

# **Updated Briefing on the development of the Common African Position on cyber security in Africa**

**Updated Briefing on the Development of the Common African Position on Cyber Security in Africa; Presentation of the Draft ToR of the PSC Sub Committee on Sanctions; Draft ToR of Ministerial Committee on Terrorism; and Draft Manual on Modalities for Enhancing Coordination Between the Peace and Security Council of the African Union and the African Members of the United Nations Security Council**

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Tomorrow (24 August) the African Union (AU) Peace and Security Council (PSC) will convene its 1170<sup>th</sup> Session. This session will cover a range of important topics, including a briefing on the development of the Common African Position (CAP) on cybersecurity in Africa, the presentation of the Draft Terms of Reference (ToR) of the PSC Sub-Committee on Sanctions, a

Draft ToR of Ministerial Committee on Terrorism and a Draft Manual on Modalities for Enhancing Coordination Between the PSC and the African Members of the United Nations Security Council (UNSC).

The session is expected to begin with the opening remarks by **Willy Nyamitwe**, the Permanent Representative of Burundi and Chairperson of PSC for the month of August. This will be followed by a statement from **Bankole Adeoye**, the AU Commissioner for Political Affairs, Peace and Security (PAPS). **Dr. Guy Fleury-Ntwari**, Legal Counsel of the AU and Director of Legal Affairs and **Prof. Mohamed Helal**, a member of the African Union Commission on International Law (AUCIL) and Special Rapporteur on the Prohibition on Intervention in the Internal and External Affairs of States, are also expected to give a presentation. In addition, **Tapiwa Masunungure** Zimbabwe's Committee of Experts member, who chaired the retreat of the Committee of Experts that considered the three documents will deliver a presentation.

Tomorrow's session on the update briefing by AUCIL is a follow-up to the decision of the 1120<sup>th</sup> session of the PSC and the request in its subsequent [1148<sup>th</sup> session](#). During the [1120<sup>th</sup> session](#), which was dedicated to the inaugural engagement of the PSC with the AUCIL, the PSC recognized the need for the development of a CAP on the application of international law on cybersecurity. It was the first time the PSC approached the issue of cyberspace for peace and security from the perspective of regulating it with the rules of international law. The session emphasized the importance of cybersecurity and the need for adequate regulation. Additionally, discussions were held on the management and regulation of cyberspace in order to prevent activities that threaten international peace and security, including the emergence of cyber-weapons and the manipulation of cyberspace for political influence.

Most importantly, during the session, the PSC acknowledged the applicability of international law to cyberspace, and called on AU Member States to adopt a CAP and emphasized the need for Africa to actively engage in the process. To this end, the Council tasked the AUCIL, in collaboration with the AU Commission, to organize consultations with relevant stakeholders on the application of international law to cyberspace. In its most recent 1148<sup>th</sup> session on cybersecurity, the PSC requested 'the AU Commission on International Law to expeditiously complete, and submit to the Peace and Security Council, the draft statement of a Common African Position on the Application of International Law to Cyberspace.'

In response to PSC's assignment from its 1120<sup>th</sup> session, the AUCIL collaborated with the AU Commission and [organized](#) a series of capacity-building training sessions for AU member states. These sessions aimed to equip participants with the knowledge and skills necessary to effectively contribute to the formulation of the CAP regarding the application of international law to cyberspace.

The first session was held online on 29 and 30 March 2023, while the second session took place in Addis Ababa from 12 – 14 June 2023. The third and final part of the capacity-building [program](#) took place in New York from 19 – 21 July 2023. The program was attended by experts representing AU Member States who are responsible for following multilateral processes. The third session of the training aimed to strengthen the capacities of AU Member States in cyberspace and international law in order to empower them in multilateral processes like the Open-Ended Working Group on Cybersecurity and the UN General Assembly's 6th Committee. It also aimed to assist in the process of reviewing and enriching the draft CAP statement.

It is therefore expected that the PSC will receive a progress report and a presentation on the CAP statement in tomorrow's

session. It may be of interest for members of the PSC to know whether the draft statement identifying the rules of international law applicable to cyberspace being presented to the PSC was considered and reflected upon by the AUCIL and updated based on such reflection and whether it covers rules on responsible state behavior in cyberspace. The PSC may also consider whether the statement would benefit from consideration and input of the AU Special and Technical Committee on Justice and Legal Affairs for it to receive strong support and ownership on the part of Member States and the AU broadly. The PSC may also consider how the statement can help in informing the development of a regional legal framework and strategy for promoting the rules of international law governing cyberspace for addressing threats to peace and security arising from cyberspace.

