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**Dilemmas of Regional Peacemaking: The Dynamics of the
AU's Response to Darfur**

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INTERNATIONAL
COOPERATION**

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List of Acronyms

AU	African Union	NAC	North Atlantic Council
AUPD	African Union High Level Panel on Darfur	OAU	Organization of African Unity
AUHIP	African Union High Level Implementation Panel on Sudan	PF	Peace Fund
AMIS	African Union Mission in Sudan	SCSL	Special Court for Sierra Leone
APF	African Peace Facility	SLA	Sudan Liberation Army
ASF	African Standby Force	SPLA/M	Sudan People's Liberation Army/ Movement
ACP	Africa Caribbean and Pacific	SADC	Southern African Development Community
CSSDCA	Conference on Security, Stability, Development and Cooperation in Africa	UNAMID	United Nations African Union Hybrid Mission in Darfur
CPA	Comprehensive Peace Agreement	UNMIS	United Nations Mission in Sudan
CEWS	Continental Early Warning System	UNSC	United Nations Security Council
CMD	Conflict Management Division		
DITF	Darfur Integrated Task Force		
DPA	Darfur Peace Agreement		
DPAIT	DPA Implementation Team		
DDDC	Darfur Darfur Dialogue and Consultation		
EU	European Union		
EC	European Commission		
PSC	Peace and Security Council		
PAE	Pacific Architects Engineers		
PSOD	Peace Support Operations Division		
POW	Panel of the Wise		
PCC	Police Contributing Country		
TCC	Troop Contributing Country		
IGAD	Intergovernmental Authority on Development		
ICTR	International Criminal Tribunal for Rwanda		
ICC	International Criminal Court		
JRRD	Justice and Reconciliation Response to Darfur		
JTRC	Justice, Truth and Reconciliation Commission		
JEM	Justice and Equality Movement		
LAS	League of Arab States		
MILOB	Military Observer		
NATO	North Atlantic Treaty Organization		

Executive Summary

The African Union's (AU) peacemaking efforts in Darfur exposed the limits of implementing its ambitious peace and security agenda, and the absence of an effective international system to support regional peacemaking efforts. This paper contends that the AU's efforts brought to the fore three critical issues: first, the gap between the AU's mandate to intervene in situations involving war crimes, crimes against humanity and genocide as provided for in its founding charter, the Constitutive Act, and its capacity to do so; second, the absence of an international system to support regional peacemaking, especially when it involves deploying complex multidimensional peace operations; finally, it brought into sharper focus the inherent tensions and contradictions surrounding existing norms and emerging concepts such as sovereignty, the responsibility to protect (R2P) and internationalized justice through the International Criminal Court (ICC). The paper focuses on the AU's two pronged strategy in Darfur: Political and Military/peacekeeping.

From the outset the AU pushed for a political settlement of the conflict in Darfur. Starting with a ceasefire agreement in 2003, AU-led mediation efforts culminated in the signing of the now largely discredited Darfur Peace Agreement (DPA) in May 2006. The DPA - a partial agreement between the Government of Sudan (GoS) and one faction of the Sudan Liberation Army (SLA) - was rejected by the non-signatories and their civilian sympathizers. Since then, the search for a political settlement has yielded minimal results. The peace process continues to suffer setbacks due to, but not limited to, the following: a lack of commitment by the GoS and the armed groups, a splintering of the armed groups into small and unwieldy entities with no clear political agenda, and conflicting signals from key regional and international actors.

On the military front, the AU deployed its second and largest peace operation, the African Union Mission in Sudan (AMIS) in 2004. AMIS which, started as a small observer force with an initial mandate to *observe, monitor* and *report* violations of the N'Djamena Ceasefire had by the end of its tenure in

2007 grown to a multi-dimensional force of over 9,000 military, police and civilian personnel with a broader mandate including the protection of civilians. However, the mission was hobbled by the absence of a political settlement or a viable peace process that it could complement. Additionally, AMIS lacked the capacity and resources to implement its mandate and deal with the complex humanitarian and security situation. This precipitated a long-drawn out transition process - as the GoS refused to consent to the deployment of UN peacekeepers - that eventually morphed into the current United Nations African Union Hybrid Mission in Darfur (UNAMID); the first of its kind.

In light of the above, this paper draws the following conclusions:

First, despite acute resource constraints, the AU's response to the Darfur crisis demonstrated that it enjoys legitimacy among its members and internationally beyond the continent. The unanimity of the AU's Peace and Security Council (PSC) decisions, the contribution of uniformed personnel by its members, coupled with international financial and logistics support - though inadequate - manifested its legitimacy.

Second, the intervention exposed the gap between the ambitious peace and security agenda and the capacity to implement it. Given the inability of its members to provide materiel for AMIS, the AU relied almost entirely on donors to support the mission. Its heavy reliance on external support highlighted the absence of a structured international mechanism for providing support to regional organizations like the AU and raised critical questions about issues of ownership, sustainability, flexibility and predictability.

Third, and related to the above, the AU's military/peacekeeping response floundered due to four key reasons.

I. Lack of cooperation by the feuding parties, including the GoS and the armed groups, undermined its overall peacekeeping venture.

II. The disconnect between the decisions of the PSC and the capacity of the AU Commission to translate those decisions into action.

III. AMIS's mandate, especially the protection of civilians, proved too ambitious given the paltry troop-to-task ratio and the lack of adequate force multipliers.

IV. Resources - human and materiel - and donor support proved inadequate to the task of meeting the challenges of the mission.

Fourth, the issue of consent – a cardinal principle of UN peacekeeping - featured prominently after the AU proposed to handover its mission to the UN. For the AU, the issue of consent goes to the heart of its interventionist security regime, which sanctions intervention in situations involving war crimes, crimes against humanity and genocide. Thus, lack of cooperation by the GoS exposed the complexities of implementing the AU's interventionist principles. Moreover, it highlighted the challenges of implementing international concepts such as R2P, partly due to disagreement over the threshold for intervention, even in cases involving war crimes and crimes against humanity, as is allegedly the case in Darfur.

Fifth, divisions among Permanent Members of the UN Security Council (UNSC) and other actors complicated the AU's peacemaking venture by contributing to the intransigence of the GoS and the armed groups. Meanwhile, the ICC's indictment of president Omar Bashir led to open rifts between the PSC and the UNSC seriously testing their evolving partnership. This prompted the PSC to establish the African Union High-Level Panel on Darfur (AUPD) to look into the best way of dealing with the lingering dilemma. The recommendations of the AUPD provide a solid roadmap on how to address the Darfur conflict and other conflicts in Sudan.

Finally, the 'willingness and capacity' gap that hobbled the AU's peacemaking efforts exposed the risks of mounting a response without the necessary resources. It was obvious that the GoS preferred the AU because it was a more benign option compared to other forms of international intervention. Meanwhile, the presence of AMIS served as an alibi for the international community as countries responded to pressure from advocacy groups by citing their support for the mission despite the full knowledge of the inadequacies of that support.

Recommendations

The paper makes the following recommendations:

I. The AU should establish a high-level expert working group to clarify its position on critical principles such as sovereignty, consent and the responsibility to protect in light of the normative shift at the AU from non-intervention to non-indifference.

II. The AU should ensure that its peacemaking efforts are guided by the principle of ownership as that would guarantee the acceptance of peace agreements by feuding parties and their supporters, thereby enhancing the legitimacy of such agreements.

III. Before authorizing the deployment of a peace operation or an increase of personnel to an existing mission, the PSC should consult very closely with the AU Commission and key troop and police contributors.

IV. The PSC should ensure that when it issues mandates, they are informed by i) a comprehensive assessment of the situation in a given theatre, and ii) the available resources – human and materiel - for the proposed deployment.

V. The AU should continue to urge its members to contribute to the Peace Fund and explore other options such as a peace tax to strengthen its internal funding mechanisms to support its peacemaking initiatives as it continues to negotiate options for the use of UN assessed contributions to support its operations.

VI. Dialogue between the UNSC and PSC should be increased by holding at least two annual meetings: first, at the foreign minister level and second, at the head-of-state level.

VII. The AU should approach strengthening its civilian capacities as a matter of urgency. Moreover, it should

increase its engagement with national and regional centers of excellence in order to increase the number of troop and police contributors, qualitatively and quantitatively.

