

To Intervene or Not to Intervene? An inside view of the AU's decision-making on Article 4(h) and Burundi

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Introduction

Perhaps the most significant outcome of the 26th summit of the African Union (AU) was the decision scrapping the plan to deploy troops to Burundi for human protection purposes. In December 2015 the AU Peace and Security Council (PSC), the continental body's standing collective decision-making body on peace and security, announced a precedent-setting invocation of the AU's Article 4(h) authorizing the deployment of a military mission to Burundi to quell violence related to the dispute over the third term of the country's President. The January 2016 summit marked a fresh consideration of the earlier decision. As quickly as the summit came to a close on 31 January 2016, those who followed the crisis in Burundi started expressing disappointment with the failure to authorize intervention.

In a *Foreign Policy* article titled, "The Burundi intervention that wasn't,"¹ Ty McCormick lamented that the Burundi decision threw the credibility of the AU into question. Expressing manifest disappointment at the unmet expectations that boots would soon deploy to Burundi, South Africa's popular online magazine the *Daily Maverick*¹ declared, "African Union goes backwards on Burundi." Described elsewhere¹ as a "180-degree turn" or as "backtracking," most analysts have presented the case as a clear manifestation of state or regime security trumping human security.

Such analysis is incomplete. Central to the AU's decision-making were issues of substance and procedure that can only be understood in relation to the unfolding discussions before and during the AU summit. This policy briefing examines in detail how and why the AU summit arrived at its decision on MAPROBU. It further discusses the implications of the AU summit decision vis-à-vis the situation in Burundi

AU's threat of forcible intervention for human protection purposes

Over the past several months, no other crisis situation on the continent attracted as much attention as the evolving crisis in Burundi. As the situation deteriorated, reaching a climax in December, igniting fears of Burundi relapsing back to civil war rising, it has understandably been very high on the agenda of the African Union (AU).

Unsurprisingly, the crisis in Burundi was at the top of the peace and security issues that attracted major attention during the January 2016 summit held in Addis Ababa, Ethiopia. In the run-up to the summit, the issue of Burundi likewise featured as a major headline in various news media coverage of the AU summit. Remarkably, the news media and policy analysis also displayed how far the AU has come in establishing itself as the lead actor on African peace and security issues: “Burundi to dominate agenda at AU summit,” read one of the major regional newspapers¹, and “UN diplomats turn to AU summit to tackle Burundi challenge” declared the South African Broadcasting Corporation². Similarly, think tanks in their analysis of the AU summit pronounce, “Burundi crisis a key issue for the African Union.”³

It was not surprising that much of the news coverage and analysis on the AU summit was on Burundi. However, the focus was not because the situation in Burundi was dramatically worse than other crises situations. Indeed, by many measures, crises in Libya, South Sudan, Central African Republic and Nigeria are much more dire.

Attention was focused on Burundi, as I noted in an earlier article⁴, because of the historic and unprecedented decision that the African Union's standing collective decision-making body on peace and security, the PSC, took on 17 December 2015. In a landmark move that attracted applause from advocacy organizations⁵ and provoked the enthusiasm of many, including critics of the AU, the AU PSC decided in its communiqué⁶ to authorize the deployment of a 5,000 strong force, known by its French acronym, MAPROBU, the African Prevention and Protection Mission in Burundi.

Never before had the AU resorted to Article 4(h) in respect to an emerging or on-going crisis

In deciding to deploy MAPROBU, for the first time the AU expressly relied on Article 4(h) of the Constitutive Act, which authorizes the AU to intervene in member states in cases of “grave circumstances, namely genocide, war crimes and crimes against humanity.” Never before had the AU resorted to Article 4(h) in respect to an emerging or on-going crisis, despite the fact that other crises including the recent ones such as in Central African Republic and South Sudan revealed incidents amounting to crimes against humanity or war crimes, or both.

Perhaps of even greater significance, the AU PSC's 17 December communiqué was also the first instance wherein the AU suggested it would deploy troops with or without the consent of the government of Burundi. Further, although timelines in AU decisions usually do not include threats of sanction for failure to comply, the communiqué was also unique in that it gave Burundi 96 hours to express its consent or face forcible intervention.

