Responsibility to Protect in Africa: An analysis of the African Union's Peace and Security architecture

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Abstract

In this paper we argue that, since its birth, the African Union (AU) has established a set of norms and principles that mirror the tenets of R2P as agreed to by the Outcome Document of the 2005 World Summit. These norms and principles coupled with the AU's peace and security architecture make it proactive in conflict prevention and the management of crisis situations on the continent. Collaborative ventures between the African Union (at the continental level), the regional economic communities (RECs) at the (sub-regional level) and the UN (at the global level), we argue, are thus the best options for deepening R2P norms. We argue that the world is experiencing a unique moment of opportunity in the relations between the UN and (sub) regional organisations broadly and the AU specifically. However, the AU's responses to current security challenges in Darfur in Sudan, Somalia and Zimbabwe, and especially the ICC's application for the issuance of arrest warrant for President Al Bashir of Sudan, does not reflect a clear commitment to the responsibility to protect. The AU's attempt to solve the continent's problems will continue to be thwarted by its lack of political will and the weakening of its norms and principles by some Member States.

Introduction

At the United Nations (UN) World Summit in September 2005, world leaders endorsed the principle that states and the international community jointly have the responsibility to protect the world's population against four principal crimes: genocide, war crimes, crimes against humanity and ethnic cleansing. This principle is enshrined in the concept, Responsibility to Protect (R2P).[1]

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[1] The R2P as a concept emerged out of the report of the International Commission on Intervention and State Sovereignty (ICISS) in December 2001.

For states, paragraph 138 of the World Summit's Outcome Document declares that 'each individual state has the responsibility to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means…' Paragraph 139 of the Outcome Document also states that 'the international community, through the United Nations also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from war crimes, genocide, ethnic cleansing and crimes against humanity…'[2]

Even before the World Summit in September 2005, the African Union (AU), through its Constitutive Act (2000) had made provisions that will allow the organisation to intervene in Member States to prevent crimes against humanity.[3] Equally, in January 2005, Africa leaders adopted the responsibility to protect in the *Ezulwini Consensus.*[4] The acceptance by African leaders of the R2P norm is in line with the AU's new image since its transformation from the Organisation of Africa Unity (OAU). This new institution is demonstrating an encouraging proactiveness in terms of its preparedness to tackle the continent's peace and security challenges and general contribution to the attainment of international peace and security.[5] With a new peace and security architecture, the AU hopes to develop the capacity to prevent conflict even if it requires the intervention of the Union in what could be considered as the 'internal affairs' of Member States. To this end, Article 4(h) of the AU's Constitutive Act endorses intervention in member states under 'grave circumstances'. The AU's recognition of the need for intervention to save humanity gives the organisation a theoretically progressive outlook.

Collaboration with other regional organisations and the UN is another approach through which the AU intends to achieve its security objectives. This is so because the AU's most promising achievements are usually attained when it engages in collaborative ventures that have interesting perspectives and yield fruitful outcomes. While these are encouraging, one must, however, accept

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[2] For more details see '2005 World Summit Outcome', UN document A/60/L.1, 20 September 2005.

[3] See Article 4(h) of the Constitutive Act of the African Union.

[4] See page 6 of 'The Common Africa Position on the Proposed Reform of the United Nations', AU document Ext/EX.CL/2 (VIII), also referred to as the Ezulwini Consensus.

[5] 'An Agenda for Peace', UN Document A/47/277-S/24111, 17 June 1992, paragraph 64.

that there are still serious challenges and bottlenecks in building an effective peace and security architecture that can respond rapidly and effectively to the multiple security challenges faced by Africa. As a result, partnerships that are satisfactory to the AU and its collaborative institutions are increasingly being established, especially with the European Union (EU) and in November 2006 with the Organisation of American States (OAS). Of course, within the context of the R2P, partnership between states, regional and sub-regional organisations and the UN is seen as an important component for helping states meet their obligations for the protection of their citizens against crimes against humanity, war crimes, ethnic cleansing and genocide.[6]

With a number of conflict situations still prevailing in Africa – not least Darfur in Sudan, Somalia and a looming crisis in Zimbabwe – it is important to analyse: (a) how the AU's norms and principles mirror the R2P; (b) how the set of institutions and structures – the African security architecture – being built by the AU makes it proactive in dealing with crisis situations in conformity with the R2P; (c) collaboration between the AU, other regional organisations and the UN for the purposes of addressing the present and future security challenges in Africa; and (d) the role of the International Criminal Court's (ICC) in light of its request for an arrest warrant to be issued against the Sudanese President, Omar Al Bashir 'for genocide, crimes against humanity, and war crimes', and the continuing humanitarian crisis in Darfur.[7]

In this paper, we argue that since its birth the AU has established a set of norms and principles that mirror the ideas of R2P. These norms and principles coupled with the AU's peace and security architecture also make it proactive in conflict prevention and the management of crisis situations on the continent. We argue that the world is experiencing a unique moment of opportunity in the relations between the UN and regional/sub-regional organisations broadly and the AU specifically. However, the AU's responses to current security challenges in Darfur in Sudan, Somalia and Zimbabwe, and especially its reaction to the ICC's application for an arrest warrant to be issued against President Al Bashir, does not reflect a clear commitment to the responsibility to protect in practice. As such, the AU's attempts to solve the continent's problems will continue to be thwarted by its lack of political will and the weak nature of its norms and principles among Member States.

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[6] See paragraph 139 of '2005 World Summit Outcome'.

[7] For more information see 'Prosecutor's Statement on the Prosecutor's Application for a Warrant of Arrest under Article 58 Against Omar Hassan Ahmad AL BASHIR', The Hague, 14 July 2008 at www.icc-cpi.int, accessed 3 August 2008.

