

took place in April 2013 with Security Council Resolution 2100. Thus we see again the usual pattern of transition to a UN operation which led some scholars to say that African organizations are “unable to undertake complex peacekeeping functions without calling for UN and international assistance.”⁹

CONCLUSION

The management of the conflicts in Libya and Mali has shown the contrast that exists between the African security organizations’ will to bring “African solutions to African problems” and the reality. In the case of Libya, an alliance of 17 non-African states undertook a major military intervention under a Security Council mandate against the will of the AU. In the case of Mali, the SC gave regional actors the authorization to use force, but the African states were unable to act.

It would certainly be unfair to pronounce a very harsh judgment here concerning the incapacity of African organizations to impose peace and security. These organizations are faced with a “mission impossible” as the continent has been rattled by major conflicts in so many different places. African states, often facing important internal problems, are called to contribute to external security operations, stretching their resources to a breaking point. Against this difficult background, actions by regional organizations have sometimes proved useful, for example, the African mission in Burundi in 2003 or the ongoing AU Somalia mission.

At the same time it is probably necessary to rethink the role and the ambitions of African organizations in the field of peace and security. Instead of spending energy on drafting ambiguous texts that proclaim a right to military intervention outside the legality of the UN Charter, it might be better to consider avenues for increasing cooperation with the UN and obtaining crucial international assistance in order to be able to undertake crisis intervention and/or complex peacekeeping operations.

African organizations should also boost their conflict prevention, resolution, and mediation capacities while finally putting in place the African Standby Force which was supposed to be the centerpiece of the AU’s peace and security architecture. Last but not least, the United Nations and the international community should be more respectful of the political will of major African organizations such as the AU, and should not ignore them, as happened in the Libya conflict.

THE IMPORTANCE OF FRAMES: THE DIVERGING CONFLICT ANALYSES OF THE UNITED NATIONS AND THE AFRICAN UNION

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THE IMPORTANCE OF FRAMES

International legal scholarship on the African Union (AU) has focused on the question of whether international law allows the AU to intervene militarily in its member states in the

⁹ Eki Yemisi Omorogbe, *Can the African Union Deliver Peace and Security?*, 16 J. CONFLICT & SECURITY L. 61 (2011).

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absence of authorization by the UN Security Council—a right that the AU Constitutive Act seems to claim.¹ However, as Professor Christakis has beautifully illustrated, the reality of recent practice has been the opposite: the AU has often *not* intervened, even when not only its own Constitutive Act, but also international law on the use of force more generally, allowed it. Indeed, in some situations, Libya being the most evident example, the African Union *opposed* the intervention that the UN had authorized.

One explanation may be, as Professor Christakis has suggested, the AU's lack of financial and human resources, logistical infrastructure, and internal organization for it actually to fulfill the commitment in its Constitutive Act to intervene in case of international crimes, or at the request of member states in the interest of peace and security.²

However, there is also a less pragmatic and more political explanation for the fact that the AU has at times refrained from military intervention or indeed opposed it. The simple explanation is that military force would not, in the AU's analysis, foster a solution. Thus, according to the AU, only a political approach could resolve the Libyan crisis in 2011. As Africa expert Alex de Waal writes:

Official and media narratives in the West depicted events in Libya partly as a rerun of the Tunisian uprising under a NATO umbrella, and partly as Iraq revisited without the costs and risks of invasion. Africans saw the conflict through other lenses. They saw popular pressure for democracy but also recognized features familiar from other African civil wars, threatening a lawless mercenarism that could easily spill across borders. Whether Gaddafi stayed or went, they knew it would be important to engage politically.³

The difference in views between the United Nations and the African Union on how to resolve the Libyan crisis stemmed from the different lenses through which they saw the crisis.

The argument that I present today is that these different lenses explain disagreements between the AU and the UN not just about the use of force, but more broadly, preliminarily, and fundamentally, about how a conflict is *framed*. Frames “shape what is viewed and how what is viewed is interpreted.”⁴ As a result of different framing, the AU and UN differ in their analyses of the conflict and in their theories of change—in other words, in how the situation can be transformed from one of conflict into one of (relative) peace.