While the PSC decision of 17 December gave rise to a number of legal and institutional/technical issues⁷, perhaps the most crucial of these was whether Burundi did indeed manifest the imminent danger of the occurrence of the grave circumstances as envisaged under Article 4(h) of the Constitutive Act, which would warrant forcible intervention in the face of a refusal from Burundian government. Just like the international norm on the responsibility to protect, forcible intervention under Article 4(h) is predicated on reasonable or *prima facie* evidence of actual occurrence or credible fear of imminent occurrence of the grave circumstances, which the government of the country under discussion (Burundi) manifestly failed or was unable to address.

It is important to recall that the PSC took its decision in the aftermath of Burundi's deadliest incident of fighting and carnage since the end of the civil war (1993 – 2005). The violence in this episode began with a coordinated and sustained attack by unidentified armed people against three military posts in the capital,

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Bujumbura, in the early hours of 11 December 2015. In addition to sustained exchange of gunfire and explosions between the government security forces and the attackers, Burundian security personnel also engaged in retaliation; they reportedly rounded up and executed individuals suspected of involvement in the attack. Even by the government's conservative accounting of the casualties, a minimum of 87 people lost their lives at the end of what the Burundi government called "mopping-up operations." At the time, the fact-finding mission⁸ of the African Commission on Human and Peoples' Rights characterized the situation as manifesting "escalating violence and violations of human rights."

Against the background of worryingly steady escalation of violence that involved serious violations of human rights including, as the Commission's fact finding mission noted, extra-judicial executions, the events of 11 December were understandably feared to be the beginning of Burundi's descent back to the genocidal civil war of the 1990s. Paul Williams⁹ observed that:

It appears that the main drivers behind this communiqué were the reports of escalating violence that the AU was receiving from the field—the AU human rights observers in Bujumbura and the returning fact-finding mission of the African Commission on Human and Peoples' Rights—and anxiety that the existing mediation plan was failing to produce the desired progress.

In framing the decision of the PSC to deploy MAPROBU based on Article 4(h), those who crafted the 17 December 2015 PSC communiqué seemed to have opted for erring on the side of caution when they deemed that the conditions in Burundi demonstrated risks of grave circumstances and warranted preventive intervention even without the consent of Bujumbura.

Burundi calling the AU's bluff

Burundi was obliged to respond to the AU's request. To no one's surprise, Burundi called the AU's bluff with a firm "no." The issue was tabled in Burundi's parliament and MPs unanimously rejected¹⁰ the AU's plan for deploying troops. In a letter addressed to the AU Commission Chairperson formally responding to the 17 December decision, Burundi's Minister of Foreign Affairs¹¹ rejected MAPROBU, describing it as an invasion force.

This response presented a major challenge to the plan to deploy MAPROBU. First, it negated the AU's preferred option for deploying MAPROBU with the consent of Bujumbura. There is evidence that the AU was keen to secure Burundi's consent in various pronouncements that the AU made in December 2015 and in the course of January 2016. Following Burundi's rejection, on 25 December, the Chairperson of the AU Commission, Dlamini-Zuma, announced¹² that she sent a letter to Burundi's President urging him to consent to the deployment of a peacekeeping force to quell the country's escalating unrest. In a press statement of 29 December,¹³ the AU Commission went as far as expressing its readiness to discuss with the government of Burundi "to agree on the modalities of the deployment of MAPROBU." On 21 January, upon submitting the strategic concept of operations (CONOPS) for MAPROBU to the PSC, the AU Commissioner for Peace and Security stated that the CONOPS was based on the assumption that the government of Burundi would give its consent.

Second, it also effectively put the operationalization of the decision for deployment of troops on hold. The delay offered little surprise, given that all the planning work that the AU had undertaken, including the drawing up of the CONOPS, could only proceed on the assumption that Burundi would give its consent. As long as Burundi stood its ground and upheld its position rejecting MAPROBU, the mission cannot go forward without further decision. The PSC communiqué indeed stipulated that in the event of non-acceptance of the deployment of MAPROBU, the Council would "recommend to the Assembly of the Union ... the implementation of article 4 (h) of the Constitutive Act relating to intervention in a Member State in certain serious circumstances."

