The African Union, the United Nations and civilian protection challenges in Darfur

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Introduction

This paper[1] examines the nature of the relationship between the African Union (AU) and the United Nations (UN) in the field of protection of civilians in armed conflicts. The topic is significant because the development that has seen the UN and regional organisations take on and try to implement protection responsibilities means that the civilian protection regime is evolving in terms of its political purposes, main formal institutions and coordination mechanisms, as well as legal frameworks. The AU and the UN have come to operationalise the still contested notion of protection of civilians in armed conflicts through adding this as a dimension of peace operations. Yet, performing such a role is among the most contested and inherently difficult for the UN itself as well as for non-UN actors. In part, states are divided over this emerging norm because it raises difficult questions of sovereignty. It challenges the prevailing interpretations in international society of core norms such as non-intervention and domestic jurisdiction. Additionally, peace operations with civilian protection mandates tend to be short-term, have often entailed high levels of use of force and have had quite ambiguous humanitarian consequences, in combination with unclear lines of accountability between non-UN actors and the UN Security Council (UNSC).

The paper proposes that we can best understand the AU-UN collaboration for civilian protection from a perspective that takes seriously the value of legitimacy for state actors. The benefits of such an approach are illustrated by reference to the AU's lead role in the Darfur conflict and its African Mission in Sudan (AMIS). It concludes that since the AU-UN relationship for civilian protection currently seems to be 'the only game in town', and since this state of affairs is becoming more institutionalised and legitimated, it is necessary that scholars critically comment on the political effects of this in terms of the quality of the actual protection provided. Fundamentally, the paper draws on a particular understanding of international legitimacy to increase our understanding of how the UNSC has executed its primary responsibility for the maintenance of international peace and security in relation to Africa.

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[1] The paper builds on a presentation given at the September 2009 international conference on *Protecting People in Conflict and Crisis: Responding to the Challenges of a Changing World*. It was part of the panel 'VI: Protection and the role of the military: The UN Mission in Sudan (UNMIS) and the African Mission in Sudan (AMIS)'. The conference and roundtable were hosted by the Refugee Studies Centre (RSC) and organised respectively with the Humanitarian Policy Group at the Overseas Development Institute (HPG) and the Centre for Research on Inequality, Human Security and Ethnicity, University of Oxford.

1   The AU emerges as an actor in civilian protection

Since its creation in 2001, the AU has taken normative and constitutional strides towards a more robust conflict management capability which may, in some circumstances and on a case by case basis, be employed to prevent or stop ongoing human rights abuses and atrocities. The AU has become the primary formal actor in the area of civilian protection and peace operations on African soil. To understand the AU's current importance for civilian protection in Africa, and its relations with the UN in this regard, it is important to consider the geopolitical context and previous intervention and peacemaking patterns from which this situation emerged. Therefore, this paper first reviews the context that facilitated the current Africa-UN civilian protection initiatives.

The UN in African Conflicts – Disengagement and Decentralisation

The UN's peace operations in Africa have mostly been deployed to intra-state conflicts (Heldt and Wallensteen 2006: 30). This forms a central part of the explanation why so many UN missions in Africa have been deemed failures. Initial post-Cold War UN missions in Namibia and Mozambique were largely perceived as successful, yet they were the exception. They were traditional peacekeeping operations, established on the back of comprehensive peace agreements. By contrast, when the United States and the UN intervened in government-less Somalia, they encountered a challenging operational environment in which extensive use of force by US soldiers and UN peacekeepers on one side and non-state armed groups on the other ended in the deaths of 18 US soldiers in Mogadishu as well as many more Somali fighters and civilians.[2] The setbacks in Somalia were contributing factors to a situation where influential UNSC members grew wary of contributing to missions headed for Africa's civil war scenarios in the early 1990s (Cleaver and May 1995: 485). Additionally, the UN Secretariat took the view that peace operations were inherently difficult and risky unless the UN had ensured the commitment of the warring parties (at a minimum, host state consent), a comprehensive peace agreement (peace to keep), a clear mandate and international support. UNSC members who were unwilling to contribute troops and resources for UN missions in Africa sometimes justified their positions on the grounds that those conditions had not been met.