VIII. The AU should establish a high-level expert working group consisting of representatives of the Peace and Security Council and civil society to explore the substantive and practical aspects of establishing an African criminal court to deal with the growing violations of humanitarian and human rights law in conflict zones across the continent. Sustainable peace cannot be built on impunity.

IX. The AU should ensure that critical aspects of the road map recommended by the AUPD such as the establishment of a hybrid court and a truth commission are implemented.

X. The AU should establish a Best Practices Unit in its Peace Support Operations Division (PSOD) to ensure that lessons from past and current peace operations are properly captured and applied to future planning.

XI. The AU should establish a standing Mediation Support Unit to support its peacemaking efforts.**

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Introduction

Darfur has proved to be a major test of the African Union's (AU) capacity to undertake complex peacemaking, especially when it involves the deployment of large numbers of peacekeepers. The brutal conflict had become synonymous with genocide especially in the United States; although most, including the AU have not described it in those terms. As the conflict between the Government of Sudan (GoS) and the southern-based Sudan People's Liberation Army/Movement (SPLA/M) raged for over two decades, the long-standing tensions in Darfur were neglected. Negotiations led by the Intergovernmental Authority on Development (IGAD) in South Sudan culminated in the Comprehensive Peace Agreement (CPA) in January 2005, marking the end of one of Africa's longest running civil war; a conflict that had claimed approximately two million lives and displaced millions more.

However, the historic marginalization of Darfur by the central government rendered celebrations marking the end of the north-south conflict short-lived, as news of mass murder involving government soldiers and their infamous militia ally, the *Janjaweed*, eclipsed the much celebrated deal. In Darfur, the GoS and *Janjaweed* were initially pitted against the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM), the two groups that had taken up arms against the Islamist government in early 2003.

As the international media focused its radar on Darfur, the gravity of the situation was exposed with scenes of death and destruction. Images of violence evoked memories of earlier atrocities, most notably, the 1994 Rwandan genocide, leading to calls for intervention to avert a repeat of that tragedy. These calls were led by US civil society and human rights organisations concerned that the administration of President George W. Bush's preoccupation with the war on terror would overshadow the violence in Darfur. The ENOUGH Project and the Save Darfur Coalition are two of the most notable civil society movements to advocate

sustained international response and attention to the Darfur crisis.

At the same time, prominent US political figures such as Susan Rice, current US Permanent Representative to the UN; John Prendergast, former Director of African Affairs at the National Security Council and Special Advisor at the Department of State during the administration of President Bill Clinton; and Anthony Lake, former Assistant to President Clinton on National Security Affairs, have been in the forefront in calling for robust international action in Darfur. Their efforts received a temporary boost when former President George W. Bush and Secretary of State Colin Powell described the conflict as genocide. But the momentum was short-lived as the pronouncements were not followed by a robust response, politically or militarily.

Nonetheless human rights activists and other observers saw Darfur as a perfect case to implement the much vaunted concept of the responsibility to protect (R2P).¹ Additionally, some observers viewed Darfur as an 'opportunity' for the international community to salvage its image after its indifference to the Rwandan genocide. But, the much anticipated response failed to transcend the rhetoric; instead it degenerated into arguments about the right labels for what was unfolding in Darfur, reminiscent of similar debates during the genocide in Rwanda. It was soon evident that there would be no immediate robust intervention and that the people of Darfur, like the hundreds of thousands of Rwandans, were at the mercy of their killers. This prompted African leaders to invoke the norms and instruments of the newly established AU to deal with the conflict.

This paper therefore analyzes the challenges surrounding the AU's response to the Darfur crisis. It explores the underlying challenges of adopting a regional approach – i.e., the AU's response - to an international problem. As discussed above, the conflict in Darfur was internationalized

due to allegations of war crimes and genocide and the vocal advocacy by US-led civil society and human rights groups that had adopted the crisis as a major part of their advocacy. The analysis is centred on the AU's two-pronged strategy; a political track, pursuing dialogue between the parties, and a military track, deploying a peacekeeping force to monitor compliance with peace agreements and protect civilians. Both tracks were supported by a range of international actors including the United Nations, the European Union and individual states, however, in the end, the support proved inadequate and ineffective as the AU's peacekeeping mission was continuously hampered by lack of resources. The AU's peacemaking efforts were further complicated and often contradicted by the complexities surrounding existing norms and emerging concepts such as consent, R2P and internationalized justice through the International Criminal Court (ICC).

Background to the AU

Just as World War II marked a turning point in Europe, the genocide in Rwanda had a similar effect in Africa as it galvanized the African discourse about the need to develop effective prevention and response mechanisms on the continent. The impact of the genocide was captured by former South African President Nelson Mandela, when he openly challenged his peers at a Summit of Heads of State and Government of the Organization of African Unity (OAU) in Tunis in June 1994, for failing to act to stem the tide of violence that engulfed Rwanda. Emphasizing the interwoven nature of democracy, human rights, and development, Mandela challenged the African leadership to play an active role in preventing and mitigating the effects of conflict by among other things, improving cooperation and developing effective response mechanisms.²

Prior to the genocide in Rwanda, the OAU had established its Mechanism for Conflict Prevention, Management and

Resolution³ which was adopted at the Cairo summit in 1993. However, from the outset, it was clear that conflict prevention was the primary focus of the Mechanism, but that meant little to the thousands of civilians who were already trapped in violent intra-state conflicts.

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Consequently, by the early 1990s, some African states – led by Nigeria, Libya, Senegal, and South Africa – recognized that the changing nature of conflicts, from interstate to intrastate wars with a large number of

non-state actors who typically disregarded international humanitarian law, required a robust response. This was difficult to achieve through the OAU due to a normative constraint, most notably the principle of non-intervention. Hence, the desire not to be deterred by existing normative constraints and the determination to provide adequate responses to the brutal conflicts on the continent paved the way for the AU, which was launched in Durban, South Africa, in July 2002.

The Constitutive Act: An Interventionist Regime

The Constitutive Act establishing the AU is perhaps the most interventionist regime anywhere in the world. It provides for “the right of the Union to intervene in a Member State pursuant to a decision by the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity,” and “the right of Member States to request intervention from the Union in order to restore peace and security.”⁴ This was a significant shift, as the principle of non-indifference would supersede that of non-intervention in situations involving war crimes, crimes against humanity and

genocide. The paradigm shift in Africa coincided with similar trends at the global level, where there was a growing perception especially among middle powers that the concept of security needed to be redefined to include non-military issues. In other words, human security should take precedent over the state-centric approach that held sway throughout the Cold War.

To implement its ambitious peace and security agenda, the AU established the Peace and Security Council⁵ as the “standing decision-making organ for the prevention, management and resolution of conflicts.”⁶ It is meant to act as a collective security and early warning instrument for timely response to both existing and emerging conflicts and crises in Africa.

The PSC is to be supported by the Commission, a Panel of the Wise, a Continental Early Warning System, an African Standby Force (ASF) and the Peace Fund. A Panel of the Wise consisting of prominent Africans was established in 2006. Plans are also under way to operationalize the African Standby Force and the continental early warning system.⁷ Effort to operationalize the ASF has registered varying degrees of progress, with most sub-regions adopting the policy and legal frameworks for establishing the regional standby brigades; the pillars of the ASF.

Having adopted this ‘interventionist’ regime, the AU’s intervention in Darfur was not surprising. It had to live up to its principles, thereby separating itself from the policies of its predecessor, the OAU, which was criticized for its inaction in the face of gross violations of human rights. Moreover, the AU was keen to insulate the Naivasha Peace process between the GoS and SPLM from the conflict in Darfur. Consequently, the AU pursued a military/peacekeeping and a political track to dealing with the conflict, both of which will be discussed in turn.

The Political Track

From the start, the AU pushed for a negotiated settlement to the conflict in Darfur. Mediation efforts led by the AU and President Idris Dèby of Chad culminated in the first ceasefire agreement between the GoS and the SLA in September 2003. But growing tensions between Sudan and Chad ended the latter’s role in the peace process. The hostility between the two countries came to a head in 2008 with rebel advances on their respective capitals. The attacks were widely viewed as a tit-for-tat policy by the two rival governments. Meanwhile, peace talks continued under the auspices of the AU, culminating two years later in the Darfur Peace Agreement (DPA) between the GoS and the SLA led by Mini Minnawi. Signed on 6

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led by Abdoul Wahid. The DPA was further undermined by the divisions among the armed groups along ethnic lines, pitting the Zaghawa against others, most notably, the Fur, the largest ethnic group in Darfur. This rift led to increased frictions among the armed groups and their civilian sympathizers in the internally displaced persons camps and continues to hinder efforts at reaching a political settlement.