This paper is divided into five sections. It starts by analysing how the principles and norms enshrined in the AU's Constitutive Act and other key documents mirror R2P as a concept for conflict prevention and the protection of the people of Africa against crimes against humanity, war crimes, genocide and ethnic cleansing. The next section discusses how the AU's security architecture responds in practice to the R2P. This is followed by a third section which examines the AU's collaboration with other regional/sub-regional organisations, especially the UN to build its capacity to meet the responsibility for the promotion of peace and security in Africa. Section four discusses how the AU's norms could apply in actual crises. As a case study we examine in section five of the paper the AU's response to the crises in Darfur, Western Sudan, as a test case of the AU's commitment to R2P.

The AU's Endorsement of R2P

Over four decades of its existence, the OAU was incapacitated by the lack of legal right to intervene in what was considered to be the 'internal affairs' of Member States. Apart from the region's rhetorical fidelity to the 'non-interference' principle which made it impossible for the OAU to intervene in conflicts on the continent, the organisation also lacked the capacity to conduct meaningful interventions, even if it were allowed to do so. The OAU had to look on helplessly while hundreds of thousands of Africans died through internal conflicts, mostly in the 1990s. For instance, in 1994 the OAU's inability to prevent or stop the Rwandan genocide undermined its credibility. It was in order to avoid another 'Rwanda' that, at the birth of the AU in 2000, African leaders proactively made provision for intervention in Member State in 'grave circumstances'.[8]

For the purposes of this paper it is important to mention a number of principles in the AU's Constitutive Act (2000), which we believe unambiguously endorsed the R2P prior to the release of the International Commission on Intervention and State Sovereignty's (ICISS) report, *The Responsibility to Protect*, in December 2001. The basic principles guiding the AU were outlined in Article 4 of the Constitutive Act. Among the most important principles were:

Sovereign equality of member states (Article 4a);
- Non-interference by any Member States in the internal affairs of another (Article 4g);

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[8] See Article 4(h) of the Constitutive Act.

- Peaceful settlement of disputes (Articles 4e);
- The right of the Union to intervene in a Member State in pursuant to a decision of the Assembly in respect of grace circumstances, namely war crimes, genocide, and crimes against humanity (Article 4h);
- The right of Member States to request interventions from the Union in order to restore peace and security (j);
- Respect for democratic principles, human rights, the rule of law and good governance (4m); and
- Respect for the sanctity of life (4o).

Of relevance to R2P issues is article 4h which allows for intervention in the domestic affairs of Member States in 'grave circumstances' with respect to three serious crimes, namely: war crimes, genocide and crimes against humanity. It is to bring effect to the above principles that the AU constructed a security architecture spearheaded by the AU Peace and Security Council and its allied institutions. It is also important to note that achieving compliance with the principles and norms of the Member States of the AU in the face of violations is central to the realisation of the concept of responsibility to protect.

Beside the Constitutive Act, the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* also re-enforces the right of the AU to intervene in 'grave circumstances' and calls for 'early responses to contain crisis situations so as to prevent them from developing into full-brown conflicts'.[9] Moreover, the *African Charter on Democracy, Elections and Governance* also contains principles for the promotion of peace and security, respect for human rights, and democratic principles.[10] The key objective of these principles is the prevention of conflict on the continent. Finally, at the 7th Extraordinary Executive Council Meeting in Addis Ababa on 7–8 March 2005, the AU adopted a Common African Position on UN reform, known as 'The Ezulwini Consensus', in which Africa leaders 'reiterate[d] the obligation of states to protect their citizens'.[11] It can therefore be argued that the AU has, through its norms and principles (some of which we have mentioned above), shown commitment to the R2P norms.

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[9] See Article 4 (j and k) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, adopted by the 1st Ordinary Session of the Assembly of the African Union, Durban, 9 July 2002.

[10] See Article 3 of the African Charter on Democracy, Elections and Governance, adopted by the 8th Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia, 30 January 2007.

[11] The Ezulwini Consensus was adopted at the 7th Extraordinary Session of the Executive Council of the AU in Addis Ababa, Ethiopia, 7-8 March 2005.

While the AU norms and principles demonstrate commitment to R2P issues, institutions with the capacity to make the norms a reality are important. In the next section, we focus on the set of institutions and structures that are being developed by the AU to make its commitment to R2P a reality – the African peace and security architecture.

The African Union's Peace and Security Architecture: Building Capacity for Protection?

In this section we focus on the AU Peace and Security Council (PSC) and its supporting institutions, namely; the Commission of the African Union; Panel of the Wise; Continental Early Warning System; and the African Standby Force.

The Peace and Security Council (PSC)

The AU's Peace and Security Council (PSC) which comprises 15 member states of the AU, is 'a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa'.[12] This is the most significant institutional component of the African Union's peace and security architecture. More importantly is that the AU's new security regime is premised on several norms which are both old (based on the Charter of the OAU) and new (emanating from the Constitutive Act). The PSC is guided by principles enshrined in the Constitutive Act, the UN Charter and the Universal Declaration of Human Rights.[13] With regard to the functions of the PSC, Article 6 of the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* states that the Peace and Security Council shall perform the following functions:

- promotion of peace, security and stability in Africa;
- early warning and preventive diplomacy;
- peace-making, include the use of good offices, mediation, conciliation and enquiry;
- peace support operations and intervention, pursuant to article 4(h) and (j) of the Constitutive Act;

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[12] See for example Chapter IV (b), Article 16 of the CADSP.
[13] See Article 4 of the Protocol on Peace and Security Council.

- peace-building and post-conflict reconstruction;
- humanitarian action and disaster management; and
- any other function as may be decided by the Assembly.

To discharge the above functions, the PSC has been given a wide range of powers under Article 7 of the *Protocol* establishing it. These powers which shall be exercised in conjunction with the Chairperson of the Commission include the power to:

- authorise the mounting and deployment of peace support missions (7c);
- lay down general guidelines for the conduct of such missions (7d);
- recommend to the Assembly, intervention on behalf of the Union in a Member State (7e);
- approve modalities for such intervention (7f);
- institute sanctions whenever an unconstitutional change of government (7g); and
- promote and develop a strong "partnership for peace and security" between the AU and UN and its agencies, as well as other relevant organisations (7k).