Frames are not merely analytical tools. They are constitutive: they create a reality in accordance with which some conflicts are resolved and others are continued, intensified, or even ignited. Conflicts have been resolved the moment parties were willing to make concessions on the way they framed their dispute, for instance, by recognizing the political demands of the other party, instead of treating the opponent as purely criminal. Frames have intensified conflict, for example, when one party was framed as a *hostis humani generis*, an enemy of mankind.⁵ Frames have ignited conflicts, for instance, when third parties felt misrepresented in the frame adopted by two parties that concluded a peace agreement.⁶

Differences in how the UN and a regional organization—in the case of this panel, the AU—frame a conflict deserve at least as much attention as the use of force. The use of force

¹ Constitutive Act of the African Union art. 4(h), July 11, 2000, 2158 U.N.T.S. 3.

² *Id.*, arts. 4(h), (j).

³ Alex de Waal, *African Roles in the Libyan Conflict of 2011*, 89 INT'L AFF. 365, 369 (2013).

⁴ Sharath Srinivasan, *The Politics of Negotiating Peace in Sudan*, in PEACEBUILDING, POWER AND POLITICS IN AFRICA 195, 205 (Devon Curtis & Gwinyayi A. Dzinesa eds., 2012).

⁵ See Sarah M.H. Nouwen & Wouter G. Werner, *Doing Justice to the Political: The International Criminal Court in Uganda and Sudan*, 21 EUR. J. INT'L L. 941 (2010).

⁶ See, e.g., David Keen, *Peace as an Incentive for War*, in PEACEBUILDING, POWER AND POLITICS IN AFRICA 31 (Devon Curtis & Gwinyayi A. Dzinesa eds., 2012).

is only one of the possible outcomes of a frame; the frame determines how the organization, whether the UN or the AU, addresses the situation from the beginning to end. When the UN and the AU adopt different frames for the same conflict, this fundamentally undermines their ability to fulfill their respective responsibilities for peace and security in Africa. The adoption of different frames not only obstructs cooperation between the organizations; it is likely to divide the parties to the conflict even further, with one of the parties adopting the UN's frame, and the other that of the AU.

In my remaining time here, I will use Sudan, and in particular Darfur, as an example of a scenario in which the frames of the conflict have fundamentally diverged between the AU and the UN. However, before I develop this example, I must specify what I mean by the UN and AU.

THE UNITED NATIONS AND THE AFRICAN UNION: COMPLEX IDENTITIES

Comparing views between the UN and AU is difficult.⁷ For the purposes of these remarks, I focus on divergences in views between on the one hand the so-called P3 (the U.S., the UK, and France—the western permanent members) in the UN Security Council and on the other the majority of the AU Peace and Security Council (PSC), and between on the one hand the UN Secretariat and on the other the AU Commission. The focus on the P3 is justified because of the decisive role that the P3 plays in matters of peace and security in Africa. The so-called P2 of the Security Council (Russia and China—the non-western permanent members) may sometimes be successful in obstructing a particular Africa strategy of the P3, but it is the P3 that design the Council's actions in Africa. It is also the P3 that wield decisive influence within the relevant departments of the UN Secretariat, in particular the Department of Peacekeeping Operations. In the AU, the situation is reversed: when it comes to developing policies, the Commission guides the AU PSC, at least in the Sudan file.⁸ Whereas in the UN Security Council member states draft resolutions, the AU Commission holds the pen for the AU PSC.

DIVERGING FRAMES IN SUDAN

At first glance, Sudan seems an example of a situation in which the AU and UN harmoniously work together. Focusing on Darfur, thus leaving the Sudanese north/south relations outside the picture, we see the UN and AU jointly commanding the AU/UN Hybrid operation in Darfur (UNAMID), which is headed by a *Joint* Special Representative, while the two organizations have a *Joint* Chief Mediator for negotiating peace in Darfur.

However, fundamentally different frames of the conflict in Darfur have tested the partnership since the very beginning, as has been apparent in, among others, the negotiations on UNAMID's mandate and the design of peace processes for Darfur. Today I will zoom in on a bone of contention that is perhaps the most evident example of the battle of the lenses: the arrest warrant of the International Criminal Court (ICC) for President Bashir. When the African Union called for the UN Security Council to request the ICC to defer proceedings

⁷ Both the UN and the AU consist of various organs. If we were to focus on the UN Security Council (SC) on the one hand and the AU Peace and Security Council (PSC) on the other, we face the difficulty that these organs do not fulfill the same role within their organizations. Moreover, the bodies are often internally divided. Nonetheless, the dissent of a few does not mean that one cannot speak of a PSC view or an SC view altogether.