Third, in leaving the AU with only the option to deploy MAPROBU by force, Burundi's refusal presented two additional major tests that the African Peace and Security Architecture (APSA) would have to pass before the mission could go forward. First, the relevant APSA components would have to produce the data and analysis to convince member states that the situation in Burundi had reached a point where violence could not be averted other than through forcible intervention. Second, sufficient political will would have to be generated among AU states to follow through with the proposal, by mobilizing adequately equipped combat troops for the mission and storming Bujumbura.

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As the summit approached it became apparent that the tests would be difficult to pass. In the process, weaknesses in the APSA also started to show, as some member states began expressing their reservations. In the first instance, the peace talks, led by Uganda under the aegis of the fractured East African Community (EAC) on the basis of the so-called principle of subsidiarity, failed to take off the ground. The resultant political vacuum allowed the crisis to fester and degenerate, as was made apparent

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by the violence on 11 December. The AU's 17 December decision was in significant measure aimed at creating a political environment that would prompt Uganda into jump-starting the talks. In short, political mediation had not been exhausted, and the threat of military intervention in some ways can also be understood as intending to provoke Uganda into taking its role as mediator more seriously.

Second, in a move indicating that PSC members were not fully convinced of the 17 December decision on MAPROBU, which the AU Commission led, Tanzania made its reservation public. Its foreign

Minister Augustine Mahiga¹⁴ suggested that the option of regional mediation was not adequately pursued and did not believe that forcible intervention was the optimal option.

At the same time, even before the summit took place, it can be gathered from the evolution of AU Commission's approach to the proposal on the deployment of MAPROBU, that the mission was already evolving into a so-called MAPROBU-light; that is, a much smaller force with a revised mandate adjusted in light of Bujumbura's concerns. This was the mission that would be featured during the relevant summit meetings.

Tabling MAPROBU on the agenda of the Summit

While MAPROBU's deployment could have been acted on at the level of the PSC if Burundi's response had been positive, Burundi's rejection of MAPROBU moved the issue out of the PSC's hands. The PSC lacks the legal authority to effect the deployment of MAPROBU without the consent of Burundi's government on its own.

In this circumstance, the PSC's decision to authorize the deployment of MAPROBU could only be followed up and acted upon through a decision of the AU Assembly of Heads of State and Government, as is stipulated in the Constitutive Act of the AU.¹⁵ Article 7 (1) of the Protocol establishing the PSC also clearly articulates that the AU Assembly considers a decision under Article 4 (h) of the Constitutive Act on the recommendation of the PSC.

Hence, by the time the summit was opened, the protocol for follow-up on the 17 December PSC communiqué required two further steps: a meeting of the PSC adopting a decision to recommend that the AU Assembly authorize MAPROBU's deployment under Article 4(h) of the Constitutive Act, and consideration by the AU Assembly.



Enter the AU Summit meetings

Prior to the two meetings with Burundi on their agenda, the Executive Council of the AU elected the new 15 members of the PSC.¹⁶ From the candidate countries of the Central African region, Burundi was reelected together with Chad. While Burundi received the least number of votes for its re-election, its successful return to the PSC carrying the vote of 38 AU member states, may indicate that at least in the view of two-thirds of the AU member states, some doubts lingered as to whether the situation in Burundi was grave. If indeed any inference could be drawn from it, this was the first indication that a proposal for Article 4(h) authorization of the deployment of MAPROBU might not receive the required majority vote of the AU Assembly.

The PSC Summit that ended MAPROBU

The first meeting with Burundi on its agenda was the PSC summit, held on 29 January 2016. While the meeting was open for two agenda items on South Sudan and terrorism in Africa, the situation in Burundi was considered in closed session. In accordance with Article 8 (9) of the PSC Protocol, the delegation of Burundi was required to leave the chamber after delivering a statement on the situation in Burundi.