The functions and powers of the PSC stated above theoretically position the AU to discharge the responsibility to 'prevent', 'react' and 'rebuild'.

The Commission of the African Union

The Commission is the key organ playing a central role in the day-to-day management of the AU. Among others, it represents the Union and defends its interests; elaborates draft common positions of the Union; prepares strategic plans and studies for the consideration of the Executive Council; elaborates, promotes, coordinates and harmonises the programmes and policies of the Union with those of the Regional Economic Communities (RECs), such as the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC); and ensures the mainstreaming of gender in all programmes and activities of the Union. The Commission is chaired by a 'chairperson' and his/her deputy, and comprises other Commissioners and staff members. The Department of the Commission that deals with conflict and security, namely the Peace and Security Directorate, is made up of a Conflict Management Division, Peace Support Operations Department, Defence and Security Department, Darfur Integrated Task Force (DITF), the Secretariat to the Peace and Security Council.

Panel of the Wise

Article 11(1) of the AU Protocol on Peace and Security states that, 'in order to support the efforts of the Peace and Security Council, particularly in the area of conflict prevention, a Panel of the Wise shall be established'. The Panel of the Wise is composed of five 'highly respected African personalities' selected on the basis of regional representation and appointed for three years to serve as a proactive conflict prevention team.[14] In January 2007, during its Eighth Ordinary Session held in Addis Ababa, Ethiopia, the AU Assembly of Heads of State and Government appointed five eminent Africans to the Panel of the Wise for a period of three years.[15] The Panel members included:

- Salim Ahmed Salim, former Secretary-General of the Organization of African Unity (East Africa);
- Dr. Brigalia Hope Bam, Chairperson of the Independent Electoral Commission of South Africa (Southern Africa);
- Ahmed Ben Bella, former President of Algeria (North Africa);
- Elisabeth K. Pognon, President of the Constitutional Court of Benin (West Africa);
- Miguel Trovoda, former President of Sao Tomé and Principé (Central Africa).

The Panel of the Wise was subsequently inaugurated in December 2007. Since its inauguration, the Panel of the Wise has attempted to contribute to the quest for lasting peace and security in Africa. For instance, in July 2008, the Panel met in Addis Ababa to discuss how to address concerns generated by existing conflicts and controversies over elections in Africa. Discussions centred on two major themes: conflict management and prevention, and building democracy.[16] For now, however, the Panel is still 'young' and it is yet to be seen how precisely it will contribute to the search for peace and security on the continent.

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[14] See Article 11(2) of the AU Protocol on Peace and Security.

[15] Tim Murithi (2007), 'Panel of the Wise', *AU Monitor* at http://www.pambazuka.org/aumonitor/AUMONITOR/comments/347/, accessed 26 August 2008.

[16] For further details see 'AU's Panel of the Wise gather to discuss conflict and peace building in Africa', *Sub-Saharan Informer* at http://www.ssinformer.com/news/africa/african_union/2008/July/18/Aup_18_08_08_001.html, accessed 2 August 2008.

Continental Early Warning System

The purpose of the Continental Early Warning System (CEWS) is to 'facilitate the anticipation and prevention of conflicts' on the continent. It is made up of a Situation Room in Addis Ababa, Ethiopia and linked into the early warning mechanisms of the five regional economic communities (RECs), namely the Economic Community of West African States, (ECOWAS), the Inter-governmental Authority on Development (IGAD) (which has established its own conflict early warning and response mechanism – CEWARN – which primarily focuses on small scale pastoral conflicts); and the Southern African Development Community (SADC). In this particular case, the PSC protocol authorises '[t]he Commission … [to] collaborate with … research centers, academic institutions and NGOs, to facilitate the effective functioning of the Early Warning System'.[17]

The major challenge for the AU is how to operationalise the CEWS to serve the purpose of conflict prevention. Thus within the framework of the efforts to operationalize the Continental Early Warning System (CEWS), as provided for in Article 12 of the Protocol on Peace and Security, a meeting on early warning and conflict prevention was held in South Africa in December 2006. The meeting brought together governmental experts from AU Member States and representatives of the RECs. The meeting was also attended by representatives of African research centres and academic institutions, NGOs, as well as international organizations, including the UN, as observers.[18]

The meeting was a follow up to the PSC's June 2006 decision to request that the AU Commission hasten the operationalisation of the continental peace and security architecture, including the CEWS. The meeting discussed three important components of the CEWS: data collection analysis and indicators; early action and engagement with decision makers; and coordination and collaboration between the AU and RECs. It was in relation to these issues that the meeting 'urged the AU Commission and the RECs, working together with the stakeholders identified in the PSC Protocol, to take all necessary steps… within a time frame of three (3) years, to ensure that the CEWS is fully operational by 2009'.[19]

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[17] Article 12 (3), AU Protocol on Peace and Security.
[18] See report of the meeting, 'Framework for the Operationalization of the Continental Early Warning System as adopted by Governmental Experts Meeting on Early Warning and Conflict Prevention', held in Kempton Park (South Africa), 17–19 December 2006 at www.african-union.org/roo/au/publications/PSC/Early%20Warning%20System.pdf, accessed 24 August 2008.
[19] Ibid., p. 17.

