

Dilemmas of Regional Peacemaking: The African Union in Darfur

*Presentation at a Joint Center on International Cooperation and International
Peace Institute High-Level Policy Forum at the Trygve Lie Center for Peace,
Security & Development, IPI*

*Dr. A. Sarjoh Bah
Senior Fellow, New York University's Center on International Cooperation
17 March, 2010
New York*

I would like to start by thanking Adonia, Mashood and John for partnering with us on this event. I would also like to thank Mr. Ibok and Seth for agreeing to share with us their invaluable experience from the AU's tortuous peacemaking efforts in Darfur. Both men had front row seats in the AU's mediation and peacekeeping endeavors, so don't miss the opportunity to ask them all the difficult questions that you may have.

My presentation will focus on highlighting the strategic dilemmas that confronted the AU in Darfur and continues to do so today. To do this, I will focus on three key areas: First, I will briefly explore what I call the "willingness and capacity" gap that was made evident by the AU's engagement in Darfur; second, I will explore the dilemmas of embarking on regional peacemaking in an era of internationalized justice; and finally, I will reflect on the question of partnership especially as it relates to support for regional peacemaking.

Coming a year after the inauguration of the AU, the Darfur crisis exposed the strategic and operational challenges of implementing the AU's ambitious peace and security agenda. As you are aware, the AU's founding Charter, the Constitutive Act, provides for the Union to intervene in a member state in respect of grave circumstances, namely war crimes, crimes against humanity and genocide. However, the challenges that dogged its mediation and peacekeeping efforts, the details of which you will hear from the next two speakers, demonstrated the gap between the AU's willingness to intervene in conflict situations and its capacity to do so effectively. Despite a strong commitment to resolve the conflict, the AU's peacemaking efforts, especially its peacekeeping venture, floundered. Perhaps, more than anything else, lack of cooperation by the parties to the conflict coupled with a fractured international response undermined its efforts, setting the stage for the long-drawn out transition that eventually morphed into the current UN-AU hybrid mission, UNAMID; the first such partnership between the two institutions. The complexity of the challenges proved to be an early test of the AU's ability to translate its interventionist security

regime into action. The AU needs to urgently address this chasm in order to strengthen its peacemaking efforts in Darfur and elsewhere. While current efforts to operationalize the African Standby Force are steps in the right direction, the AU needs to do more to fill the financial and logistics gaps` that crippled its second and to date, largest peace operation, AMIS.

The second issue that I would like to address is the dilemma of undertaking regional peacemaking an era of internationalized justice with a specific focus on the ICC's indictment of President Omar Bashir. Needless to say, the indictment has added a complex layer to an already complex and complicated process. To me, the effect of the indictment on the AU's peacemaking efforts manifests itself on three levels.

First, it has led to open rifts between the UN Security Council and the AU's Peace Security Council. Although the PSC did not object to the indictment *per se*, it expressed alarm at the poor timing, which in its view could worsen the Darfur crisis and potentially unravel the North-South peace process. Consequently, the PSC made repeated requests to the Security Council to suspend the indictment by invoking Article 16 of the Rome Statute. The suspension, the PSC argues would give peace a chance; an argument that I agree with largely. However, much to the anger of the PSC, its requests were ignored by the Security Council, exposing the undercurrents in this critical but fragile partnership.

You will agree with me that the indictment touches on an important issue, that is, the unresolved dilemmas of dealing with impunity on the one hand and promoting peace and justice on the other. This raises at least three crucial questions: First, should peace be pursued before justice or justice before peace? Second, what are the inherent challenges of pursuing peace and justice concurrently? Finally, who decides on the timing of these processes: national, regional or international actors? While I will not pretend to have answers to any of these questions, to me,

the establishment of the AU's High-Level Panel on Darfur is a good first step that could set the tone for its broader response to the dilemmas posed by this issue. It is worth noting that the High-Panel 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. By all accounts, the High-Panel's recommendations including the establishment of a hybrid-court and a truth commission are far-reaching and ground breaking. Now it remains to be seen whether and how the AU will ensure that these recommendations are implemented. Early indications are not promising given that the Government of Sudan had expressed reservations about the establishment of a hybrid court since that would be a violation of its constitution. Moreover, from a practical standpoint, it is unclear who will bear the financial costs of running the hybrid court, and whether western powers would support the proposed court given that some of them already view it as an attempt to circumvent the ICC's move against President Bashir.

At the institutional level, the AU's response to the indictment reveals important differences between its two key decision making organs, the Summit of Heads of State and Government, and the PSC. First, and perhaps 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 in 2009, strongly pushed for the decision not to cooperate with the ICC. However, efforts to present the decision as one that was based on consensus failed as it was subsequently repudiated by several members on procedural and substantive grounds. But Libya's role in this instance demonstrated the impact of the chair of the AU on its peacemaking initiatives. The decision as you may be aware, put the AU and even the High-Level Panel at odds with some of the warring factions in Darfur who accused it shielding president Bashir.