In her opening statement of the session, the Chairperson of the AU Commission Dlamini Zuma, after outlining and clarifying the purposes and motivations for deploying MAPROBU, said that “if the situation in Burundi stabilizes there is absolutely no reason for deploying the force.”¹⁷ The report that AU Commissioner for Peace and Security, Smail Chergui, presented to the PSC summit recommended in paragraph 16 to “appeal to the Government of Burundi to accept without further delay the deployment of MAPROBU and express its determination, for lack of explicit consent of the Government, to take the necessary action, within the spirit of the PSC Communiqué of 17 December 2015 and in conformity with the relevant provisions of the Constitutive Act.”¹⁸ After making a case for MAPROBU’s deployment with Burundi’s consent, the Commissioner indicated that the plan was to deploy MAPROBU on a gradual basis and halt full deployment if the situation improved.

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While a number of PSC members intervened during the debate on Burundi, the majority was silent. Thus, the views of those who intervened carried the eventual decision. Emphasizing the need to primarily focus on peace talks, Tanzania’s Foreign Minister Augustine Mahiga argued that the crisis was still amenable for resolution through dialogue, hence suggesting it did not warrant forcible intervention. He further added that while the violence and counter violence by armed opposition forces and Burundian army and police escalated in December as a result of the attack on three military installations, the violence had subsequently deescalated, as the drop in the outflow of refugees further indicated. In cautioning against

the deployment of MAPROBU, he said that, “the drama of such deployment would scuttle the dialogue and result in panic and outflow of refugees.” However, he left the possibility for deployment open, when he said that with the elements of consent, disarmament and border security introduced the issue of deployment could be discussed and the peace talks may indeed call for such a security arrangement for implementing the eventual peace accord.

The Ugandan delegation led by the Vice President, as the country leading the peace process, made a statement focused entirely on the peace process without addressing the issue of MAPROBU.

Gambia’s President Yahya Jammeh, who was the only head of state¹⁹ present by the time the debate on Burundi started, used the argument of sovereignty. Starting by saying that there was no need to talk about deployment in the absence of Burundi’s consent, he argued that unless the AU has an invitation or consent from the government that was elected by the people, the issue was an internal matter. He advocated for respect of Burundi’s sovereignty, in order to avoid playing into the hands of others. In an emphatic rejection of the proposal on MAPROBU, he said that, “Gambia totally opposes to the deployment of troops by force and will fight it tooth and nail.”

Equatorial Guinea’s President Teodoro Obiang Nguema Mbasongo, who as PSC chair of the month was presiding over the proceedings, stated that now that the situation was calming down, the AU should encourage and focus on the dialogue. He further observed that, “foreign troops do not resolve but can make the situation worse.” Arguing that the crisis did not at this stage warrant intervention, he said “if there is no solution by dialogue, if the situation deteriorates the AU could persist on troops.” He added that presently sending troops was premature.

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When the draft communiqué was circulated, it carried provisions which, among others, proposed to the PSC to recommend to the AU “Assembly to approve the measures considered at its ... meeting of 17 December 2015, including the implementation of Article 4(h) of the Constitutive Act for the deployment of MAPROBU.”²⁰ It also proposed for the Assembly “to dispatch, without delay, a high level delegation to Burundi for consultations on the principle and modalities of MAPROBU.” Representatives of various PSC member states including Chad and South Africa observed during their intervention that the elements of the draft, particularly such as those making reference to military intervention, should be removed. They pointed out that the draft should be reworked to reflect the consensus that sending troops was premature.

It appeared that the conclusion of the PSC summit would have the effect of removing MAPROBU in any of its form, including MAPROBU-light. This became clear when the final copy of the communiqué²¹ of the PSC summit meeting was finally released on 6 February 2016. Mirroring the view that prevailed at the summit, the communiqué under paragraph 11 stated the decision of the PSC “not to deploy MAPROBU because it considers it premature to send such a force to Burundi.” Interestingly enough, with respect to the

proposal for dispatching a high level delegation, the PSC mandated the delegation “to hold consultations on the inclusive inter-Burundian Dialogue.”