Furthermore, geo-political changes spurred on the disengagement of the UN from Africa. In the immediate post-Cold War context, there were increasing expectations for the UN system to play a role in intra-state wars in the former Yugoslavia and in Africa. The rapid expansion of activities made it evident that the world body could neither mobilise nor manage the enormous capabilities that would be required for high quality operations in many complex wars simultaneously. Partly for fear of appearing indispensible, one response from the UN Secretariat was to encourage a move toward decentralisation in the field of international peace and security, including increased involvement of regional organisations. Decentralisation, in line with Chapter VIII of the UN Charter, was hailed as an opportunity to 'not only lighten the burden of the Council but also contribute to a

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[2] The ill-fated missions were the US-led Unified Task Force (UNITAF) (1992/93) and its successor United Nations Operation in Somalia II (UNOSOM II) (1993/95).

deeper sense of participation, consensus and democratization in international affairs' (Boutros-Ghali 1992: para. 64). While this trend was global in scope, it became most marked with reference to Africa. In part a result of the complex conflict scenarios and the lack of national interests at stake in Africa for the permanent five (P5) members of the UNSC, a rapid regionalisation of conflict management took place. From 1995 onwards the UN Secretariat actively facilitated structural and institutional steps towards increasing the contribution by African institutions to regional conflict management.[3]

In the mid-1990s, the Africa-UN relationship experienced an all-time low: the UNSC policies regarding Africa were characterised as distanced and driven by double standards (Boulden 2006: 419). As Jane Boulden put it, 'It was in Africa [that the UN] Security Council's immediate post-Cold War enthusiasm was most evident [...] And it was, therefore, in Africa and because of Africa, that the retreat was the most keenly felt' (Boulden 2003: 11). The event that evoked the most criticism of the UNSC's position on Africa was the withdrawal from Rwanda of the bulk of forces deployed in the UN Assistance Mission for Rwanda (UNAMIR) right at the outbreak of the genocide in April 1994. Moreover, the UNSC did not (until the second half of 1999) contemplate military involvement to protect civilians in some of the world's deadliest wars at the time: in Southern Sudan, the Democratic Republic of Congo (DRC), Liberia, Rwanda and Sierra Leone.

UN Security Council involvement in peace operations in Africa – key characteristics

- In 1993, there were seven UN peace operations in Africa. UN peacekeeping forces in Africa numbered almost 40,000, or 51%, of approximately 78,400 uniformed peacekeepers[4] (military personnel, police officials, and military observers) deployed worldwide (Berman and Sams 2000: 4-5). UN peace operation expenditures in 1993 reached around US$3bn.

- By stark contrast, in June 1999 there were only three UN peace operations in Africa, and the force levels were less than 1,600 (Berman and Sams 2000: 4-5). This made up about 16% of an approximate worldwide total of 10,000 deployed uniformed UN peacekeepers (Heldt and Wallensteen 2006: 24). The drop in numbers did not correspond to a drop in conflict levels on the continent. Between 1993 and 1999 major wars were being fought in Liberia, Sierra Leone and Southern Sudan, and there were 16 ongoing conflicts in Africa in 1999 (Sollenberg and Wallensteen 2000: 638). Troop contributions from the P5 were decreasing dramatically as were those from the previously generous Scandinavian countries and Canada. The UN peace operation expenditures were down to approximately $1bn in 1998 and $1.3bn in 1999 (Global Policy Forum 2005).

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[3] The argument in this paper draws on my doctoral thesis (Bergholm 2009b). The thesis expands on the contributing factors behind the decentralisation trend and its theory and practice. Importantly, decentralisation includes regional involvement but also that of coalitions of the willing, individual states and private military/security companies.

[4] The high numbers were mainly due to the large UN missions in Cambodia, the former Yugoslavia and Somalia.

- Nonetheless, from the second half of 1999 onwards there has been what might be called a re-engagement of the UN in Africa. Uniformed peacekeepers deployed worldwide had reached 65,000 by December 2004 (Heldt and Wallensteen 2006: 24). By January 2008, this figure reached 90,883, approximately 70% of whom were deployed in Africa, and ten out of the 20 UN-led peace operations worldwide in April 2008 were in Africa. The re-engagement comprised large-scale peace operations to conflicts that some felt were long overdue, such as Côte d'Ivoire, the DRC, Liberia, Sierra Leone, and Sudan. The UN peace operation budget was increased in 1999–2000 and reached $2,1bn in 2000 and $2,7bn in 2001 (Global Policy Forum 2005).