The Darfur Peace Agreement (DPA)

Despite its flaws, the DPA attempted to address the contentious issues of *security, power and wealth* sharing, but it failed as it was rejected by two key faction leaders and their followers in Darfur. Unsurprisingly, the post-DPA period witnessed an increased splintering of the armed

groups leading to the emergence of various groups with no clear political agenda, further complicating the mediation efforts. Implementation of the DPA proved to be a tricky challenge for the AU, especially as the non-signatories viewed the organization as biased due to its role in negotiating the agreement. This resulted in a marked increase in armed attacks on AMIS personnel, hindering its activities. The attack on an AU base in Haskanita in September 2007 that left 12 peacekeepers dead and many more injured was the largest single attack on AMIS. The ICC has since brought charges against Bahar Idriss Abu Garda, the leader of the group that is believed to have carried out the attack. In a surprise move Garda voluntarily surrendered to the ICC in May 2009; the first such voluntary surrender to the Court.⁸ However, in a surprise twist and a blow to the ICC prosecutor in February 2010, judges of the court dropped charges against Garda citing lack of evidence. These attacks manifested a wider deterioration of security due to the weakening of the command and control structures of the armed groups and open hostility to the AMIS. The renewed fighting exacerbated the humanitarian situation.

Despite these challenges, the AU established the DPA Implementation Team (DPAIT) with a mandate to spearhead the implementation of the agreement. The DPAIT was to work closely with the Chairperson of the Darfur-Darfur Dialogue and Consultation (DDDC). The DDDC was to address issues ranging from security, claims of marginalization and exclusion and socio-economic development to reconciliation. It was envisaged as a bottom-up approach to remedy some of the anomalies that resulted from the top-down approach of the Abuja peace process. The central aim was to increase the local population's sense of ownership of the peace process, thereby legitimizing it. Moreover, it was meant to encourage dialogue among the people of Darfur. But, since the vast majority of the people had already rejected the DPA, efforts to convene the DDDC were obstructed, undercutting the bottom-up peacemaking approach that had been envisaged.

However, the AU's PSC endorsed the DPA and set a deadline for the non-signatories to sign or face sanctions.⁹ Unsurprisingly, the groups failed to comply, forcing the PSC to impose targeted sanctions including a travel ban and an asset freeze on the leadership of the factions who were now viewed as spoilers.¹⁰ But the sanctions were largely symbolic since the AU lacked the leverage and means to enforce them. Additionally, the move put the AU at loggerheads with the affected groups, who were already sceptical about its role. Consequently, disagreements about the DPA weakened the AU's peacemaking efforts plunging the entire peace process into disarray.

Throughout the talks there was undue emphasis on concluding the negotiations, even after the parties had repeatedly demonstrated a weak commitment to the peace process and no will to implement any potential agreement.

From the start, the inter-Sudanese peace talks in Abuja were plagued by differences between the AU and UN, the other partner in the peace process. While the UN favoured a

more phased approach, the AU aimed for a comprehensive agreement, because the parties had signed earlier agreements, which in its view provided a basis for a final settlement.¹¹ Although these differences were minor, the mediation efforts faltered due to what some have described as *deadline diplomacy* and a lack of commitment by the parties.¹² Throughout the talks there was undue emphasis on concluding the negotiations, even after the parties had repeatedly demonstrated a weak commitment to the peace process and no will to implement any potential agreement. This situation was summed up by the head of the AU mediation team Sam Ibok, when he stated that "...our experience over the past sixteen months has led us to conclude that there is neither good faith nor commitment on the part of the any of the parties."¹³

Nonetheless, the pressure to conclude the negotiations was relentless due to a combination of factors. The donors, most notably, the “quartet” - the United States, Britain, Canada and the EU - who funded the talks, repeatedly threatened to withhold their financial support if the parties failed to reach an agreement. The quartet and the UN believed that signing an agreement would pave the way for a transition from the under-resourced AMIS to a more robust UN peace operation. This logic failed since even after the DPA was signed, the GoS refused to consent to the transition, an issue that will be returned to later. The government’s intransigence over the transition coupled with the anti-DPA propaganda by the non-signatories exposed the weakness of the logic that partly drove the ‘deadline diplomacy.’¹⁴

The flawed logic of this approach was captured by Laurie Nathan who argued that “the deadline diplomacy was the strategy and the plan, and it was far too simplistic, vacuous, and rigid for this purpose...” adding that “the external pressure fixed in place a process and trajectory in which neither the mediator nor the parties had any confidence, but from which little deviation was possible.”¹⁵ The approach failed partly due to the absence of penalties for non-compliance. As one deadline after another was missed, the parties realized that the threats were hollow and were therefore not inclined to abide by future deadlines. A major consequence of this approach was the rejection of the DPA since it was viewed as an output that was driven by external imperatives which were out of sync with their demands. The non-signatories regarded the process as an attempt to impose peace without adequately addressing the issues at the heart of the conflict. Perhaps more time might have helped to narrow the gap between the parties.

“The peace negotiations were launched...at a time when both parties believed they could advance their positions on the battlefield. Therefore, each was a reluctant negotiator from the outset. Until the very end of the talks...the parties tended to see the Abuja talks as a tactical forum, rather than the central stage on which a solution to Darfur’s conflict could be found.”

The peace talks were also confronted with questions of timeliness as summed up by a senior AU official who observed that: “the peace negotiations were launched...at a time when both parties believed they could advance their positions on the battlefield. Therefore, each was a reluctant negotiator from the outset. Until the very end of the talks...the parties tended to see the Abuja talks as a tactical forum, rather than the central stage on which a solution to Darfur’s conflict could be found.”¹⁶ In the end, lack of commitment by the GoS and the armed groups doomed the agreement from the start as their actions contributed to undermining the security situation with more actors emerging from the splintering and their differences widened. Furthermore, it removed any possibility of implementing what was already a weak agreement.

While the signatories of the DPA used it as a license to mount military offensives, the non-signatories embarked on a propaganda campaign to discredit the agreement by invoking the ethnic card. The end result was deepened animosity and a poisoned peacemaking environ-

ment. This undermined the AU’s peacemaking efforts as its mission on the ground struggled to keep a non-existent peace and the negotiations faltered.

Joint UN-AU Mediation

Meanwhile, efforts by the Joint AU-UN mediation team to jump start the peace process has yet to gain traction. Initially led by two mediators, Salim Ahmed Salim and Jan Eliasson from the AU-UN respectively, the joint mediation is tasked with bringing the warring parties together, a task that it failed to accomplish. The AU and UN were criticized for appointing two part-time mediators for a process that

required fulltime engagement. Following this criticism they appointed Djibril Yipènè Bassolé, former Foreign Minister of Burkina Faso, as the joint mediator. But Bassolé has yet to reinvigorate the peace process as the parties showed little inclination to negotiate, as some of the armed groups were emboldened by the ICC's arrest warrant for president Bashir issued in March 2009--an issue that will be discussed in detail later.

Following the indictment, some of the groups refused to negotiate with the government arguing that they would not negotiate with an indicted war criminal. The negative effects of the indictment on the peace process were echoed by Senegalese President, Abdoulaye Wade, who warned that "the accusations of President Bashir by the International Criminal Court have come to complicate things, because the rebels now say, how can we now negotiate with a president who's going to go to prison, so that's what caused a setback in negotiations with the rebels."¹⁷

Although Qatar's hosting of the joint AU-UN peace process is laudable, it introduces an additional layer of complication given that Qatar is not viewed as an impartial actor by all the parties. This is due largely to Qatar's support for the government of Sudan during its tenure as a non-permanent member of the UN Security Council (UNSC). Additionally, the tug-of-war between Qatar and Egypt over the hosting of the peace process could potentially presents the parties with alternative forums. This would break a cardinal rule in mediation, the need for unity and to speak with one voice. Failure to adhere to this rule has often resulted in 'forum shopping' by parties to a conflict giving them an opportunity to play one mediator against another. The joint mediation's involvement in the Qatari peace process, the Qatar-Egypt rivalry and other initiatives threatens to undermine its role as it risks ceding convening powers to actors that lack the confidence of all the parties.