The AU Assembly’s Article 4(h) decision that never was

The second meeting in which the situation in Burundi featured was in the closed session of the Assembly. Unlike in the PSC summit, there is no rule requiring a country whose situations are under discussion to be excluded from the deliberations at the Assembly. Accordingly, the delegation of Burundi remained in the session and participated in the deliberations. Interestingly, despite what transpired during the PSC summit, the issue of MAPROBU was brought to the Assembly.

Commissioner Chergui introduced the discussion on the situation in Burundi. In his introduction, the Commissioner expressed the AU’s grave concern about the situation, referencing continuing violations of human rights and emphasizing the need to disarm militias and collect illegal weapons as well as secure Burundi’s borders. He also submitted that MAPROBU, if Burundi accepts it, would help address many of these issues and contribute to stabilizing the situation. It is worth noting that the draft of the Assembly decision contained a provision in which “the Assembly appeals to the Government of Burundi to accept, without further delay, the deployment of the African Prevention and Protection Mission in Burundi (MAPROBU) and expresses its determination, for lack of explicit consent of the Government, to take the necessary action, within the spirit of the PSC Communiqué of 17 December 2015 and in conformity with the relevant provisions of the Constitutive Act.” Commissioner Chergui also tabled the idea of dispatching a high level delegation to Burundi for consulting on MAPROBU.

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In its statement, Burundi reiterated its strong opposition to the deployment of MAPROBU, emphasizing that, “no armed force is expected in Bujumbura.” The Burundi delegation also raised a challenge to what it called “a new initiative to send high level delegation for discussing MAPROBU,” and insisted that the final decision should reflect the consensus reached at the PSC summit.

Only a few other delegations spoke about Burundi. Tanzania was one of them. The head of the delegation, Foreign Minister Mahiga, reiterated the views he expressed during the PSC summit, emphasizing the need both to revamp the peace process and to finalize the consultations with the parties in order to reconvene the peace process. Similarly, the President of Equatorial Guinea made a statement in which he expressed doubt that there was a need for sending intervention force to Burundi unless there was clear evidence of genocide or civil war, and the AU should instead encourage inclusive dialogue.

During the exchanges, following Burundi's protest on Commissioner Chergui's explanation on the mandate of the proposed high-level mission in respect of MAPROBU, the new Chairperson of the Assembly, Chad's President Idris Déby, stated that the AU was very concerned about the situation in Burundi. Yet, while insisting that Burundi could not deprive the Assembly of the option of deciding to send a high-level delegation, he also said that the AU could not force Burundi to accept MAPROBU. As he put it to Burundi, "you are a sovereign country, but you cannot tell us that everything is ok," and he further stated that it was the view of the Assembly to send the high-level mission for consultation on revamping the dialogue. Thus, by the end of the deliberations, it was decided that a high-level mission consisting of heads of state representing the five regions would be dispatched to Burundi.

On 4 February 2016, the AU Commission issued a press release²² announcing the composition of the high level delegation, including five heads of state and government from the five regions of Africa, namely: Mohamed Ould Abdel Aziz of Mauritania (North Africa), Jacob Zuma of South Africa (Southern Africa), Macky Sall of Senegal (West Africa), Ali Bongo Ondimba of Gabon (Central Africa) and Hailemariam Desalegn of Ethiopia (East Africa). The delegation's mandate appears to expand beyond and above the terms of the PSC summit decision and the apparent consensus that prevailed at the Assembly. Strikingly the press release envisages that the high level delegation will undertake consultations covering not only on the inclusive dialogue but also "the deployment of the African Prevention and Protection Mission in Burundi (MAPROBU), if accepted by the Government of Burundi."