- A recent and important structural feature of peace operations in Africa is the skewed nature of contributions by developed vs. developing countries. Developed countries are heavy contributors financially and materially to the UN peace operation budget. As of 1 January 2008, the biggest contributors to that budget were: the United States, Japan, Germany, the United Kingdom, France, Italy, Canada, Spain and China. The bulk of the UN peace operation budget of nearly $7bn in the 2007/08 period was pledged for African peace operations. $1.48bn of the budget was destined for the UN-AU hybrid mission in Darfur alone. This was the UN's biggest ever approved budget for one single mission. However, the P5 members do not normally commit any of their soldiers to conflicts in Africa (Neethling 2009: 7). Today, large-scale peace operations depend on troop contributions from developing countries in Asia, such as Pakistan, Bangladesh, India, and Nepal, and in Africa, such as Nigeria, Rwanda, Ghana, and Senegal. By late 2004 some 45% of the total number of UN peacekeepers in Africa came from African countries. So, in one sense, although under UN flag and with UN financing, Africa carries out its own peacekeeping (Heldt and Wallensteen 2006: 22).

African solutions to African problems

The move by African regional and sub-regional organisations to adopt formal conflict management mandates and to take on humanitarian intervention roles from the early 1990s and onwards cannot be understood apart from the UN's disengagement from the continent. This move forms part of an overall decentralisation trend in international peace and security that was particularly intense in 1996-2004 (Heldt and Wallensteen 2006: 17). A widely held perception was that the UNSC was neglecting its primary responsibility for international peace and security and that this was most evident in reference to Africa (Boulden 2003: 307). The UN Secretary-General Kofi Annan said in his 1998 report on conflict in Africa that the UN – particularly non-African and African state leaders - had failed the peoples of Africa (UN 1998, para 5). At the same time, the African regional involvement in peace and security facilitated the increased post-1999 UN involvement in Africa. This section discusses the developments in the area of peace and security in Africa, while the next section discusses what form the UN re-engagement has taken and how it might be understood.

The rise in the involvement of African organisations in conflicts in Africa began with the decision by a sub-regional organisation, the Economic Community of West African States (ECOWAS), to send a Monitoring Group (ECOMOG) to Liberia in 1990 and to Sierra Leone in 1997. Both crises were conscious-shocking civilian protection crises, but despite the suffering they caused, the UNSC's approach to both cases has been described as one of 'malign neglect' (Adebajo 2008: 486). For example, ECOMOG had been deployed in Liberia for two years when the UNSC passed its first resolution on the conflict (Boulden 2006: 420). The mission in Liberia represented the first time that a sizeable force was controlled and financed by an African sub-regional organisation. It has been argued that Nigeria, the lead state, intervened due to a mix of self-interest (regional power dynamics) and humanitarian concern (Adebajo 2002: 48-50). Soon after the ECOWAS response to Liberia, the political and humanitarian crises in Rwanda and Burundi broke out. These met with neither UN nor sub-regional engagement, thus forcing the Organisation for African Unity (OAU) to act. The OAU sent small monitoring missions to Rwanda and Burundi: the OAU Neutral Monitoring Group to Rwanda (NMOG) 1991-1992, and the OAU Military Observer Mission to Burundi (OMIB) 1993-1994. For the first time, humanitarian concern was a sufficient ground for the OAU to intervene in the domestic jurisdiction of its member states. As experience in different parts of the continent accumulated, African leaders were faced with the long-term costs that war has for state power and for development. Gradually, these leaders supported the development of African peace and security institutions, including the ability to deploy peace operations to internal conflicts when the UNSC is blocked by political considerations (see Busumtwi-Sam 1999: 268; Williams 2007: 266). By 1993, African leaders formally acknowledged that conflicts in Africa were intra-state rather than inter-state and they endowed the OAU with a formal role in conflict management by endorsing the Mechanism for Conflict Prevention, Management and Resolution (OAU 1990).

One explanation for such a norm change is the contradictions embedded in the OAU's own principles and the parallel and growing pressure for African governments to be seen as conforming to transnational norms such as liberal democratisation and human rights.[5] For example, the non-intervention principle was interpreted in contradictory ways at OAU Summits. On the one hand, African leaders fiercely condemned the internal arrangements of 'foreign' regimes such as Rhodesia and South Africa. On the other, they were notoriously silent about human rights abuses committed by indigenous African governments, claiming these were 'internal matters'.[6] Pressures for democracy, development and human rights, expressed by African publics, OAU Secretariat officials as well as international voices, led to a social process of African elites realising that the OAU was becoming irrelevant (Bakwesegha 1997: 80). The norms had to change as they could no longer vest African elites with accepted power in world politics (author's interpretation of de Waal 2002: 43, 47).

