. The thinking of the drafters of the convention was that the offences committed by people fighting for liberation from colonialism or self-determination fell within the jurisdiction of international law on armed conflicts or the laws of warfare. The Geneva Convention of 1949 and its Additional Protocols of 1977 are usually cited as the legal regimes governing armed conflicts and the responsibilities of combatants.

14 The problem is that acts of terrorism, with the exception of hijacking, hostage-taking and suicide bombing, are not so unique as to be easily distinguishable from other acts of warfare. It is hoped that practice will help clarify these issues. The adoption of a UN (or international) convention on the prevention and elimination of terrorism will also help to shed light on these matters.

15 See Articles 4, 5 and 6 of the convention.


17 See, for example, the Dakar Declaration against Terrorism, adopted by the Summit of African Leaders, held in Dakar, Senegal, on 17 October 2001.

18 The declaration recommended to the OAU, in its paragraph 9, to convene an extraordinary summit to assess the progress made so far in Africa to combat terrorism, and to take all necessary measures to ensure that the events of 9/11 have the least possible consequences on African development, particularly the implementation of NEPAD.


23 The role being played by the AU today has been evolving from regional, continental and international fora, particularly through cooperation with the UN and other international institutions. In October 2003, the AU convened a meeting of international experts to assist the commission to prepare a roadmap for the implementation of the AU Plan of Action on the Prevention and Combating of Terrorism. That meeting made a number of recommendations for enhancing the role of the AU. It was proposed that the AU should focus more on coordination and the promotion of international cooperation in Africa.

24 The High-Level Intergovernmental Meetings began in 2002 and the last one was held in Algiers, Algeria, in October 2004. The purpose is to bring senior government officials and experts from the 53 AU member states to share experiences, best practices and challenges, as well as chart the way forward toward the implementation of the AU counter-terrorism instruments. Coordination is also achieved through the system of focal points for the African Centre for the Study and Research on Terrorism (ACSR) who meet more regularly within the framework of the ACSR.

25 The structure and functional modalities of the committee are still to be finalised.

26 There is a growing concern among member states about reporting fatigue as a result of increasing demand for states to submit written reports to regional, continental and international...
organisations on various activities at the national level. Many states have complained that the technical expertise and time required for preparing such reports overstretched states’ capacity. There have even been suggestions that states could prepare a common report for all organisations on the same topic.

27 See, for example, the preambles to the 1999 OAU Convention and its protocol thereto; see also Article 7 of the convention and Article 3(k) of the protocol.

28 The legal responsibilities between the two commissions as far as terrorism is concerned are not clear. The Protocol and the Plan of Action confer the responsibilities for implementation on the AU Commission in Addis Ababa. But there is no mention of the Human and People’s Rights Commission, which we think does equally have a stake in the human rights issues on counter-terrorism matters. The need for the two commissions to meet and address the matter and accord some form of jurisdiction to the Human and People’s Rights Commission should be treated with urgency.

29 See, for example, the Report of the Chairperson of the AU Commission on the Implementation of the 1999 OAU Convention and the Plan of Action on the Prevention and Combating of Terrorism in Africa, AU document Mtg/HLIG/Conv Terror/2(II), Original: English, submitted to the Second High-Level Meeting. With respect to human resources for example, only one person at the AU headquarters in Addis Ababa deals with terrorism matters. The issue of funding has been felt more by the ACSRT, which has been unable to carry out many of its programmes due to insufficient budget allocation. For the first two years, the centre operated on a US$2 million donated by the Algerian government, a sum which was far less than what was budgeted to jumpstart the centre.