During the summit, Burundi was adamant that there was no need for consultation on MAPROBU. Unsurprisingly, Burundi's Foreign Minister Alain Nyamitwe²³ also told journalists at the conclusion of the summit that MAPROBU was completely off the table. With respect to the mandate of the high-level delegation, he added that, if the high-level panel went to Burundi to try to persuade his President Pierre Nkurunziza to accept MAPROBU, "the delegation has failed already." Despite the fact that the scope of the mandate of the delegation is different in the 4 February AU Commission press release from the more authoritative PSC summit decision, it appears that the delegation may raise the issue of MAPROBU but Burundi is set to reject it (again). The high-level delegation undertook its mission on 25 and 26 February 2016.

Conclusion

The foregoing offers a first hand account and in-depth review of how discussions unfolded during the January 2016 AU summit. The explanation that many have offered for why the AU backed away from authorizing an intervention force is that it represents a simple case of state or regime security trumping human protection concerns. A *Foreign Policy* article poignantly illustrated this perspective when it said that the decisions of the summit embody a case in which "high-minded ideas about continental solutions ran headlong into the crude political realities of an institution that has long been accused of prioritizing the interests of member heads of state over all else."

I am of the view that a combination of various substantive concerns about whether intervention was the appropriate response and procedural factors contributed to the way the summit arrived at its decisions.

The PSC met at the level of Heads of State and Government to consider the situation in Burundi *de novo*. Unlike usual AU summit proceedings in which the deliberations and decisions of lower level policy bodies (Permanent Representatives Committee and Executive Council) are presented and considered by the higher level policy body (the Executive Council and the AU Assembly)²⁴ there was no similar procedure of presenting the PSC's 17 December deliberations and decision to the PSC summit. Similarly, unlike the 17 December decision in which the Foreign Ministries of the PSC members had limited, if any role, during the PSC summit the Foreign Ministries were in the driving seat of policy. Thus, the factors and processes that informed the PSC decision of 17 December had little, if any, impact on the deliberations during the PSC summit.

It also appeared that while the AU Commission was the catalyst for the 17 December decision, member states of the PSC took leadership in the proceedings and final outcome of the PSC summit. Indeed, the weak ownership by member states of the December 17 decision became clear when no member state championed the push for MAPROBU nor presented a robust argument in support of it. Thus, it was no

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surprise that an unidentified Ambassador of a member state of the PSC reportedly²⁵ stated, “the information that underpinned the December decision to deploy the force ‘exaggerated the threat of civil war and genocide.’” In addition to affirming the AU Commission’s lead role in the 17 December decision, the unraveling of the threat to send a intervention force also clearly reveals that the timing of that decision, coming less than a week after the deadliest incident of violence in Burundi since the end of the genocidal civil war, played

very significant role in shaping how PSC members approached MAPROBU at the time. By the January summit, that urgency appeared to have diminished.

Two major considerations that shaped the outcome of the PSC summit also clarify the processes and factors for making a decision on Article 4(h). The first is very much akin to what the International Commission on Intervention and State Sovereignty (ICISS)²⁶ called the threshold criteria of just cause or extreme and exceptional cases in its 2001 report. In the terms of the Commission, the threshold criteria entails that military intervention for human protection purposes is justified only in response to what it called circumstances of: a) large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or b) large scale “ethnic cleansing,” actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape. In the 2005 World Summit outcome report, this was specified to cover genocide, war crimes, ethnic cleansing and crimes against humanity.

The AU Constitutive Act (2000), which pre-dates both ICISS and the 2005 World Summit Outcome document, limited these conditions to genocide, war crimes and crimes against humanity. As it became clear later, at the time of the 2016 summit and as Burundi’s non-repeated incidents of violence from 11

December faded from peoples' memories, the AU Commission, as can be gathered from the report it submitted to the PSC summit, did not present or adequately articulate a strong case capable of convincing member states of the existence of such large scale loss of life or grave circumstances, to use the words of Article 4 (h) of the AU Constitutive Act. Challenging the existence conditions meeting the threshold criteria for warranting MAPROBU, both Tanzania and Equatorial Guinea questioned the existence, or credible and imminent threat, of a civil war or the kind of serious breaches envisaged under Article 4 (h). With no counter argument challenging it, this position prevailed in the PSC summit.