African Standby Force

In order to support the work of the Peace and Security Council (PSC) with respect to the deployment of peace support missions and intervention pursuant to article 4(h) and (j) of the Constitutive Act, Article 13 of the AU Protocol on Peace and Security calls for the creation of an African Standby Force (ASF) comprising five regional brigades. The ASF 'shall be composed of standby multi-disciplinary contingents, with civilian and military components in their countries of origin and ready for rapid deployment [on the continent] at appropriate notice'.[20] The ASF has the support and backing of a Military Staff Committee (MSC) whose role is to provide technical suggestions and solutions to issues relating to military issues and to provide expert opinions to the PSC before military decisions are made. Furthermore, there is recognition that '[i]n undertaking [its] functions, the African Standby Force shall, where appropriate, cooperate with…regional organizations, as well as with national authorities and NGOs'.[21] Among some of the functions that the ASF shall perform are: (a) observation and monitoring missions; (b) other types of peace support operations; (c) intervention in a Member State in respect of grave circumstances or at the request of a Member State in order to restore peace and security, in accordance with Articles 4 (h) and (j) of the Constitutive Act; (d) preventive deployments in order to prevent (i) a dispute or a conflict from escalating; (ii) an on-going violent conflict from spreading to neighbouring areas or States, and (iii) the resurgence of violence after parties to a conflict have reached an agreement; (e) peacebuilding, including post-conflict disarmament and demobilization; (f) humanitarian assistance missions to alleviate the suffering of civilian population in conflict areas and support efforts to address major natural disasters. All these duties are set out in Article (13) (3) (a–g) of the Constitutive Act.

The ASF is to be established in two phases. During phase one, the AU's key objective was to establish a strategic level management capacity, while the sub-regions would complement the AU effort by establishing forces up to brigade level strength for UN Chapter VI and preventive deployment missions. The ASF aims to be deployable within 30 days of an AU mandate. The objective set under phase one is supposed to have been realised by 30 June 2006, but it still had not been accomplished at the time of writing. In the second phase, the AU must develop a full peacekeeping force for complex multidimensional peacekeeping missions by 30 June 2010. At this stage, the AU should also

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[20] See Article 13(1) of the Protocol on Peace and Security.
[21] Ibid., Article 13 (4).

have the capacity to intervene in situations characterised by genocide in cases when the international community does not act promptly. Such a force should have the capability to deploy a robust military force within fourteen days.[22]

If the AU is to build the military capacity to intervene effectively to put an end to genocide and other grave violations the ASF is crucial. This is because 'forces dispatched to protect a population under thread under non-permissive, [or permissive] non-consensual conditions must be militarily superior to those of ay of the hostile parties, including a recalcitrant sovereign state'. According to Gompert such military superiority demands a measure of:

- accurate and persistent strategic awareness;
- fast deployment and employment (e.g. air and high speed land mobility);
- precision fire-power from land, gunship and other strike systems;
- information dominance: tactical intelligence collection, fusion and dissemination;
- command and control, including deployable communications with adequate bandwidth and connectivity to global grid; and
- flexible and ample logistics.[23]

An intervention force with the 'capacity to protect' such as envisaged under the ASF will have two advantages. First, having such a capacity will provide the AU 'an option to act in cases when there is the international consensus to do so'.[24] Second, a regional force with adequate capabilities 'would increase pressure on [Member] states [of the AU] and [rebel] groups to desist from atrocities and allow…humanitarian intervention or else face forcible actions'.[25]

All these institutions discussed above have common purpose: conflict prevention and resolution. When all these institutions are fully established they will then make the African security architecture R2P 'compliant'. The most crucial challenge for the African security architecture will still be how mobilize political will when a situation demands it.

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[22] Jakkie Cilliers, *The African Standby Force: An Update on Progress,* ISS Paper I60, March 2008, p. 4.

[23] David C. Gompert, 'For a Capability to Protect: Mass Killing the Africa Union and NATO', *Survival* Vol. 48, No. 1, Spring 2006, p. 12.

[24] Ibid., p. 9.

[25] Ibid.

Partnership for Protection: The African Union, the UN and Civil Society Organisations

The responsibility of protecting the world's population from crimes against humanity, genocide, ethnic cleansing, and war crimes is a daunting one that requires concerted effort and partnership between sub-regional and regional organisations and the UN. Whether in Africa or other regions, the outcome of any such partnership should lead to the building of multilateral forces with the capacity to stop mass killings. In other words, regional organisations such as the AU should through international partnerships develop a capability to protect. Already there is strong collaboration between the AU and RECs who form an integral part of the CEWS and the ASF. The AU also sees the partnership with the UN as crucial for the maintenance of international peace and security. The rest of this section discusses the relationship between the AU and the UN.

The UN

There is no doubt that in the last decade, there has been a growing recognition by the UN Security Council (UNSC) of the need to cooperate more closely with regional organisations, particularly the AU, under Chapter VIII of the Charter. For example in 1989, there were no references in Security Council resolutions to regional organisations, and in 1990 there was only one such reference. From 1991, however, references to regional organisations' engagement in conflict became common. The period between 1989 and 1992 saw resolutions expressly recalling Chapter VIII of the UN Charter, conveying appreciation of regional efforts aimed at the settlement of conflict, supporting cooperation between the UN and regional organisations, and endorsing regional efforts.[26] While most of these references concerned attempts at peaceful settlement of disputes, this period also saw the first authorization by the Security Council of the use of force by a regional organization, when it authorised NATO to enforce a no-fly zone over Bosnia.[27] It is clear that since 1989, and especially after 2004, the Council has become more willing to approve actions undertaken by regional organizations.

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[26] UN Document S/25184, 29 January 1993.
[27] UN Documents S/25567, 10 April 1993; S/PV.3191, 31 March 1993.

Early initiatives along these lines were welcomed by the General Assembly.[28] As a follow-up to its Resolution 48/42 (1994), the Assembly issued a declaration stating that the involvement of regional organizations in matters of peace and security should be encouraged and, where appropriate, supported by the Security Council.[29] In spite of what can be seen as a significant effort to collaborate with other organizations, such cooperation does not come easily to the UN which is structured and funded to focus on its own operations rather than those led by other groups even when such missions are authorized or supported by the Security Council.