At the time of writing, the Joint mediation's efforts appear to have gained some momentum with the holding of workshops for civil society from Darfur so as to give them a more prominent role in the peace process. However, there were critical hurdles that needed to be addressed if the outcome of the Qatari peace process is not to suffer the same fate as previous efforts, especially the Abuja peace process.

Internationalized Justice

Meanwhile, the arrest warrant¹⁸ issued for President Bashir by the ICC, on 4 March 2009, added another complex layer to the crisis, threatening to overshadow the joint UN-AU peacemaking in Darfur and potentially erode implementation of the CPA. Additionally, open rifts between the UNSC and the PSC over the indictment tested their evolving partnership, with negative consequences for the faltering Darfur peace process. The issue split the two Councils, as the PSC made repeated requests to UNSC to suspend the indictment by invoking Article 16 of the Rome Statute. The PSC's requests failed to elicit a positive

response from the UNSC. Three Permanent Members of the Security Council - the UK, US and France - insisted that the ICC process should be allowed to run its course. For the most part, the trio maintained their support for the indictment, despite some vacillations by President Nicolas Sarkozy of France who on several occasions offered to support a suspension of the indictment if Sudan agreed to meet certain conditions, including full cooperation with the United Nations/African Union Hybrid Mission in Darfur (UNAMID). These offers

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elapsed but had the unintended effect of widening the rift between the two Councils given that the UNSC might have considered France's request for a suspension based on the usual *quid pro quo* among the five permanent members of the UNSC even after it had repeatedly ignored similar requests by the PSC.

The US - though not a State Party to the ICC - under President George W. Bush and Barack Obama, supported the indictment. However, China and Russia, the other two Permanent Members of the UNSC, raised doubts about the efficacy of the move arguing that the GoS should be given time to deal with what they view as a domestic affair. However, despite their objections, neither has offered to champion the AU's call for a suspension of the indictment.

Although the AU did not object to the indictment *per se*, it expressed alarm at the poor *timing*, which in its view could worsen the Darfur crisis, despite the fact that two African members of the UNSC (Benin and Tanzania) had voted in support of the referral to the ICC.¹⁹ The AU was concerned that the timing would complicate peacemaking efforts in Darfur and potentially undermine the CPA.²⁰ The AU also expressed concerns about the safety of peacekeeping personnel in Darfur, the bulk of whom were Africans, fearing that any reprisals by Khartoum and its militia allies would be directed at them. The AU's response to the warrant was summed up by Jean Ping, the Chairperson of the AU Commission who tried to walk the tightrope between dealing with peace and justice when he stated that "...we support the fight against impunity...but we say that peace and justice should not collide, that the need for justice should not override the need for peace."²¹ Supporters of the AU on the issue of timing, including this author, point to the fact that, unlike the tribunals for the former Yugoslavia and Rwanda, and the Special Court for Sierra Leone, the ICC

is a permanent institution and as such, its activities are not dictated by timelines, as is the case with the *ad hoc* tribunals. They therefore questioned the rationale behind the ICC's ill-timed move given its potential consequences on Sudanese and regional stability.

The African Union High-Level Panel on Darfur

More generally, the indictment touches on the dilemma of whether peace should be pursued before justice or justice before peace, a challenge that confronts most post-conflict societies. This is a fundamental challenge for the AU and the international community given its engagement in efforts to resolve conflicts that are characterized by serious crimes that run contrary to its founding principles.

The establishment of the African Union High-Level Panel on Darfur (AUPD) by the PSC following the warrant for President Bashir was perhaps the most practical step by the AU to deal with this lingering dilemma. The Panel, consisting of eminent Africans led by former South African President

Thabo Mbeki was mandated to "examine the situation in depth and submit recommendations to the Council on how best the issues of accountability and combating impunity, on the one hand, and reconcili-

ation and healing on the other, could be effectively and comprehensively addressed..."²² The AUPD was established against the backdrop of a growing concern among African leaders of what they perceive as the abuse of the principle of universal jurisdiction. These concerns were described by a 2008 AU Summit as "...a development that could endanger International Law, order and security"²³ pointing to what the Summit viewed as the political na-

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ture of legal proceedings initiated by non-African judges, most notably from France and Spain, against officials in the current government of Rwanda, including President Paul Kagame. The actions of these judges they argued violated Rwanda's sovereignty and territorial integrity. Subsequently, the Summit called on its members to disregard such warrants and EU member states to impose a moratorium on any arrests until the AU, EU and UN have had time to discuss the complex diplomatic, political and legal issues involved.²⁴

The AUPD marks an important step in the AU's response to the need to strike an appropriate balance between dealing with impunity and promoting peace and reconciliation. However, in the absence of an AU framework and/or capacity to tackle the perpetrators of such crimes, the UN has stepped in through ad hoc mechanisms most notably, the International Criminal Tribunal for Rwanda²⁵ (ICTR) and the Special Court for Sierra Leone²⁶ (SCSL), to deal with impunity. But the operations of the Tribunal and the Special Court brought to the fore several issues relating to *ownership, cost and legacy*. The courts have been criticized for the undue influence of the international community over their operation - especially the SCSL which is a hybrid court - partly a function of the fact that funding, for the SCSL was provided primarily by Western countries. At issue also, was the high cost of the trials in relation to the number of persons being tried in the face of questions about the legacy of the Courts, specifically, their impact on national judicial systems.²⁷

Despite initial reservations about its impartiality, the AUPD's recommendations were critical of the GoS. The AUPD criticized the GoS's response to crimes in Darfur as "...ineffective and confusing...."²⁸ Additionally, and perhaps more disappointing to President Bashir, the AUPD did not take a position on his indictment by the ICC or the AU's call for a suspension of the warrant; instead, it adopted a balanced approach by

recommending *restorative* and *retributive* forms of justice through what it calls an integrated Justice and Reconciliation Response to Darfur (JRRD). It called for the establishment of a Justice, Truth and Reconciliation Commission (JTRC) and a Hybrid Criminal Court constituted by Sudanese judges and other nationalities. The latter, which is more contentious, is to ensure that more people are held accountable since the ICC can only handle a few cases; and this is perhaps an implicit acknowledgement of the ICC's role in the search for justice in Darfur. In addition, the AUPD recommended

the use of traditional justice mechanisms to try perpetrators at the community level.²⁹

The AUPD, however, hinted at the need for flexibility by the UNSC and the ICC, indirectly invoking the complementarity

principle in the Rome Statute which requires the ICC to defer to national authorities if they demonstrate willingness and capability to prosecute alleged culprits. By all accounts, the AUPD's recommendations are far-reaching and ground breaking, especially the recommendation for a hybrid court. Now it remains to be seen whether Khartoum would comply with the recommendations and if it fails to do so, how the AU would ensure that the GoS complies with its recommendations. The establishment of the AU High Level Implementation Panel on Sudan (AUHIP) consisting of the three former Heads of State who produced the AUPD report is a step in the right direction. However, early indications are not promising since the government has already rejected the recommendation for the establishment of a hybrid court, because that would be a violation of its constitution, but it accepts the other recommendations in principle.

By all accounts, the AUPD's recommendations are far-reaching and ground breaking, especially the recommendation for a hybrid court. Now it remains to be seen whether Khartoum would comply with the recommendations and if it fails to do so, how the AU would ensure that the GoS complies with its recommendations.

In spite of these far-reaching recommendations, the AUPD's report was dealt a blow by the AU's decision not to cooperate with the ICC in arresting President Bashir.³⁰ Following the decision, some armed groups in Darfur refused to meet with the AUPD as they questioned the impartiality of the AU and the Chairperson of the AUPD, former president Mbeki. But the decision not to cooperate with the ICC came as a little surprise given Libyan President and AU Chairperson Colonel Muammar Gaddafi's support for President Bashir and his staunch opposition to the ICC.³¹ Efforts to present the decision as one that was based on consensus failed as several member states (Botswana, Ghana, Chad and South Africa) distanced themselves from it, promising to abide by their treaty obligations. Although Ghana, Botswana, and South Africa rejected the decision, Chad was the only country that officially registered its reservation when the decision was taken in Tripoli. This was however, not surprising given the bad blood between Khartoum and Ndjamena. It was however, apparent that even some state parties that objected to the move did so out of frustration with the UNSC which had ignored the PSC's repeated requests for a suspension of the indictment.