⁸ The Sudan file may be special, given the unique role played by the African Union High-Level Panel on Darfur, introduced below, and its successor, the African Union High-Level Implementation Panel, in analyzing the conflict, and spelling out and implementing policy recommendations.

in Sudan because the AU considered these an obstacle to peacemaking (not just in Darfur, but also in the north-south relation in Sudan),⁹ the Security Council did not respond. While often invoked as an illustration of the trite caricature of the AU as an organization aimed at the protection of African heads of state rather than the African people, the AU's objection to the arrest warrant goes way beyond President Bashir. The AU/UN disagreement on the ICC's proceedings against President Bashir illustrates the different lenses through which the AU and the UN each see the Darfur conflict and Sudan's conflicts more generally.

Put simply, in the P3's view the Darfur conflict is between on the one hand an unwilling or even criminal government and on the other hand rebel movements or even legitimate rebel movements. On this view, the primary cause of Sudan's conflicts is the government and the so-called Janjaweed upon which it has relied. Analyzed through this lens, the conflict requires the intervention of external actors—international prosecutors, judges, and peacekeepers with a multidimensional mandate—to protect civilians, promote human rights, build the rule of law, and do justice.

The AU's frame of the conflict differs. It is often difficult to know what precisely the AU's conflict analysis is—whether due to weak institutions or other factors, the AU has often failed to explain the rationale for its policies. But in the case of Darfur, the AU's analysis has been most clearly spelled out in the 123-page report of the African Union High-Level Panel on Darfur (AUPD),¹⁰ which the PSC, meeting at the level of heads of state and government, has endorsed.¹¹ While the Panel, composed of senior African leaders, was established by an AU that was, according to the resolution establishing the Panel, “concern[ed] with the misuse of indictments against African leaders,”¹² the AUPD's report barely touches upon Bashir and the ICC. By treating the ICC's arrest warrant as a red herring, the AUPD rejected the UN Security Council's criminal lens on the conflict. Instead, the AUPD analyzed the conflict as “Sudan's crisis in Darfur.”¹³ This analysis acknowledged elements of criminality, but within a *political* context: it identified how several groups in Sudan, including the groups to whom the so-called Janjaweed belong, have grievances. The AUPD also acknowledged the *challenges* that the government of Sudan faces in governing Darfur. And it gave recommendations on how to promote peace, *and* reconciliation *and* justice in the *broadest* sense (thus not merely criminal but also societal and political) in Darfur and Sudan more generally.¹⁴ Seeing the Darfur conflict through this political, rather than criminal frame, the AU's analysis of the conflict thus differed from that of the P3 in the Security Council. Logically, so did its proposed solutions. Not analyzing the Darfur conflict as primarily criminal, the AU did not consider the ICC's uncoordinated international-criminal-law response as a helpful intervention.

⁹ See, e.g., Communiqué of the African Union, Peace and Security Council, 175th Meeting, Addis Ababa, Ethiopia, PSC/PR/COMM(CLXXV), Mar. 5, 2009, para. 5; Communiqué of the African Union, Peace and Security Council, at the level of heads of state and government, 207th Meeting, Abuja, Nigeria, PSC/AHG/COMM.1(CCVII), Oct. 29, 2009, para. 5.

¹⁰ Report of the African Union High-Level Implementation Panel on Darfur (AUPD), *Darfur: The Quest for Peace, Justice and Reconciliation*, attached to PSC/AHG/2(CCVII), 2009.

¹¹ Communiqué of the African Union, Peace and Security Council, at the level of heads of state and government, 207th Meeting, Abuja, Nigeria, PSC/AHG/COMM.1(CCVII), Oct. 29, 2009, para. 1.

¹² Communiqué of the African Union, Peace and Security Council, 142th Meeting, Addis Ababa, Ethiopia, PSC/MIN/COMM CXLII Rev.1 (2008), July 21, 2008, para. 3.

¹³ Report of the African Union High-Level Implementation Panel on Darfur (AUPD), *Darfur: The Quest for Peace, Justice and Reconciliation*, attached to PSC/AHG/2(CCVII), 2009.