In seeking to improve cooperation and coordination between the UN and regional organizations, especially the AU, there are several issues that need to be resolved concerning the interpretation of Chapter VIII of the UN Charter. On the one hand there is the question of the role that regional organisations should play broadly in international peace and security, with the AU in mind specifically for the purposes of this article. But on the other hand, it is important to clarify the *type*, *nature* and *division of responsibilities*. There is no doubt that any endeavour to resolve and understand the nature of the relationship between the UN and the AU under Chapter VIII of the UN Charter will need to consider some of the definitional and conceptual issues inherent in any such partnership. This is critical because it is becoming obvious that while both the UN and the AU talk about partnership(s)*,* there are some fundamental differences about what such partnerships entail, what should be the guiding principles and who is responsible for the failures and successes of this relationship.

In spite of these tensions, there has been a deepening of the relationship between the UN and regional organisations in the area of international peace and security. Furthermore, there is no single organization in which this deepened relationship is more practically demonstrated than with the AU. Responding to and collaborating with the AU on different crises has demonstrated beyond doubt that when collaboration between the UN and regional organizations is implemented correctly, it goes a long way to bringing about success as exemplified in Liberia, Sierra Leone and Burundi. Understanding and appreciating how such partnerships should be framed is a precondition for determining its effectiveness. The remainder of this section will evaluate the three key conditions for successful cooperation under Chapter VIII in the area of international peace and security.

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[28] UN General Assembly Resolution 48/42, 10 December 1993, paragraph, p. 63.
[29] UN General Assembly Resolution 49/57, 9 December 1994, annex, paragraph, p. 5.

(a) Division of Responsibilities

There is no doubt that the best way to prevent and resolve conflict is through the UN working in partnership with regional organisations in a context where the parameters of such partnerships are well-defined and coordinated. Establishing support arrangements for such cooperation and coordination will not be achieved easily. This is because, the AU's active engagement with peace and security issues on the African continent is not only fraught with political challenges and difficulties among its Member States, but also in terms of its constitutive relations with the UN. There are several provisions in both the Constitutive Act and the Protocol establishing the AU PSC that on the surface appear to be contradictory. A cursory glance at the two documents shows a level of uncertainty as to whether the AU PSC should take upon itself the primary responsibility for peace and security in Africa or whether that primary responsibility resides with the UN Security Council. Significantly, nothing in either the Constitutive Act or the Protocol establishing the PSC openly requires the AU to seek prior consent from the UN Security Council, creating the potential for conflict between the two organisations. The AU PSC has arrogated to itself the 'primary responsibility for promoting peace, security and stability in Africa'.[30] However, further on in the Protocol, it pledges to 'cooperate and work closely' with the UN Security Council – a body upon which the UN Charter bestows primary responsibility for international peace and security.[31] For clarity, the PSC protocol states that:

> Where necessary, recourse will be made to the United Nations to provide the necessary financial, logistical, and military support for the African Union's activities in the promotion and maintenance of peace and stability in Africa, in keeping with the provisions of Chapter VIII of the UN charter.[32]

While the UN Charter stipulates that it can authorise a regional organization to undertake enforcement action, it also asserts that 'no enforcement action shall be taken under regional arrangements…without the authorization of the Security Council'.[33] It is clear from the proactive interventionist language in both the Constitutive Act and the PSC Protocol that while the UN's primacy in maintaining international peace and security is recognised, the AU has also

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[30] AU Protocol on Peace and Security, see Article 16(1).
[31] Ibid., Article 17.
[32] See ibid., Article 17(2).
[33] UN Charter Article 53(1).

reserved for itself an interventionist role that reverts to the UN only when the *AU deems necessary.*[34]

But herein lies the possible conceptual, legal, political and operational pitfalls if the AU insists upon this role. To what extent, for example, must the UN support the AU when the PSC takes unilateral decisions like authorising its member states to contribute troops to form the AU Mission in Somalia (AMISOM)?

Although such difficulties exist, there are several reasons why the role of regional organizations in peacekeeping should be encouraged and supported. These include:

- their proximity to the crisis;
- their familiarity with the actors and issues involved in a particular crisis;
- the perception that a regional organization has a great interest in resolving a crisis that has erupted in its neighbourhood.

Chapter VIII of the UN Charter underlines the roles that regional organizations can play as partners of the UN in maintaining international peace and security. This is the reason why the AU generally perceives its peace and security interventions as a contribution to the UN and therefore expects to be supported. However, the Security Council's responses to decisions made by regional organizations are at best *ad hoc*. As such, there certainly remains a need to discuss what exactly the term *partnership* means. For example, how far should the UN go to support decisions taken by regional organizations outside the remit of the Security Council? What does delegation of authority mean in this context and does it require a clear determination by the Security Council? There is a need for clarity about when the functions of the UN can be seen as being 'delegated' to regional organizations. There is also a need to define the conditions under which there can be more scope for partnerships under Chapter VIII, and what type of role the UN should assume in operations managed by regional organizations either through co-deployment, co-financing or hybrid forces. Such a situation requires that the UN decides whether it can continue to afford to have *ad hoc* approaches and delegate what it considers as non-core missions to regional organizations.

Increased cooperation between the UN and regional organizations, particularly the AU, demonstrates a recognition that regionalism is a *desirable*, *feasible* and *necessary* component of multilateralism. The call for a global-regional

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[34] A combination of the Constitutive Act (Articles 4 (h) and (j)) and the PSC protocol Articles 4 (j) and (k), Art. 6 (d), 7 (c) - (g), Art. 16 (10 and 17 (1) and (2)) amply demonstrate this cumulative desire to initiate intervention schemes.

mechanism for maintaining international peace and security is based on recognition of the need for greater involvement by regional agencies in conflict prevention and management. It is this rise that underpins the vision of a 'mutually-reinforcing regional-global mechanism' for peace and security.[35] This mechanism can be effective if there is a combination of flexibility with impartiality, and pragmatism with consistency. Such an approach will reduce the endemic uncertainties and occasional tensions between the UN – responsible for international peace and security – and regional agencies that are meant to play a supporting role.