This frustration was expressed by Ghana's Foreign Minister – despite his country's opposition to the decision – when he stated that “we have been a little unhappy about the whole process...the AU actually addressed a resolution to the Security Council asking the SC to defer the warrant for one year, and it was virtually ignored. That we thought was a slap.”³² Thus, the AU's decision not to cooperate with the ICC was directed at the UNSC for being unresponsive to its request; the failure of the ICC to garner support is therefore collateral damage suffered in the failed dialogue between the two Councils. This development does not bode well for

the partnership between the two, given that the bulk of the UNSC's work is on Africa and the growing profile of the PSC on the continent and at the international level. How such differences are dealt with in the future would determine the strength of partnership between the two institutions.

Meanwhile, the response of individual AU member states to the indictment varied. While Senegal – the first African signatory of the Rome Statute – and others voiced their reservations over the move, Botswana for its part applauded it, while Libya forcefully rejected it, calling on African State Parties to withdraw their membership from the ICC. Although a mass walk-out by the African

Although a mass walk-out by the African State Parties as advocated by Libya is remote, the ICC needs to embark on a charm offensive to fend off criticisms of bias from certain African countries including the signatories to the Rome Statutes. Part of this offensive should include a clear demonstration by the ICC that it can go where the evidence leads it and is not deterred by the whims of the powerful members of the international community, as appears to be the case at the moment.

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the international community, as appears to be the case at the moment. The stakes are high for both; it is not in the interest of either of them to be seen as obstructing justice or peace. The challenge is how to ensure that peace and justice are viewed as complementary and not mutually exclusive.

The indictment of President Bashir exposed the fault lines in Afro-Arab relations in the AU and beyond. The responses of Arab members of the AU and their sub-Saharan counterparts were starkly different; sub-Saharan members fa-

vored the move while their counterparts in the North objected to it. While these divisions were less evident in voting patterns in the AU's Peace and Security Council (PSC), they were however, evident in the UN Security Council (UNSC) where Arab members of the Council either voted against actions directed at the GoS or abstained. The differences became more pronounced following the warrant of arrest for President Bashir and the AU's decision not to cooperate with the ICC. North African states, most notably Libya pushed for the decision, as some sub-Saharan members broke rank with the AU. In fact, with the exception of Eritrea, Ethiopia and Zimbabwe, President Bashir's defiant visits following the warrant were limited to North Africa and the Middle East. He canceled several planned visits to South Africa and Uganda due to uncertainties about the response of authorities in those countries.³³ Additionally, President Bashir skipped the special PSC summit in Abuja, Nigeria, which was convened to discuss the AUPDI report.

Plans by the AU to establish an African criminal justice mechanism emerged as one of the consequences of the ICC's indictment of President Bashir and growing perceptions among African leaders about abuse of the principle of universal jurisdiction. A recent meeting of the AU's Executive Council in Kampala, Uganda endorsed proposals to establish an African court with criminal jurisdiction.³⁴ While some might see this as an attempt to circumvent the ICC, this is a laudable move that could ensure African ownership on the one hand and accountability for egregious crimes on the other. But in order for such a mechanism to be effective and credible, the AU needs to take concrete steps to bridge the gap between its political pronouncements and its poor record of implementation due largely to an acute commitment gap in terms of resources. Failure to address this chasm would undercut its ownership claims and weaken its capacity to implement its intrusive peace and security agenda.

At the institutional level the AU's response reveals important differences between its two key decision making organs, the

Summit of Heads of State and Government and the PSC:

First, and less surprising, the Summit of Heads of State is more political, and its actions are often driven by the political outlook of the chair of its rotating presidency. For instance, Libya - in its capacity as the AU Chair - strongly pushed for the decision not to cooperate with the ICC. The decision was subsequently repudiated by several members on procedural and substantive grounds. From the substantive standpoint, the decision put African States Parties to the ICC at odds with

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their treaty obligations. Moreover, Libya was accused of failing to respect the laid down procedures in the debates leading to the decision and even arm-twisted

some of the smaller countries into supporting its position. The subsequent fallout from this decision demonstrates the challenges of achieving consensus at the Summit level. Libya's role in this instance demonstrated the impact of the chair of the AU on its peacemaking initiatives.

Additionally, Summit meetings are susceptible to horse-trading due to the diverse and varying interests of member states. These interests are often shaped by national, sub-regional or other considerations. For instance, countries from the same sub-region tend to band together on issues that affect them directly. Generally, the position of members of a particular sub-region is shaped by the posture of regional hegemons: Nigeria in West Africa, South Africa in southern Africa, Egypt/Libya/ Algeria in North Africa and Kenya/ Ethiopia in the broader horn of Africa.

Second, though characterized by similar dynamics, the PSC is a smaller – at 15 members - and more manageable group where decisions are based on consensus or two-thirds majority. While PSC is undoubtedly driven by the national interests of its members, the PSC's call for the suspension of the indictment appears to be less political for the following reasons. First, in calling for the suspension, the AU did not dispute the indictment, it merely advocated for proper timing to ensure that its peacemaking efforts are not jeopardized.³⁵ This is consistent with its position on the dilemma of peace and justice. In the eyes of the AU, the two are not mutually exclusive but instead are mutually reinforcing. Second, the PSC anchored its call for the suspension on Article 16 of the Rome Statute, which empowers the UNSC to defer investigation or prosecution of a particular case if and when the need arises.³⁶ The PSC position was less political because it did not amount to a rebuttal of the ICC's indictment. The PSC's apolitical stance in this instance can be attributed to the fact that its sub-Saharan members – the majority on the Council - are more concerned with the human rights violations in Darfur.³⁷ Despite the fact that none of the 15 members wields a veto power, sub-Saharan members can effectively exercise a veto because they account for the bulk of the 15 members of the Council. This does not imply that there is a standing consensus among this group; it is not unusual for voting by this group to follow sub-regional positions.

For instance, countries from Southern Africa tend to caucus under the Southern African Development Community (SADC) just as their counterparts from other sub-regions. However, this group's preoccupation with the plight of

civilians in Darfur shaped the PSC's more principled response in contrast to the overtly political nature of the Summit's decision.

The Military/Peacekeeping Track

On the military/peacekeeping front, the PSC authorized the deployment of AMIS to monitor compliance with the N'djamena and subsequent agreements.³⁸ AMIS, comprising military and civilian staff, was initially mandated to carry out investigations, verifications, monitor and report compliance with the ceasefire agreements.³⁹ However, as the security situation deteriorated, the PSC incrementally increased the number of AMIS personnel from the initial hand-full of observers and protection forces to a multidimensional force consisting of thousands of military, civilian and police personnel. The enhanced mission was also given a broader mandate, including to "protect civilians ...within its *resources* and *capability* (emphasis mine)."⁴⁰

It was soon evident that the AU lacked the capacity and resources to adequately implement its mandate especially, the protection of civilians. This significantly undermined AMIS's standing with the armed groups and the internally displaced persons in Darfur. Consequently, a combination of factors including the continued deterioration of the security situation, lack of cooperation from the Government and the other warring parties, discord among the various armed groups, the consequent humanitarian challenge and most importantly, the absence of a peace to keep or a viable political process, forced the AU to propose a transition to a more robust UN force.⁴¹

Disagreements over the proposed transition proved to be a major sticking point, exposing two key challenges for the AU. First, that effort to implement its intrusive peace and security agenda even in situations involving egregious crimes would be inhibited by political and operational limitations. Second, it exposed the challenges facing the AU in eliciting compliance from intransigent members

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Transition to Hybridity

The growing insecurity and the additional mandated tasks from the DPA served as strong imperatives for a transition from AMIS to a UN force. As the under resourced peacekeepers had proved incapable of addressing the mounting security and humanitarian problems, the PSC called for "...a transition from AMIS to a UN operation, within the framework of the partnership between the AU and the United Nations."⁴² The PSC however, stressed that the transition should take place only with the consent of the Government of Sudan and on the understanding that the African character of the UN mission would be maintained, including its composition and leadership.⁴³

If these caveats were meant to appease the GoS, they failed, as President Bashir rejected the proposal arguing that the AU lacked the mandate to handover its mission to another organization. Disagreements over the proposed transition proved to be a major sticking point, exposing two key challenges for the AU. First, that effort to implement its intrusive peace and security agenda even in situations involving egregious crimes would be inhibited by political and operational limitations. Second, it exposed the challenges facing the AU in eliciting compliance from intransigent members.