Also worth mentioning for the PSC is whether and how the draft statement took account of and built on the various decisions of the PSC relating to cyberspace and peace and security. Although the PSC has not regularized the decision of its 850<sup>th</sup> session dedicating a session on this theme on an annual basis, it has since then convened a number of sessions highlighting its increasing engagement and concern about the peace & security implications of cyberspace. Of direct relevance for tomorrow's session, among other critical points, the 1097<sup>th</sup> session drew attention to the need for enactment of necessary legislations and regulations at national, regional and continental levels to govern issues related to cyberspace. Most recently, the PSC considered the issue of cybersecurity during its 1148<sup>th</sup> session last April under Tunisia's Chairship of the PSC. As the PSC pointed out, its focus on this subject is informed by 'the growing threat to peace, security and stability in the Continent emanating from the increasing cyber-attacks, malicious use of information and communication technologies (ICTs) and incidents of unethical and hostile cyber-activities undertaken by both, state and

non-state actors, including the targeting of government institutions and public infrastructure; the spread of misinformation and disinformation, subversive activities and interferences with national government processes, as well as the promotion of ideologies of hate and hate speech.'

In addition to the CAP statement on cybersecurity, the PSC is expected to receive a presentation on three documents. It is to be recalled that these documents were finalized during the Committee of Experts (CoE)'s retreat that was held from 18 – 22 May 2023.

One such document is the draft TOR of the PSC Committee on Sanctions. During the Reflection Forum on Unconstitutional Changes of Government (UCGs), which was convened in March 2022 in Accra, Ghana, one of the [recommendations](#) was to reactivate the PSC Sanctions Committee. Subsequently, the PSC held a session on sanctions and enforcement capacities in the deterrence against UCGs and called for the full operationalization of the PSC Sub-Committee and the development of the requisite technical capacities to ensure its effectiveness. During this 1100<sup>th</sup> session, the Council also instructed the CoE to develop the ToRs for the PSC Sub-Committee on Sanctions. It is important to note that the CoE was initially established in 2009 by the PSC's 178<sup>th</sup> session [communique](#), but it has never been operational. During the CoE retreat in May, the CoE identified certain issues, such as the composition of the Sub-committee and the level of its chairship that require the guidance of the PSC with respect to the Sanctions Sub-Committee.

The second document is the draft ToR of the Ministerial Committee on Terrorism. One of the key [outcomes](#) of the 16<sup>th</sup> Extraordinary Summit of the AU Heads of State and Government on UCGs, which was held in May 2022 in Malabo, Equatorial Guinea, was the establishment of the Ministerial Committee on Counter Terrorism. This committee is meant to coordinate,

monitor, evaluate and follow-up on the mechanisms of the implementation of the decisions made during the summit. In this regard, it was expressed in the PSC's 1107<sup>th</sup> session [communique](#) that the PSC looks forward to the first meeting of the Ministerial Committee on Terrorism. Since the decision of the Malabo Summit was for the AU Commission to prepare the ToR of the Committee, in tomorrow's meeting the CoE may propose that the draft ToR be referred to the AU Commission for finalization and presentation to the ministers. The ToR is expected to outline the purpose, goals, scope, working arrangement and composition of the ministerial committee.

Lastly, the PSC will consider the draft manual on modalities for enhancing coordination between the PSC and the African members of the UNSC. The development of this manual is in line with the request made by the PSC during its [1056<sup>th</sup> session](#) that considered the Conclusions of the 8<sup>th</sup> High-Level Seminar on Peace and Security in Africa. The session also requested for the manual to be considered and adopted by the 9<sup>th</sup> Annual High Level Seminar on Peace and Security in Africa on 18 January 2023. Accordingly, the draft manual was presented to the participants of the Seminar and it was requested to circulate the draft to all AU member states for inputs before submitting it for the consideration of the PSC. Following its update during the CoE meeting last May, the representative of the CoE is expected to propose the adoption of the manual by the PSC during tomorrow's session.

What is expected following the presentations of these three documents is that the PSC will take the required steps including the adoption of the documents and/or clearing of the documents that may require adoption at a different forum or level.

The outcome of the session is expected to be a Communiqué. It is expected that the PSC will reiterate the urgent need for a

Common African Position on the application of international law on cyberspace, as well as the need for Africa to actively engage in the process. It is also expected that it will commend the work of the AUCIL in working towards appraising representatives of AU Member States of the latest developments in the field of the rules of international law applicable to cyberspace. It may also emphasize on the importance of capacity building and the need to continue such efforts. The Council may also welcome the draft CAP statement on cyberspace for peace and security. The PSC may recommend that it is presented to relevant AU bodies such as the STC on Justice and Legal Affairs for wider input and build on and reflect the relevant decisions of AU policy organs including those of the PSC. The PSC may request the AU Commission to use the statement in the development of a regional legal framework and strategy for promoting the rules of international law governing cyberspace for addressing threats to peace and security arising from cyberspace.

Additionally, the PSC may welcome the work of the CoE in developing the three documents presented to it. It may also adopt the Terms of Reference of the PSC Sub-Committee on Sanctions with clarification of the issues presented to it for its guidance. The Draft Manual on Modalities for Enhancing Coordination Between the PSC and the African Members of the United Nations Security Council is expected to be adopted by the PSC. The PSC may also refer the Draft ToR of the Ministerial Committee on Terrorism to the AU Commission for its updating and submission for adoption by AU Ministers.