However, as much as there is recognition of the need for greater involvement by regional agencies in conflict prevention and management, in cooperation with the UN, the real challenge is to replace the improvised, politically-selective, resource-skewed approach to regionalism with a more planned, consistent yet flexible, and resource-balanced style of regional and global governance on the part of the UN Security Council. The trend in recent years has been moving away from the exclusive reliance on UN-mandated peace enforcement operations in favour of 'hybrid' operations in which the UN and other international organizations cooperate in various ways within the same mission.

(b) Coordination and Consultation Mechanisms

An improved partnership between the UN and regional organizations assumes the establishment of coordination and consultation mechanisms between the UN Security Council and the peace and security organs of regional organizations. In the case of the AU, the PSC was established as part of a new continental security architecture. In terms of coordination and consultation issues, there are close correlations between the objectives of the AU PSC and the UN Security Council which include the promotion of peace, security and stability in Africa, the anticipation and prevention of conflicts, and the promotion of peacebuilding and post-conflict reconstruction. Furthermore, the AU PSC was established as a standing decision-making organ intended to function as a collective security and early warning arrangement to facilitate timely and efficient conflict response and crisis situations in Africa.

Following the establishment of the AU PSC in March 2004, the Security Council adopted two Presidential statements that recognized the importance of strengthening cooperation with the AU in order to help build its capacity

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[35] UN Document A/61/204 – S/2006/590, 28 July 2006.

to deal with security challenges.[36] This cooperation has been epitomized in Security Council Resolution 1625, expressing support for the establishment of a ten-year capacity building programme for the African Union.

As a result, several practical measures have been undertaken. For example, on 12 November 2006, the UN Department for Political Affairs received a request from the Commission of the AU to train staff members of the Secretariat of the PSC on the work of the Security Council. To help improve the performance of the AU's PSC secretariat, its Security Council Affairs Bureau organized two training programmes focusing on the working methods of the Security Council and the activities of Security Council Affairs division in its various aspects. It aimed to strengthen the substantive and operational capabilities of the PSC secretariat by allowing staff to visit the UN Secretariat. Further to these developments, on 16 November 2006, the AU Chairperson and UN Secretary General signed a Declaration on Enhancing UN-AU Cooperation.[37] More recently, the UN Security Council also issued a presidential statement which encouraged increased exchange of information and sharing of experiences, best practices and lessons-learned between the Security Council and the AU.[38]

(c) Civil Society Organisations

There are several areas where civil society organisations (CSOs) can support the AU in terms of its conflict prevention, management and other activities. However, two areas where CSOs can play a particularly important role are in relation to: (a) conceptual and analytical work; and (b) practical peacebuilding activities.[39] These are areas where the AU needs particular support and help from CSO because among some of the AU's weaknesses is a lack of:[40]

- in-depth analysis of the process of state fragility and eventual collapse, so as to provide a sound basis for taking decisions on intervention;
- adequate capacity to manage conflicts on the continent;

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[36] UN Documents S/PRST/2004/27, 20 July 2004; S/PRST/2004/44, 19 November 2004.
[37] UN Document A/61/630, 12 December 2006.
[38] UN Document S/PRST/2007/7, 28 March 2007.
[39] See 'Civil Society – African Union consultative process: towards a new partnership', prepared by CSSDCA/CIDO of the AU Commission, (n.d.), pp. 3-4. The concept note identifies several areas for potential CSO contribution and argues that, '…analyses of conflict issuing from such indigenous sources have tended to have a different thrust from those of foreign scholars and think-tanks'.
[40] Ibid., p. 3. Other areas where CSO can be of help are: (a) mobilizing resources, (b) conduit for early warning. See Tim Murithi, *The African Union – Pan-Africanism, Peacebuilding and Development* (Aldershot: Ashgate, 2005), pp. 121-123.

- independent analytical briefings on the situations in conflict zones;
- mechanisms for disseminating information about the decisions and operations of the AU.

What can CSOs do to assist AU in addressing these weaknesses? CSOs as epistemic communities have specialised knowledge of particular issues pertaining to their area of expertise. Thus, such groups have a 'common understanding of particular problems in their field of research as well as an awareness of, and a preference for, a set of technical solutions to these problems' that can be used to support the AU's activities in maintaining and restoring regional peace and security.[41]

What then are the processes through which such expert groupings can impact the operationalisation of the AU's peace and security architecture? Among the several options, three of them are worth mentioning. First, when a high degree of uncertainty exists among policymakers arising out of insufficient understanding of complex issues and their causal linkages, independent analysis can help improve understanding.[42] Second, when there is no coherent policy framework as a result of a lack of consensual knowledge among experts, CSOs can present evidence-based knowledge as a basis for consensus building. And third, when members of such communities gain political power or have relatively unfettered access to those with political power they can influence the decision-making process.[43] Engagement with CSOs needs to be based on an accurate understanding of what they can contribute. In general, these groups have the potential to serve different functions and provide diverse technical inputs into security issues.

Finally, it is important to note that there is a need to broaden the limited circle of experts and expertise, expand the space for Security Sector Reform (SSR) debate and democratize popular participation in the interrogation and development of the concepts, norms and practices of security analysis in Africa. There is also a need to avoid complacency in assuming that CSO are,

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[41] See Andreas Hansenclever, Peter Mayer and Volker Rittberger. 'Interests, power, knowledge: the study of international regimes', *Mershon International Studies Review*, vol. 40, 1996, p. 209.

[42] Ibid.