The UNSC welcomed the PSC's decision and requested that the Secretary-General embark on contingency planning to explore options for transitioning to a UN operation.⁴⁴ The UNSC visited Sudan and Chad with the aim of boosting the DPA and paving the way for the proposed transition. The UNSC held high-level consultations with members of the Government of National Unity including President Bashir. It also met with the senior leadership of the AU and AMIS

and held its first joint session with the PSC in Addis Ababa, Ethiopia. Despite their efforts, President Bashir reiterated his objection, particularly to the deployment of a UN mission under Chapter VII, which in his view would amount to a re-colonization of Sudan. He cited resolution 1679 (2006)⁴⁵ - adopted under Chapter VII - as an example of bad faith by the international community. Nonetheless, the UNSC outlined a seven-stage process that could culminate in the deployment of UN blue helmets.⁴⁶ The plan included the provision of additional resources to AMIS to ensure that there was no gap during the transition period.

Resolution 1706 and the African Vote

As the debate on transition continued, the Security Council adopted Resolution 1706 (2006)⁴⁷ expanding the mandate of the United Nations Mission in Sudan (UNMIS) to include de-

ployments in Darfur. Twelve members of the Council (including African member states, Ghana, which co-sponsored the resolution, and Congo and Tanzania) voted in favor of the Resolution, while China, Russia and Qatar abstained signaling potential obstacles to its implementation. With strong interests in Sudan by China and Russia (oil and armaments respectively), it was difficult to see how these two countries could pressure the government of Sudan without jeopardizing their relationship. Additionally, China repeated its usual refrain of not interfering in the internal affairs of member states as the duo broke ranks with the rest of the Council and advocated for a softer approach. As will be seen later, the reluctance by these countries to pressure Sudan continued over the indictment of President Bashir by the ICC. In fact, China was one of four Security Council members - along with Brazil, Algeria, and the

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United States - that abstained during the adoption of resolution 1593 (2005) referring Sudan to the ICC.⁴⁸ Algeria and Qatar's abstentions in both instances were less surprising given that the League of Arab States (LAS), to which both are members, had repeatedly voiced its support for the GoS, including its rejection of the proposed transition. Both the LAS and GoS either boycotted or sent low-level officials to the final deliberations leading up to Resolution 1706. They questioned the appropriateness of the resolution.

President Bashir sharply criticized the African members of the Security Council for supporting what his government viewed as a neo-colonial agenda; this, despite the fact that the AU, with the consent of Khartoum was leading peacemaking efforts in Darfur. In playing the neo-colonial card, President Bashir had hoped to win the sympathy of AU members, but it failed to resonate with the vast majority of members due to the following. First, having adopted an interventionist regime for serious violations of human rights, the AU could not have afforded to embrace the charges of neo-colonialism in the face of mounting evidence of Khartoum's complicity in the atrocities in Darfur. Second, with memories of the Rwandan genocide fresh in the minds of many, the AU was less sympathetic to Khartoum's invocation of the neo-colonial card. Third, the AU was frustrated by the repeated obstacles to its peacemaking efforts including obstruction of AMIS' implementation of its mandate. The AU's response suggests it is a pragmatic institution that is not necessarily driven by members that conveniently invoke the neo-colonial card to gain sympathy. Given the overwhelming evidence of the GoS's complicity in Darfur, the AU would have undermined its credibility if it had embraced Khartoum.

The Darfur crisis, more than any contemporary conflict exposed the challenges of reconciling existing principles and emerging concepts. While the crisis met or in some instances surpassed some of the thresholds for R2P type interventions – such as the complicity and unwillingness of the government of Sudan to reign in the Janjaweed and end the violence - the principle of consent proved insurmountable.

The Consent Hurdle

Meanwhile, consent, a cardinal principle of UN peacekeeping became a difficult hurdle in the proposed transition and brought to the fore two issues. First, it exposed the complexities of implementing its new norms, which call for intervention in situations involving serious crimes such as genocide. The Darfur crisis, coming a year after the inauguration of the AU with an ambitious peace and security agenda, exposed the political and operational chal-

lenges of implementing such an intrusive agenda. Politically, the AU had to walk a fine line between adhering to its stated principles, while ensuring the continued support of its members. Upholding its principles was critical as that would serve as a break from what was widely viewed as

the timid policies of its predecessor, the OAU. The OAU was criticized for its inaction in engaging member states with poor governance and human rights records. Consequently, inaction by the AU in this instance would have undermined its standing with its members and at the international level beyond Africa. There was added pressure by civil society organizations on the continent and internationally that had adopted the Darfur crisis as a major part of their advocacy. Thus, the issue highlighted the normative constraints that confronted the nascent organization.

Second, the difficulties of navigating the issue of consent drew attention to the tensions between existing international principles and emerging concepts such as the responsibility to protect (R2P). The Darfur crisis, more than any contemporary conflict exposed the challenges

of reconciling existing principles and emerging concepts. While the crisis met or in some instances surpassed some of the thresholds for R2P-type interventions – such as the complicity and unwillingness of the government of Sudan to reign in the Janjaweed and end the violence - the principle of consent proved insurmountable. Caught between these competing challenges, the international community dithered at the expense of thousands of lives in Darfur. Despite calls for the invocation of R2P as a basis for international intervention, the concept was subject to varied interpretations, exposing the lack of clarity surrounding humanitarian intervention even in situations involving egregious crimes. This lack of clarity was further complicated by the US invasion of Iraq, a controversial move that cast its shadow over any form of humanitarian intervention especially in another Muslim dominated state. These dilemmas raised several unanswered questions for the AU regarding the compatibility of the principles of sovereignty, consent, R2P and its interventionist regime.⁴⁹ Meanwhile, it was obvious that the GoS objected to a UN peace operation due to concerns that such a force could be used to arrest senior government officials indicted by the ICC; another aspect of the emerging international norms that was discussed above.

As a compromise,⁵⁰ the Security Council authorized its largest peace operation in the 21st Century, the United Nations African Union Hybrid operation in Darfur (UNAMID). However, in authorizing UNAMID and in the rush for a compromise, the UNSC ignored a major recommendation of the *Brahimi Report*⁵¹, which had warned the Council not to authorize sizeable missions until there are firm commitments of troops and critical mission support elements. Having ignored this best practice, the Council's acceptance of Khartoum's demand to 'maintain the African character of UNAMID' set the stage for serious challenges. While there is nothing wrong with promoting the principle of African ownership, operationally

it was evident that generating a large number of uniformed personnel and equipment from the continent would be a tall order. There was however, no guarantee that even without this caveat, that major Western countries would have contributed to UNAMID, since they still account for less than five percent of all UN deployments in Africa. Nonetheless, a Scandinavian offer to deploy a composite battalion was rejected by Khartoum as part of its objection to the presence of Western troops on its territory.

That the Council had to accommodate the wishes of some its members is not surprising, what is surprising is the fact that it ignored a major lesson of the past decade

and a half. Forcing the UN to accept this condition was a clever move by Khartoum and its backers since they knew that the traditional African troop contributors were overstretched, thus generating thousands of additional troops from the continent would be a

tall order.⁵² And even where they are available, they lacked critical force multipliers such as attack helicopters. Consequently, for the first year of its operation, UNAMID consisted largely of troops from AMIS and failed to generate 24 helicopters, an indication of a wider international indifference to the crisis.