On the other hand, while the Peace and Security Council is undoubtedly driven by the national interests of its members, its call for the suspension of the indictment appears to be less politically motivated for two key reasons. First, in calling for the suspension, the PSC did not dispute the indictment, it merely advocated for proper timing to ensure that its peacemaking efforts are not jeopardized. This appears to be consistent with its position on the dilemma of peace and justice. In the eyes of the AU, the two are not mutually exclusive, they are instead, mutually reinforcing. Second, the PSC anchored its call for the suspension on Article 16 of the Rome Statute, which empowers the Security Council to defer investigation or prosecution by the ICC of a particular case if and when the need arises. Thus, the PSC's request could not be interpreted as politically motivated because it did not amount to a rebuttal of the ICC's indictment. The PSC's principled position in this instance, presents it as an impartial and pivotal actor in the AU's peacemaking efforts. I am convinced that maintaining that impartiality and the credibility that flows from it, is critical to enhancing future peacemaking by the AU.

At another level, the response of individual member states to the indictment 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 have been starkly different; while some sub-Saharan members favored the move, their counterparts in the North objected to it. These divisions became more pronounced following the warrant and the AU's subsequent decision not to cooperate with the ICC. For instance, North African states, most notably Libya pushed for the decision not to cooperate with the ICC, while some sub-Saharan members most notably, Botswana, Ghana, and South Africa broke rank with the AU. The polarized responses by Afro-Arab members of the AU could be an indication of deeper divisions within the institution, with serious consequences for its peacemaking efforts in Darfur.

The other dilemma that confronted the AU in Darfur was the impact of the tensions and contradictions between existing and emerging principles and norms such as consent and the responsibility to protect on its peacemaking efforts. As you will remember, attempts to gain the consent of the government of Sudan for the deployment of a UN force in Darfur failed leading to the hybrid edifice, UNAMID. Difficulties in gaining the consent of the government of Sudan brought to the fore two issues. First, it exposed the political and legal challenges of implementing the AU's interventionist peace and security agenda. Politically, the AU had to walk a fine line between adhering to its stated principles, while ensuring the continued support of its members. Legally, it was apparent that the AU could not force the government of Sudan to consent to the proposed transition despite the widely acclaimed paradigm shift on the continent from *non-intervention to non-indifference*.

At a global level, difficulties of navigating the issue of consent drew attention to hurdles in enforcing emerging concepts such as the responsibility to protect (R2P). While the Darfur crisis met or in some instances surpassed some of the thresholds for R2P-type interventions, the principle of consent proved insurmountable. So, despite calls by Darfur advocates 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, as is allegedly the case in Darfur.

These dilemmas raised several unanswered questions for the AU regarding the compatibility of the principles of sovereignty, consent and the responsibility to protect with its interventionist security regime. This is critical because, despite the widely accepted paradigm shift mentioned earlier, sovereignty remains alive and well especially when it comes to military intervention. The AU needs to clarify its position on these thorny issues with the aim of ensuring their complementarity with its wider peace and security agenda.

One of the unintended consequences of the AU's intervention in Darfur has been to reinforce the need for a more structured international partnership for effective peacemaking. Given its acute shortage of resources, the AU's peacemaking effort in Darfur was supported by a range of actors including the UN, EU, NATO and individual states. This approach appeared to herald a division of labor based on what I describe as a "blood-treasure" dynamics whereby, African countries provided the blood in the form of troops while their western counterparts provided the treasure in the form of finance and logistics. Unfortunately, that was not the case, as most of the external support was largely ad hoc and raised serious questions surrounding the issues of *ownership*, *sustainability*, *flexibility* and *predictability*. For instance, the AU's reliance on external support undermined its claims to ownership of the peace process, just as the ad hoc nature of the partnership exposed the weaknesses of the support system. With the exception of the EU's Africa Peace Facility, most other support to AU was neither predictable nor sustainable. Quite often, external support was not well coordinated, and was often characterized by inconsistency and competition, leading to an increased transaction cost for the AU. Moreover, there was no clear coordination strategy between the various multi-lateral and bi-lateral actors involved. In the end, external support to the AU in Darfur highlighted the absence of a structured international mechanism for providing support to regional organizations. While this lesson has been identified, it has certainly not been learned if the disjointed nature of international support to the AU's current peacemaking effort in Somalia is anything to go by.

Despite these dilemmas and constraints, the AU's response to Darfur demonstrated that it enjoys a high degree of political legitimacy among its members and at the international level. The unanimity of PSC decisions, the contribution of uniformed personnel by its members, coupled with international support – though inadequate - was an affirmation of its legitimacy.

However, lack of consensus between the AU and other external actors, especially the permanent members of the Security Council complicated its peacemaking efforts. Divisions among the permanent members of the Security Council contributed to the refusal of the government of Sudan to consent to the proposed transition from AMIS to a UN force. This reinforces the fact that, the success of regional peacemaking is partly contingent on concerted and cohesive international support, political and otherwise. When that is lacking, regional peacemaking can be slow, costly and tortuous for all involved including civilians who are often at the receiving end of conflicts.

To conclude, it is evident that the AU's peacemaking efforts in Darfur exposed the risks of mounting a response without the necessary resources and international support to alter the dynamics on the ground in a positive way. It was obvious that the Government of Sudan preferred the AU because it was a more benign option due to political and other constraints. Politically, Khartoum calculated that the AU would be less assertive as it ran the risk of alienating some its members if it was deemed to be too assertive. On the other hand, the AU's intervention served as an alibi for the international community. That fact 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, as is currently the case in Somalia, would determine the success of its peacemaking endeavors in the future.

Thank you!