[43] There is also increasing concern about the need to disaggregate the sum of CSOs proffering to have expertise in particular issue areas. Murithi warns about this proliferation and argues that, '[t]here is, however, the assumption that all civil society groups are benevolent in nature and purpose. This of course would be a misconception. Civil society … can be just as authoritarian, in their internal governance, and as corrupt as the governments they criticize. Some civil society organizations are opportunistic enterprises convened for the purposes of taking advantage of donors…' Ibid., p. 113.

by their mere existence, structurally superior to state structures and inherently better equipped to contribute positively to the security debates.[44]

From Rhetoric to Reality: Normative Commitments and Political Issues

As we have articulated in the earlier sections of this paper, in its transformation from the OAU the AU as the principal regional organization has undergone a normative shift by positing that non-interference does not mean indifference.[45] On this basis, the AU has moved towards a more preventive, principled and coercive role. The complexity of challenges faced by the African continent has contributed to the 'novel idea' that: '[t]he notion of non-interference must be revised because it must *never* be associated with *indifference*.[46] And this non-indifference must lead to *coercive measures*, to well-adapted and active policies.[47] In whatever sense one examines this statement, it is a radical departure from the nature of traditional African international relations after 1963, when the OAU was formed. It is important to appreciate the context within which the AU is developing such 'principles' and norms to guide community action. What can be deduced is that by emphasizing issues of security (among a panoply of other issue-areas), the AU is developing into a regime with specific *rules, norms* and *principles* as enunciated in Article 4 of the Protocol relating to the establishment of the PSC. Its functions are spelt out in Article 6 and powers of execution in Article 7. The collective impact of these institutional mechanisms is to give operational expression to the 'new culture of peace' and the responsibility to protect.

Rules in this sense '…relate to the written rules and guidelines within the specific issue area that the signatory states essentially have voluntarily accepted to uphold'. Furthermore, and in the same vein, 'principles are the results of the development of a common understanding and collective interpretation of reality of individual incidents … that affect member states'.[48] To that end, we

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[44] Damian Lily et al., 'A Goal Oriented Approach to Governance and Security Sector Reform', International Alert, London, 2002, p. 7. For further exposition, see Kwesi Aning, *Security in the West African Sub-region: An Analysis of ECOWAS's Policies in Liberia* (Copenhagen: Reprocentre, 1998) pp. 48ff.

[45] Alpha Oumar Konare, 'Security is the African Union's priority', *African Geopolitics*, No. 13, winter 2004.

[46] Cilliers, 'The African Standby Force: An update on progress', p. 4.

[47] Ibid., p. 2, emphasis added.

[48] Aning, *Security in the West African Sub-region.*

raise several questions which will need to be disaggregated and examined for future research. First, what explains this radical shift in approach and methodology from the traditional stance of non-interference to the new stance of non-indifference? Second, what is the level of political will to deliver on the structural commitments that member states have agreed to, which allow the employment of coercive measures? Third, what role, if any, have epistemic communities played in bringing about this critical change in policy? Fourth, what circumstances will elicit a proactive response from the AU's new peace and security architecture in order to justify the view of the AU as 'exist[ing] and keep[ing] its promises of rebirth'?[49] Finally, it is important to understand the normative framework within which the AU's peace and security regime is situated, and how its relationship with the UN Security Council will evolve in relation to the maintenance of peace and security in the African continent.[50]

According to the Constitutive Act, the AU has 'the right 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'.[51] These principles were given further acceptance with the adoption of the '*Ezulwini Consensus*', which is presented by the AU as Africa's endorsement and incorporation of the responsibility to protect principle.[52]

Although the responsibility to protect or principle of non-indifference, as has been enunciated, will be challenging in praxis, it is not impossible to implement. However, what is critical in this discussion is the extent to which there is the political will to apply coercive measures in cases where the protection of vulnerable populations becomes imperative. Not only that, there might arise a situation where there is a need to disaggregate the type of coercive measures that are anticipated in terms of state size, power and influence. Therefore, it is critical that there is new thinking about how best to respond to challenges that arise from the commitment to respond coercively to major emergencies – especially in cases where the potential target is a large and powerful state.

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[49] Ibid., p. 1.

[50] Konare, 'Security is the African Union's priority', p. 3.

[51] See also Article 23(2) of the Constitutive Act. A further addition to Article 4(h) gives the AU the right of intervention in cases where 'a serious threat to legitimate order to restore peace and stability in the Member State of the Union upon the recommendation of the Peace and Security Council'.

[52] Although Articles 4 (h) and (j) exist, there are as yet no specific operational mechanisms for guiding decision-making apart from the ones taken by the PSC.

From Theory to Praxis: Darfur as a Test Case for R2P?

The AU still has a number of challenging humanitarian situations to deal with, the major ones being the crises in Darfur in western Sudan, Somalia and Zimbabwe. In this section we examine how African governments through the AU have demonstrated their responsibility to protect populations from crimes against humanity in one of the humanitarian crises on the continent today – Darfur in Sudan.

Darfur is Sudan's largest region, situated on its western border with Libya, Chad and Central Africa Republic. It comprises an area of approximately 250,000 square kilometres with a population of approximately 6 million people. African farmers such as the Fur, Msalit and Zaghwa tribes predominate in Darfur. The rest of the region consists of nomadic Arab tribes.[53] Unrest and periodic violence in Darfur are not new. On the contrary, numerous reports identify a history of tension and violence in their region dating back a decade or more.[54] Two main issues have driven the violence. First is an ethnic division between the Government of Sudan (GoS) and the non-Arab African communities in Darfur, which has led the GoS to support the Arab groups in the region. Second is an age-old economic competition between the nomadic Arabized herdsmen and the sedentary farmers of the African tribes over land use and water.[55]

What is relatively new is the sharp escalation of violence in the period from 1997 to 2003. More than 200,000 people are estimated to have died and at least 2 million displaced from their homes in Darfur since fighting broke out between GoS forces, allied *Janjaweed* militia and other armed rebel groups.[56] Atrocities such as the murder of civilians and the rape of women and girls have been widespread and continue, underscoring the need for actions to prevent crimes against humanity.