However, UNAMID's biggest challenge is the fact it was deployed in a strategic vacuum. Unlike most peace operations that are deployed in support of a peace agreement with the consent of all the parties, UNAMID is mandated to support implementation of the largely discredited DPA. As discussed above, the DPA was rejected by two major armed groups, hobbling the

With less than seven thousand uniformed personnel, it was inconceivable to see how AMIS could have protected civilians in the vast and inhospitable environment in Darfur with little or no infrastructure. In the end, the mission's failure to protect civilians undermined it locally and internationally.

prospects of its implementation. Moreover, it was deployed with the grudging consent of the GoS, portending serious challenges for the mission. Given these difficulties, the mission can only implement its protection mandate to the extent that it has the resources and cooperation of the parties on the ground. While its protection mandate is important, the absence of a viable political process raises questions about the strategic direction of the mission especially as it relates to its exit strategy. Absent a political process that addresses the issues at the heart of the conflict, UNAMID is essentially an open ended commitment; a difficult proposition given the cost of the mission in the face of the ongoing economic and financial crisis. It is uncertain how long troop, police and financial contributors would continue if the parties fail to reach a negotiated settlement. Although a propitious withdrawal is out of the question, political support for the mission could wane over time.

Strategic and Operational Challenges for AMIS

Overall the AU's military/peacekeeping response floundered due to at least three key reasons. First, there was a disconnect between the decisions of the PSC and the capacity of the AU Commission to implement those decisions. Second, the AU's mandate, especially the protection of civilians, proved too ambitious. Third, the AU lacked the resources - human and materiel - to support the mission, especially as donor support proved inadequate, partly due to lack of coordination and conflicting interests. Finally, lack of cooperation by the Government of Sudan and the armed groups severely weakened and undermined its peacemaking efforts.

Throughout its engagement in Darfur, the AU suffered from a disconnect between the decisions of the PSC, the AU Commission and the response of member states. Quite often, the PSC authorized an increase in troops and police

without adequate planning and assessment of not only the needs but the ability to generate, deploy and support these personnel. These decisions were handed down to an AU Commission that was still in the process of setting up its mechanisms for undertaking peace operations. What is obvious in all these was the gap between the AU's desire to protect civilians and its lack of capacity to do so. The inverse logic whereby planning followed the decisions of the PSC instead of the other way round, raised all sorts of operational challenges for the AU as it struggled to

In the end, the broad range of international actors that supported the AU in Darfur highlighted the complex challenges of developing an interlocking system for peace operations. Issues of coordination, sustainability, flexibility and ownership arose from the various partnerships

generate adequate personnel and the resources to sustain them. The end result was a huge gulf between the decisions of the PSC and the ability of the Commission to implement

them. This was inevitable given that the conflict in Darfur erupted a year after the inauguration of the AU. These challenges were heightened by the poor burden-sharing among AU member states since only a handful of its members contributed uniformed personnel to AMIS, leading to overstretch among these contributors.⁵³

Closely related to the above was AMIS's ambitious mandate which included the protection of civilians. The mission lacked the capacity to implement its protection mandate given the deteriorating security situation, lack of cooperation by the parties and most importantly, the skewed troop-to-task ratio. With less than seven thousand uniformed personnel, it was inconceivable to see how AMIS could have protected civilians in the vast and inhospitable environment in Darfur with little or no infrastructure. In the end, the mission's failure to protect civilians undermined it locally and internationally. Public criticisms of AMIS became self-fulfilling prophecies, as the mission lost credibility, precipitating the long-drawn

out transition which eventually moped into UNAMID. The fact that the resource constraints that undermined its ability were compounded by deliberate obstruction by the government of Sudan raised questions about member states commitments to the principles enshrined in the Constitutive Act. How it responds to this chasm and other more practical operational constraints, would determine its success in dealing with future crises.

Partnerships

Lacking its own resources, the AU was forced to rely almost entirely on donor support exposing the absence of a robust inter-locking system for peace operations. The AU's collaboration with the European Union (EU) was perhaps the second most important partnership that emerged from the Darfur crisis after the UN. In the past, EU policy in Africa focused on humanitarian and development issues mostly in the context of the Lomé agreement.⁵⁴ The Cotonou agreement, the successor to Lomé, broke new ground as it provided for the EU to broaden its engagement in Africa through the Africa Caribbean and Pacific (ACP) framework to include security. As part of its support to the AU, the EU provided military and police advisers, some of whom were embedded in the Darfur Integrated Task Force (DITF), the strategic management cell for AMIS.

Nonetheless, it was the EU's provision of financial support to AMIS through the African Peace Facility (APF) that was perhaps its most important contribution. The APF, established in response to a request by the AU, was the most useful and practical tool in sustaining the AU's engagement in Darfur.⁵⁵ In fact, some including this author have argued AMIS would

not have been sustainable without the APF, since it was the only predictable – though not flexible – source of funding for the mission. The APF⁵⁶ is unique in several respects. First, it illustrates the AU's innovation in its bid to develop its security architecture. Second, it is a demonstration of the EU's flexibility (despite reservation by some of its members on the use of development funds for security issues) and its growing profile in the area of peace and security in Africa. Finally, it is an illustration of the growing recognition of the link between security and development globally.

As the AU's engagement expanded, so did its challenges. AMIS faced critical shortfalls in strategic airlift, prompting it to request the North Atlantic Treaty Organization (NATO) for support in this crucial area. In June 2005, the North Atlantic Council (NAC) and the Military Council authorized NATO to deploy a small office to provide strategic airlift for the deployment of AU troops and assist in building staff capacity. Though limited in scope, NATO's support to AMIS was significant as it marked the alliance's first engagement in Africa.⁵⁷ The AU also benefited from several bilateral partnerships that provided different forms of assistance primarily in the form of finance and logistics.

In the end, the broad range of international actors that supported the AU in Darfur highlighted the complex challenges of developing an interlocking system for peace operations. Issues of *coordination, sustainability, flexibility* and *ownership* arose from the various partnerships discussed above. Coordinating the various initiatives and programs by the AU's international partners

Divisions among the permanent members of the UNSC contributed to the intransigence of the government of Sudan over the proposed transition leading to the current hybrid mission, UNAMID with its attendant political challenges. While no glaring differences have emerged over the strategic direction of the mission, rifts between the PSC and the UNSC over the ICC's indictment of President Bashir exposes the fault lines in their partnership.

proved problematic. Quite often donor activities were not well coordinated, and were characterized by inconsistency and competition, leading to an increased transaction cost for the AU. For instance, the EU, EC and NATO lacked any identifiable coordination strategy in their support to AMIS. Moreover, there was no clear coordination strategy between these actors and other bi-lateral initiatives. Although representatives of AU partner countries and organizations based in Addis Ababa, Ethiopia, devised *ad hoc* mechanisms to improve coordination at the tactical level, they were however not reflected at the strategic level.⁵⁸ While these mechanisms contributed to improving donor coordination, they were, *ad hoc* and carried out at the tactical level, not reflecting the broader strategic approach of the countries and organizations they represented.⁵⁹

Conclusion

Despite acute resource constraints, the AU's response to the Darfur crisis demonstrated that it enjoys some degree of political legitimacy among its members and internationally. The unanimity of the PSC decisions, the contribution of uniformed personnel by its members, coupled with international political and military support, was an affirmation of its legitimacy. The intervention however, exposed the gap between the AU's ambitious mandate and its capacity to implement it. Given the inability of its members to provide resources – financial and logistical – the AU relied almost entirely on donors to support AMIS; reaffirming a key fact that effective peace making require more than political pronouncements.

That there was an AU mission in Darfur helped the international community respond to pressure from advocacy groups in their countries by citing their support for the AU, despite their full knowledge of the inadequacies of that support. How the AU deals with the potential for its members and the international community to hide behind it will determine its continued credibility and legitimacy.

The AU's mediation efforts at the Inter-Sudanese talks in Abuja highlighted critical lessons. First, imposing deadlines without the leverage and means to implement sanctions is counterproductive, because it eventually undermines the credibility of the mediator. This was the case during the peace process that culminated in the DPA. Second, timing is critical as it determines whether belligerents still view the battlefield as the strategic front, thereby minimizing the chances of a negotiated settlement. Third, ownership of both the mediation process and outcome is essential for implementa-

tion. The AU lost ownership of the peace process during the final round of talks since some external actors keen on concluding the talks, most notably the 'quartet,' pressured the parties, leading to an agreement that was immediately rejected.