The second consideration is related to what the ICISS report called the requirement of last resort. This entails, in the words of ICISS report that “[e]very diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored” before an armed intervention is considered. Regarding the proposed deployment of MAPROBU without Bujumbura’s consent, PSC member states—particularly Equatorial Guinea and Tanzania—expressed the view that there was room for resolving the Burundi crisis through dialogue, hence suggesting that diplomatic and non-military avenues had not been fully and adequately pursued. Along with the Ugandan-led political dialogue, there is the avenue of a high level and robust diplomatic engagement with Bujumbura. Indicating the possibility and imperative of such avenue, Steve McDonald of the Woodrow Wilson Center for International Scholars rightly observed that, “the only way to engage Nkurunziza constructively is in private, exploring with him ways in which to address the crisis.” McDonald further added that this can be pursued “possibly with a trusted party like former [Tanzanian] President [Jakaya] Kikwete or perhaps a senior South African figure, all individuals who[m] Nkurunziza trusts.”²⁷

Regarding the proposed deployment of MAPROBU without Bujumbura’s consent, PSC member states—particularly Equatorial Guinea and Tanzania—expressed the view that there was room for resolving the Burundi crisis through dialogue, hence suggesting that diplomatic and non-military avenues had not been fully and adequately pursued.

Another factor related to the threshold criteria that contributed to the summit’s failure to affirm the earlier decision on MAPROBU was that, arguably, the threat of AU intervention in December contributed to the de-escalation of violence in Burundi. Indeed, the December decision seemed to have contributed to two developments. The first was with respect to the Ugandan-led political dialogue. The threat of military intervention brought extra attention to the situation in Burundi, thereby creating a new political dynamic that prompted the EAC and the mediator of the Burundi dialogue, President Museveni of Uganda, to jump start the peace talks. As a result, the peace talks with the participation of both the government and the opposition were launched in Entebbe, Uganda on 28 December 2015. However, the mediation has since slowed down, not only because of disputes over the agenda, participation in the talks and the timeline for reconvening the talks, but also the elections in Uganda, which have occupied all the attention of the mediator. Secondly, although it is difficult to measure, the 17 December decision also contributed to the de-escalation of the situation. As available data²⁸ and analysis²⁹ have shown, “the violence has died down

and the number of reported fatalities has dropped.” The statistics on the flow of refugees from the time of the 11 December to end of December and mid January 2016³⁰ lends further support to the view that the level of violence has fallen.

Finally, subsequent statements of the AU and some member states did not stick to the formulations of the 17 December PSC decision. They almost completely dropped the threat of forcible intervention and spoke only of consensual deployment. Williams was thus spot on when he pointed out that the AU Commission’s push for getting MAPROBU approved at the summit was not helped by the fact that the 17 December decision “was not communicated with complete consistency and clarity.” In addition to the fact that member nations failed to champion and express robust support to that decision, and that several expressed reservations with the idea of authorizing an intervention force, the AU Commission’s subsequent statements were explicit in making the deployment of MAPROBU contingent on Bujumbura’s agreement.

Understanding these substantial and procedural matters is important if we are to perceive how the AU might further engage in Burundi. If it were simply a matter of privileging regime stability over civilian protection, then one might question the relevance of the AU to contribute to improving the situation. However, a more nuanced picture suggests a different outlook. Moving forward on Burundi, much depends on how the dialogue for peace is revamped, including if sustained private diplomatic engagement with the government progresses and the outcome of the AU high-level delegation visit to Bujumbura results in the reconvening of the dialogue and secures firm commitment for peacefully resolving the crisis. While it is unlikely that this visit would breath life into MAPROBU, there is a possibility of expanding the existing AU human rights monitors and military observers into an ordinary AU mission. Indeed, on 18 February, 23 additional human rights monitors arrived in Burundi bringing the total number of monitors to 32. In this light, it might be helpful to abandon the formula of MAPROBU and conceptualize a mission that has as its core expanded number of human rights monitors and military observers with the possibility of additional deployment of police experts or units.

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