Darfur presents a particularly tough challenge relating to how the developing norms and principles described earlier in the chapter should be applied. While it is true that the GoS has reneged on the responsibility to protect the people of Darfur, it is equally true that both the AU and the wider international community have so far failed in their responsibility to protect Darfuris

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[53] Kindiki, Kithure 'Intervention to Protect Civilians in Darfur: Legal Dilemmas and Policy Imperatives', ISS Monograph Series. No. 131, May 2007, p. 3.

[54] Ibid.

[55] Ibid.

[56] Ibid. The Justice and Equality Movement is the major rebel movement in Darfur fighting against the Khartoum-backed Janjaweed.

or change government's behaviour towards them. Following the referral of the situation in Darfur to the Office of the Prosecutor of the International Criminal Court (ICC) by the UN Security Council (Resolution 1593 (2005)), which 'affirmed that justice and accountability are critical to achieve lasting peace and security in Darfur', on 14 July 2008 the ICC submitted an 'application for the issuance of an arrest warrant' against Sudan's president, Omar Hassan Ahmad Al Bashir, for genocide, crimes against humanity and war crimes.[57] The application for an arrest warrant for Al Bashir has brought the ICC onto a collision course with the AU whose immediate reaction through its PSC was to 'request the UN Security Council to postpone the process initiated by the ICC' arguing that the timing of the request for arrest warrant could jeopardize the peace process. But the ICC Prosecutor, Luis Moreno-Ocampo, has argued that his mandate was 'a legal one' in which his duty was 'to uncover the truth about the crimes' for which Al Bashir has been charged.[58] It is yet to be seen how the UN Security Council will react to the opposing stances of the ICC and the AU.

It is obvious from the disagreement over the timing of the indictment of Al Bashir that there will continue to be divergent views over how and when to apply the responsibility to protect principle. Also in a situation where the ICC appears to be pursuing justice, and not peace, while the AU is pursing peace not justice (for the time being), any attempt to make the R2P a reality needs to address the apparent conflict between peace and justice. Beyond the stances taken by the ICC and AU on the request for the issuance of a warrant of arrest for President Al Bashir, the application creates both 'big opportunities and big risks' for peace in Sudan. In terms of the opportunities, this warrant may push Sudan to comply with the international community's wishes and permit the full deployment of the AU/UN Mission in Darfur (UNAMID) and faithfully implement its side of the North-South Comprehensive Peace Agreement (CPA). But the warrant also creates risks. It may make it harder to move forward the stalled negotiation process in the North-South peace deal and undermine humanitarian efforts in Darfur. In the short-term, the chances of actually hauling the President before the Court and executing the warrant are remote. The choices available now place the international community in a dilemma. There is, however, the opportunity for the UN Security Council to exercise its

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[57] See 'Prosecutor's Statement on the Prosecutor's Application for a warrant of Arrest under Article 58 Against Omar Hassan Ahmad AL BASHIR'.

[58] For more details see 'ICC Prosecutor visits Senegal; ICC Deputy Prosecutor in Botswana: Working with African leaders to stop crimes in Darfur', http://www.icc-cpi.int/press/pressreleases/412.html, accessed 25 August 2008.

authority under Article 16 of the Rome Statutes to suspend any prosecutions for an initial 12 months, but with a caveat to renew it indefinitely. This could provide an incentive for compliance with the expectations of the international community. According to Gareth Evans, the international community faces hard policy choices in balancing the risk of such an action with the opportunities that a delay may provide. He argues that:

> The [GoS] has until now utterly failed in its responsibility to protect its own people. The judgement call the UN Security Council now has to make is whether Khartoum can be most effectively presented to stop violence and build a new Sudan by simply letting the Court process proceed, or – after assessing the regimes initial response, and continuing to monitor it thereafter- by suspending that process in the larger interest of peace.[59]

How the AU will handle the Darfur situation, especially with the indictment of President Al Bashir, will set a precedent for the future direction of the organisation under similar circumstances. While the AU calls for the delay of action against President Al Bashir, it must also demonstrate that it takes its responsibility to protect the people of Darfur seriously by taking measures to stop the killings.

Conclusion

We have demonstrated in this paper that since its birth in 2000 the AU has been taking steps to do things differently from its predecessor, the OAU. The AU now has principles and norms that mirror the R2P principle. For example, the inclusion of Article 4(h) in the AU Constitutive Act gives the clearest indication that the organization is prepared to protect the population of Africa against war crimes, genocide and crimes against humanity. The AU security architecture is also a further demonstration of the organisation's commitment to create solid institutional backing to the Constitutive Act. The Continental Early Warning Systems and the African Standby Force are among the institutions or organs that will enhance the AU's capacity to prevent conflict and deal with humanitarian crises on its own, or with minimal support from the international community. In this respect, the AU sees collaboration with its subregional organisations (RECs) and the UN as vital for achieving its objectives. But there is the need to ensure more functional and effective cooperation and coordination with regional and sub-regional arrangements. Such cooperation

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[59] www.pambazuka.org/en/category/comment/49686, accessed 1 October 2008.

and collaboration must be premised on a clear division of labour which recognises the relative advantages of each organization.

While these developments are encouraging and offer hopes and opportunities, there are challenges. The continuing fragile political situations in Somalia, Zimbabwe and Darfur in Sudan will continue to consume the AU's efforts. It is clear from the AU's seeming inability to deal firmly with these situations that the organization's R2P agenda and its drive to establish its AU PSC should cause us to be cautious about the organization's capacity to implement its commitments. What the AU's responses to the crises in Zimbabwe, Somalia and Darfur show is that the inclusion of R2P norms reflected more a sense of political necessity than a realistic assessment of its institutional capacities to deliver on its responsibilities. It remains to be seen how the AU will apply the responsibility to protect norm when its peace and security architecture has achieved full capacity. But for now, the AU's attempts to solve the continent's problems will continue to be thwarted by a lack of political will, capacity and the weak bindingness of its norms and principles amongst Member States.