Lack of consensus between the AU and other external actors, especially the permanent members of the UNSC complicated its peacemaking efforts. Divisions among the permanent members of the UNSC contributed to the intransigence of the government of Sudan over the proposed transition leading to the current hybrid mission, UNAMID with its attendant political challenges. While no glaring differences have emerged over the strategic direction of the mission, rifts between the PSC and the UNSC over the ICC's indictment of President Bashir exposes the fault lines in their partnership. If not managed properly, which has not been the case so far, such open disagreements risk undermining their joint peacemaking efforts. The rift could undermine their credibility with the various parties to the conflict and could divert attention away from dealing with the more pressing matters on the ground in Darfur. For instance, the AU's decision not

to cooperate with the ICC in the face of the UNSC's refusal to consider its requests for a suspension of the indictment does not bode well for their relationship and quest for peace and justice in Darfur.

The issue of *consent* which featured prominently after the AU proposed to handover its mission to the UN served as a litmus test for whether its members are willing to comply with the principles they adopted. Difficulties with the government of Sudan especially as it obstructed the activities of AMIS highlighted the gap between the shift to a more interventionist norm and the tendency of member states to cling on to non-interventionist norms by invoking the principle of sovereignty. The issue of sovereignty re-emerged following the AU High-Panel's recommendation for the establishment of a hybrid court to try those responsible for crimes in Darfur. The GoS rejected the creation of a hybrid court which it views as violation of its constitution and sovereignty.⁶⁰ Additionally, Khartoum's refusal to consent to the deployment of a UN-led peace operation in Darfur highlighted the challenges of implementing international concepts such as the Responsibility to Protect, partly due to disagreement over the threshold for intervention.

Meanwhile, the indictment of president Bashir refocused attention on the unresolved dilemmas of dealing with impunity and promoting peace and justice. The establishment of the High-Level Panel is a good first step that could set the tone for the AU's broader response to the dilemmas posed by the issues of peace and justice. How the AU responds to this dilemma would lay the foundation for greater consensus around transitional and international justice in post-conflict environments in Africa.

Although the AU's partnerships with the UN, EU, NATO and bilaterals, is part of an emerging division of labor between itself and Western countries, what I describe as a "blood-treasure" dynamic, the system is still ad hoc. Under this arrangement, the AU provided the troops (the blood), while its partners provided finance and logistics (treasure). However, this approach raised questions surrounding the issues of *ownership, sustainability,*

flexibility and predictability. The AU's reliance on external support undermined its claims to ownership just as the ad hoc nature of the partnership exposed the weaknesses of the 'support system' as it was neither predictable nor sustainable. Overall, external support to the AU in Darfur highlighted the absence of a structured international mechanism for providing support to regional organizations. With the exception of the APF, all other partnerships were ad hoc.

The willingness and capability gap that dogged the AU in Darfur exposed the risks of mounting a response without the necessary resources to alter the dynamics on the ground in a positive way. It was obvious that the GoS preferred the AU because it was a more benign option due to its operational and political constraints. Politically, Khartoum calculated that the AU would be less assertive as that risk alienating some its members. On the other hand, the AU's intervention served as an alibi for the international community. That there was an AU mission in Darfur helped the international community respond to pressure from advocacy groups in their countries by citing their support for the AU, despite their full knowledge of the inadequacies of that support. How the AU deals with the potential for its members and the international community to hide behind it will determine its continued credibility and legitimacy.

Recommendations

In light of the above, the paper makes the following recommendations:

I. Clarify fundamental principles: The AU should ensure that its principles are fully understood by its members by clarifying its position on critical matters such as sovereignty, consent and the dilemma of dealing with peace and justice in post-conflict environments. To do this, it should establish a high-level expert working group with a mandate to clarify its position on these issues. Despite the widely accepted paradigm shift at the AU from non-intervention to non-indifference, sovereignty remains a big challenge especially when it comes to military intervention. The AU should draw the generic principles from the recommendations of the AUPD to inform its future direction on the dilemma of peace and justice.

II. More clarity on ownership of peace processes: The AU should ensure that its peacemaking efforts are guided by the principle of ownership in order to increase the legitimacy of the process and the outcome. It is important to ensure that the leaders of the armed groups represent the interests of the civilians that live in the shadows of the conflict. Instituting a bottom up peacemaking approach is a crucial first step in addressing this challenge. This should include regular consultations and feedback between the negotiating parties and their followers; both elements were absent in the negotiations that led to the DPA. Thus, the civilian population should not be held hostage by intransigent leaders claiming to represent their interests.

III. Mandates should be matched by resources: The PSC should ensure that when it issues mandates, they are informed by; i) a comprehensive assessment of the situation in a given theatre and ii) the available resources for effective mandate implementation. Mandates that

are not supported by resources – human and materiel – would in the long-run undermine the credibility of the AU.

IV. Improve consultation with TCCs and PCCs: Before authorizing the deployment of a peace operation or an increase of personnel to an existing mission, the PSC should consult very closely with the AU Commission and key troop and police contributors. Adopting this practice would help to minimize the gaps between PSC's decisions and the ability of the AU Commission to implement its decisions as was the case with the Darfur dossier. This would also secure the support of key member states for the provision of resources, human and materiel.

V. Strengthen Peace Fund and other internal options: The AU should continue to urge its members to contribute to the Peace Fund and explore other options such as a peace tax in order to strengthen its internal funding for its peacemaking efforts. To complement this, the AU should continue on-going discussions on the use of UN assessed contributions to support UNSC-authorized but AU-led peace operations, both in terms of direct financing and logistic support. Moreover, funding mechanisms such as the APF, established to support the AU, need to be flexible and guided by what is needed on the ground. For its part, the AU should strengthen its financial management systems so as to ensure proper disbursement of funds and accountability.

VI. Increase dialogue between UNSC and PSC: Dialogue between the UNSC and PSC should be increased by holding at least two annual meetings, the first, at the foreign minister level and the second, at the presidential, or head-of-state, level. The presidential level meetings should be aimed to coincide with the UN General Assembly Summit in New York, while the foreign minister level should be

alternated between Addis Ababa and New York. Moreover, there should be quarterly meetings at the ambassadorial level in Addis Ababa and New York.

VII. Strengthen civilian capacities and partnerships with African centers of excellence: The AU should approach strengthening its civilian capacities as a matter of urgency given the pivotal role of civilians to its peacemaking efforts. Moreover, in order to increase the number of troop and police contributing countries, both qualitatively and quantitatively, the AU should increase its engagement with national and regional centers of excellence, including national police and military colleges and peacekeeping training centers. Current efforts to operationalize the African Standby Force (ASF) represent a step in the right direction, however more attention should be given to developing the civilian components of the ASF.

VIII. Establish an African criminal court: The AU should establish a high-level expert working group consisting of representatives of the Peace and Security Council and civil society to explore the substantive and practical aspects of establishing an African criminal court to deal with the growing violations of humanitarian and human rights law in conflict zones across the continent. Instead of establishing a separate institution, the AU should expand the remit of the African Court of Human and People's Rights to include an international criminal code. This would ensure African ownership of judicial processes involving Africans. To be effective, the AU should provide adequate resources – financial and human - and political support to the court. This is critical given that sustainable peace cannot be built on a culture of impunity.

IX. Ensure implementation of AUPD roadmap: Related to the above, the AU should ensure that the hybrid court recommended by the AUPD is established to bring to justice those responsible for egregious crimes in Darfur. The hybrid court should be impartial and should focus

on perpetrators from all sides to the Darfur conflict. The AU should work very closely with the Government of Sudan in appointing judges and most critically, providing the necessary financial resources to support the court. Additionally, the AU should support the establishment of a truth commission as a complementary instrument of the hybrid court and ensure that other critical aspects of the road map recommended by the AUPD are fully implemented.

X. Establish Best Practices Unit: The AU should establish a Best Practices Unit in its Peace Support Operations Division (PSOD) to ensure that lessons from past and current peace operations are applied to future planning. This would not only help to share best practice with its members but would lead to more effective planning and execution of future peace operations.

XI. Establish Standing Mediation Unit: The AU should establish a standing Mediation Support Unit to support its peacemaking efforts on the continent. The Unit to be located within the Conflict Management Division (CMD) would provide crucial backstopping to the AU-led mediation and serve as a lessons learned unit for its political engagements.

Endnotes

*Cover Photo courtesy of AMIS 2005©

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