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[5] There were stark contradictions in interpretations of the OAU core norms: non-intervention, self-determination, territorial integrity and African automony (Williams 2007: 266).

[6] OAU members rewarded Uganda's dictator Idi Amin with the chairmanship of the organisation at the very height of atrocities committed by his regime in 1975. Four African leaders (Botswana, Mozambique, Tanzania and Zambia) boycotted that summit.

It was against this background that the OAU transformation into the AU took place in 2001. The AU structures and the support for the 'African solutions to African problems' agenda are significantly influenced by the notion of self-reliance. Self-reliance is about lessening external interference and forging Africa-owned solutions to Africa's disadvantaged position. This entails not just peace and security but also trade and development (Adebajo 2009). Yet, of course, such Africa-owned policies would need to be acceptable internationally. The notion of self-reliance calls for Africa's leaders to unite and assume responsibility and ownership for Africa's future. If this could be achieved, the idea is that the solutions might be better fitted to African socio-political realities than the many forms of externally dictated policies that African peoples have known. Of course, forging political unity has been very challenging. When the AU's structures were founded, they had to accommodate the many rival proposals for Africa's future by powerful African leaders (see Tieku 2004: 261). In South Africa, President Nelson Mandela and his successor President Thabo Mbeki were actively trying to improve Africa's international image by promoting democratisation and pan-Africanism on the continent, by playing a peacemaking role and by voicing various African interests abroad. Nigerian President Olusegun Obasanjo promoted deliberations on human security in African international society. Other influential leaders were Libya's Colonel Muammar al-Gaddafi, Algeria's Abdelaziz Bouteflika, and Mozambique's Joaquim Chissano. To date, the key decision-making bodies of the AU are the Assembly of Heads of State and the Executive Council. The most important peace and security organ is the Peace and Security Council. The AU structures comprise all of Africa (except Morocco) and are in this sense pan-African. However, they have a strong regionalist basis and rest on the pillars of the sub-regional economic communities (RECs).[7]

In terms of the notion of civilian protection, there have been some important developments within the AU. The AU has enshrined in its Constitutive Act Article 4(h), which affords the Union a right to forcibly intervene in one of its member states in 'grave circumstances', namely war crimes, genocide and crimes against humanity. The adoption of Article 4(h) might mean that African collectives of states are internalising the transnational norm that sovereignty is no longer a carte blanche for policies leading to atrocities against one's own population. This seemed to be the message of the AU's Commissioner for Peace and Security, Said Djinnit, when he proclaimed in June 2004: 'Africans cannot [...] watch the tragedies developing in the continent and say it is the UN's responsibility or somebody else's responsibility. We have moved from the concept of non-interference to non-indifference. We cannot, as Africans, remain indifferent to the tragedy of our people' (IRIN News 2004). Notably, the AU Peace and Security Council has convened previously unthinkable deliberations on intra-state conflicts. This has been

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[7] The AU Commission has significant influence on norm development and implementation but its activities to date have been strongly state dominated. Other organs that are growing in importance include the Pan-African Parliament, and, in the field of peace and security, the Panel of the Wise, the Early Warning System, the Military Staff Committee, and the African Standby Force (ASF). The ASF is a continent-wide body of multidisciplinary military and civilian contingents and this concept rests on brigade size forces assembled by each of the five RECs in Africa. For more information, see for example Olonisakin (2004); Franke (2009).

the case especially relating to those where it has also deployed peace operations: Burundi (2003-2004); Sudan (2004-2007); the Comoros (2006, 2007, 2008); and Somalia (2007-present). The AU Peace and Security Council has also mediated in Kenya (post-electoral violence in 2007).