¹⁴ *Id.*

The AU has rejected the P3's frame also because of its implications. Since the beginning of the Darfur conflict, the AU has objected to the P3's treatment of Sudan as a *criminal* state (i.e., a state led by a criminal government): the criminal-government frame can be used, as the Iraq war has illustrated, to justify regime-change interventions. The AU has also objected to the P3's treatment of Sudan as a so-called "failed state" (i.e., a state without effective government) because it implies that the government should be substituted by external actors (as in Kosovo or East Timor). Realizing that frames are constitutive, AU officials have feared that treating Sudan as a failed state could further weaken the Sudanese government and thus its ability to do what a government must do. Further weakening of the Sudanese state, in turn, would run the risk of "Somalization" and jeopardize Sudan's integrity. And disintegration of Africa's largest country would further destabilize the conflict-prone states upon which the African Union is built, thereby possibly dealing a final blow to any aspiration of "African unity."¹⁵

EXPLAINING THE DIFFERENT FRAMES

The explanation for the different frames does not lie in differences between the AU and the UN per se. It would be incorrect to say that the P3 always applies the criminal frame and the AU always the political frame: with respect to the 2003 war in Iraq, for instance, they use the opposite frames. Rather, the difference lies in the different characters of the actors that set the frame. In the Darfur situation, the P3's *criminal* lens of the conflict is effectively that of influential activists such as the Save Darfur movement. The work of such lobby groups has been characterized by advocacy for particular *methods*. Blue helmets, ICC intervention, and sanctions best fit the conflict in Darfur when it is analyzed through the criminal lens. While they may not have achieved the objective of a no-fly-zone, the lobby groups have been hugely successful in shaping the frame through which the Darfur conflict is seen in Washington, London, and Paris. U.S. diplomats posted in Sudan not infrequently complained that they had less influence in shaping the State Department's policy than did tweeting American high school students.

The AU's frame has been shaped by the AUPD. There are several possible explanations for the AUPD's adoption of the political, as opposed to criminal, frame. The most common is probably that the AU is more protective of state sovereignty than the P3 in the UN Security Council. The AU sees two *real* threats to sovereignty. The first is external, indeed, mostly from outside Africa: sixty years of independence has not wiped out the memory of colonial domination and exploitation. An intervention by the United Nations may be under a different banner than colonialism, but the forces intervening in Libya, Côte d'Ivoire, and Mali bear a strong resemblance to the former colonizers. The second threat to sovereignty is internal: many African states have recent experiences of challenges to state-building. They are thus more likely to see governance failure as a failure of ability than the P3, which classifies it more easily as a failure of willingness.

A second explanation for the AU's stance is the awareness that a criminal lens intensifies conflict and makes a negotiated settlement more difficult. Moreover, as De Waal also argues in the above-cited article, the consequences of continued and intensified conflict reverberate throughout Africa, affecting the stability of the north/south all the way along the Nile and east/west throughout the Sahara.

¹⁵ Sarah Nouwen, *The International Criminal Court: A Peacebuilder in Africa?*, in *PEACEBUILDING, POWER AND POLITICS IN AFRICA* 171, 183–84 (Devon Curtis & Gwinyayi A. Dzinesa eds., 2012).

Finally, the most benign explanation may be that the AU as a regional organization has a better understanding of the politics of the situation. Indeed, according to the literature, “Les organisations régionales peuvent constituer des forums plus adaptés pour la résolution des conflits régionaux du fait de leur proximité à un conflit et de leur capacité d’appréhension des particularismes d’un conflit.”¹⁶

Seen from this angle, the slogan “African solutions for African problems” does not mean what it has in practice often meant and for which it has been rightly criticized, namely that the United Nations is trying to avoid its responsibilities by leaving things to the AU that it is not up to. Rather, “African solutions for African problems” must mean that the regional organization’s framing of a conflict, and thus its analysis, carry particular weight.

CONCLUDING REMARKS BY ADEMOLA ABASS

As I said during my brief opening remarks, we are indeed truly honored to have such speakers as you have heard in our panel. These remarks were not just the products of excellent research but were also dividends of the practical experience that these speakers have acquired while working for and with some of the organizations they spoke about. Clearly, as we have heard, there are more than fifty shades of interpretations that one could ascribe to describe, qualify, or assess the role of African regional organizations in peace and security on the continent. Each person’s perspective is guided often by individual appreciation of what is at stake, as well as by which of “the glass-is-half-full” or “the glass-is-half-empty” aphorism one subscribes to.

¹⁶ Laurence Boisson de Chazournes, *Les relations entre organisations régionales et organisations universelles*, RECUEIL DES COURS 313 (2011), 347 (2010).