However, the emerging norm of 'non-indifference' has by no means supplanted that of non-intervention. This principle conflicts with but has not challenged the AU's core constitutive norms of sovereign equality and non-intervention. Questions remain regarding the degree of support for and internalisation of the AU's norms and institutional structures within the AU membership. To date, Article 4(h) has not been activated by the AU Peace and Security Council or the AU Assembly (despite the plausible view that some of the violence in cases discussed by the AU Peace and Security Council qualifies as 'grave circumstances'). The AU Peace and Security Council has shown a strong preference for consent-based interventions. The 2003 ECOWAS deployments to Liberia and Côte d'Ivoire had host state consent. So did AU missions to Burundi, Sudan and the Comoros. In regard to Somalia the concept of consent has been particularly challenging given the contested and fictitious nature of its transitional government. The AU's founding documents do not mention the concept of civilian protection. To date, there are no protocols of conduct and accountability in regard to tasks of ensuring the physical security of African populations in grave circumstances, although some of this is currently being developed. There is a lack of further policies and frameworks spelling out the consensus view and substance of the norm of non-indifference for the AU. In this context, the 2009 AU Draft Convention on Internally Displaced Persons (IDPs) is a positive development.

In practice, there have been a number of Africa-led peace operations that included measures (formal or informal) to protect civilians. These missions had varying forms of UN support or involvement. They include: the deployment of ECOMOG in Liberia 1990-1997, Sierra Leone 1997-2000, the ECOWAS mission to Côte d'Ivoire (ECOMICI) 2003-2005, the AU's deployment of the African Mission in Burundi (AMIB) 2003-2004 as well as the African Mission in Sudan (AMIS) 2003-2007. Out of these, only ECOMICI and AMIS were afforded formal civilian protection mandates (UN 2003: para. 9). But in none of the missions was protection the primary purpose (mission task). Based on these cases, it has been argued that African peacekeepers need to be better prepared for protection tasks, including better political support and a clear concept for protection (clear mandate, and rules of engagement (RoE)) (Holt and Berkman 2006: 183). While the responsibility to protect concept was endorsed by the AU Executive Council in the so-called Ezulwini consensus in March 2005, the question of when and on what grounds the responsibility to protect should fall on regional as opposed to global shoulders is highly contested (AU 2005a: para. 6).

Another significant challenge for the developing AU civilian protection role is that the Union's autonomy is quite weak. In part, this is because African leaders have not committed adequate funds to back the peace and security institutions of the AU. The bulk of resources have come from just a small handful of members. Since 1 January 2006, 75%

of the entire AU budget has been paid by only five countries: Algeria, Egypt, Libya, Nigeria and South Africa (Williams 2009b: 619). The majority of the troops for AU peace operations have come from a small number of African states, suggesting uneven levels of support for this development: South Africa provided almost all the troops for the missions in Burundi (2003-2004) and the Comoros (2006, 2007, 2008); until early 2008 Uganda provided all the troops for the operation in Somalia (2007-present); and Nigeria, Rwanda, Senegal and South Africa were the main troop-contributors for the AU's operation in Sudan (2004-2007) (Williams 2009a: 112). These troops were reliant on assistance from the AU's external partners, financially and with intelligence, transportation, logistics and training. Hence, the AU faces serious financial and material challenges and is dependent on outside resources to be able to sustain peace operations including those envisaged to end mass killings (Aboagye 2008).

African involvement in peace operations in Africa – key characteristics

- Since its birth in 2001, the AU has deployed around 15,000 troops as part of large-scale peace operations to four states: Burundi (2003-2004, 2007-2008); Sudan (2004-2007); the Comoros (2006, 2007, 2008), and Somalia (2007-present) (Williams 2009a: 98). These were all sanctioned by the AU Peace and Security Council and the AU Assembly. All but the Somalia mission had host state consent.

- These missions were also endorsed by the UNSC, although the peace enforcement actions by the African Mission in Burundi (AMIB) had never been UNSC authorised. These missions all relied on external support. The troops have come from a limited number of countries. South Africa provided almost all the troops for the missions in Burundi (2003-2004) and the Comoros (2006, 2007, 2008), Uganda provides most of the troops for the operation in Somalia (2007-present), and Nigeria, Rwanda, Senegal and South Africa were the main troop-contributors for the AU's operation in Sudan (2004-2007) (Williams 2009a: 112).

- Peace operations by ECOWAS have included: Liberia (1990-1997, 2003), Sierra Leone (1997-2000), Guinea-Bissau (1998-1999), and the ECOWAS mission for Côte d'Ivoire (ECOMICI) (2003-2005). There have been numerous other missions by sub-regional actors (Söderbaum and Tavares 2009: 71).

- Out of these African peace operations, only ECOMICI and AMIS were given mandates which included explicit civilian protection tasks.

- Most of the above operations were transitioned into UN (blue-hatted) peace operations, for instance the UN Mission in Sierra Leone (UNAMSIL) (1999-2005), the UN Mission in Liberia (UNMIL (2003-present), the UN Mission in Burundi (ONUB) (2003-2006), the UN Mission in Cote d'Ivoire (UNOCI) (2004-present), the AU-UN Hybrid Operation in Darfur (UNAMID) (2007-present). This gives the impression that AU missions are meant as interim measures until UN peace operations have been assembled.

2 How does the AU–UN relationship work in relation to civilian protection crises in Africa?

This section will discuss two central ways of understanding the current AU-UN relationship for civilian protection. Enhancing understanding of this relationship is important since overall the regional involvement in peace operations has not in itself been a meaningful response to security challenges on the African continent. In brief, regionalisation of peace and security functions to African formal actors did not occur because of, and was no reflection of, actually existing capacity for large-scale peace operations at the regional level (Heldt and Wallensteen 2006: 15). Nor was such regionalisation promoted by the UN Secretariat and the major powers (through capacity-building programmes etc.) in ways that reflected primarily humanitarian rationales - but rather short-sighted or self-interested aims (Berman and Sams 2000). Not surprisingly, taken together interventions for civilian protection purposes in Africa have been perceived as insufficient responses. Much analysis has pointed to the mixed, counter-productive and inefficient outcomes of peace operations with humanitarian, security, and law and order components (Adibe 1997; Berman 1998; Clapham 1998; UN 1999d; Barnett 2003; Bellamy and Williams 2004; Månsson 2005; Holt and Berkman 2006). Important work has borne out that local perceptions of intervening forces matter for the overall judgment of performance (Pouligny 2006; Mehler 2008: 57). This is not to suggest that peace operations in Africa, whether UN or non-UN led, could have been unproblematic, thus implying intention to fail on behalf of interveners. But it is important to critically assess interventionist practices and to enhance our understanding of their political nature, their advantages, and their limitations. There is clearly a risk involved for international organisations that in assuming a complicated security role such as civilian protection, they may raise expectations among local populations that cannot be met, usually not even by large-scale peace operations with a comprehensive political component, supported by high force levels, overall professionalism, and the political stamina to stay present long-term. The disappointing outcomes, in Africa and elsewhere, have led some to criticise the way in which the decentralisation policies have been implemented (MacFarlane and Weiss 1992; Berman 1998; Boulden 2003).

First, this section discusses the core principles of the regional-global relationship. Second, I shall clarify the proposition that legitimacy serves as a useful theoretical lens for understanding the regional-global relationship in regard to civilian protection by contrasting it with the main explanation in the literature: the interest-based one.[8]

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[8] The dominant framework in the literature explains this practice by looking at political, but also material and legal factors. The literature has considered questions such as increasing the financial, logistical and military capabilities of regional actors, improving the content or quality of their legal frameworks and investigating what motivates states to intervene (MacFarlane and Weiss 1992; Barnett 1995; Berman 1998; Sarooshi 1999; O'Brien 2000; McCoubrey and Morris 2000; Abass 2004).

The UNSC and civilian protection crises in Africa

The primary responsibility for the maintenance of international peace and security, and the power to authorise the use of force, is firmly vested in the UNSC (UN Charter Chapter V, 24 and Chapter VII, 39). The UN Charter founders clearly envisaged a subordinate role for regional actors. This can be seen in Articles 53 and 54 of Chapter VIII (the UN Charter chapter regulating regional-global interactions). Article 53 stated that 'The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council' (UN Charter Chapter VIII, 53). Article 54 stated that 'The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security' (UN Charter Chapter VIII, 54).

In addition to such ground rules, the global expectations regarding what the UNSC should be doing have arguably undergone interesting changes. I shall refer to such shared, inter-subjective, expectations of the UNSC's role or mandate as potentially affecting its 'social purposes'. During the 1990s, a normative shift took place on the UNSC with respect to the norm of non-intervention (Wheeler 2000).[9] Non-intervention, set out in UN Charter Article 2(4), is a fundamental legal principle. It stated that 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations' (UN Charter Chapter I, 2(4)). However, the UNSC increasingly defined humanitarian emergencies inside a state's borders as a threat to 'international peace and security'. Domestic sources of conflict that had previously been classified as internal matters were becoming a legitimate concern for debate in the UNSC.

This amounted to a reinterpretation of Article 2(7), which states that 'nothing contained in the UN Charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII' (UN Charter Chapter I, 2(7)). All in all, states could no longer abuse their people at will: the UNSC had been enabled to employ UN enforcement action under Chapter VII of the Charter in situations of humanitarian emergencies, mass atrocities and genocides. Such intervention could occur on a case by case basis, where none of the UNSC members had important national interests at stake, and where their troops were not exposed to significant risks (Wheeler 2008: 16-17). Indeed, the UNSC did so for example in Iraq (with the UN-sanctioned Coalition effort in the 1990-1991 Gulf War), in Somalia and in the former Yugoslavia (especially in reference to NATO air strikes).

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[9] Martha Finnemore has made a similar argument: UN member states were changing their beliefs regarding for what social purposes force should be used to foster international order (Finnemore 2003: 81).

Against this background, civilian protection has become an important thematic concern for the UNSC. One contributing factor was that the UN Development Programme (UNDP) reported that the figure of civilian deaths in civil wars was around 90% of overall deaths (UNDP 1994: 47). Another factor was the experience of the UN Protection Force (UNPROFOR). When approximately 7,000 Bosnian Muslims were massacred in a UN-patrolled 'safe area' this sparked thinking on how such areas should in the future be defended (UN 1999c: para. 499). Since 1999, mandates for peace operations have routinely included explicit permission for peacekeepers to protect civilians, often under Chapter VII.[10] On such occasions, the UNSC often determines that for instance state collapse and large-scale civilian insecurity are threats to international peace and security under Article 39 of the UN Charter.[11] Given that the UN does deploy military and civilians to protect civilians, it is troubling that the UN lacks institutional policies and military manuals for such roles (Holt and Berkman 2006: 9). The UN Secretariat is still debating and developing the tools to drive awareness and respect for human rights law and international humanitarian law (IHL) through to the field level (Bateman and Hammer 2007: 6). And given the decentralisation trend, it is also a concern that there are no clear protocols of accountability between the regional and global levels when it comes to protection missions. Against this background, it cannot be automatically assumed that decentralised civilian protection will adhere to UN standards and objectives. Alluding to this, the UN Secretary-General recommended in 1999 that non-UN actors should only be relied upon for protection if they could live up to international norms and standards (UN 1999b). However, decentralised protection is only increasing. At the 2005 UN Summit, world leaders assigned a role to regional organisations as prospective partners in responsibility to protect in situations such as mass atrocities (UN 2005, para. 139). The UN Secretary-General declared in 2006 that the UN was stepping up its cooperation with partner organisations, including developing 'a common framework on protection of civilians [,] agreed core policies and legal elements' (UN 2006b, para. 48).

Responses on the grounds that large-scale civilian insecurity is a threat to international peace and security are highly contested, particularly when one of the principal perpetrators of civilian deaths is a government. Interfering with a state's primary function to provide security for its citizens poses a challenge to UN Charter Article 2(7). Many UN member states, and most strongly those represented in the Non-Aligned Movement

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[10] The first Chapter VII peace operation with a civilian protection mandate was the 1999 UN mission for Sierra Leone (UNAMSIL). UN-led peace operations with a mandate to protect civilians under Chapter VII to date: Sierra Leone 1999, DRC 1999, Liberia 2003, Côte d'Ivoire 2004, Haiti 2004, Burundi 2004, South of Sudan 2005, Lebanon 2006, Darfur region, Sudan 2007. Moreover, since 1999 the EU, NATO, the AU, and ECOWAS (as well as individual states such as France) have all led missions with mandates to protect civilians. The Security Council has been the authorising body for most but not all of the regional organisations, coalitions of the willing and individual states that have included civilian protection mandates, such as British 'Palliser' in Sierra Leone 1999; French 'Licorne' in Côte d'Ivoire 2003; ECOWAS's ECOMICI in Côte d'Ivoire 2003; French-led EU 'Operation Artemis' in the DRC 2003, and; the AU mission for Darfur (AMIS) in 2004.

[11] The presidential statement from the Council's first open meeting on the issue of civilian protection linked the issue of protection directly to the Council's primary responsibility for international peace and security (UN 1999a).

(NAM), are sceptical of any new interpretations on these core principles (NAM 2004: para. 8). However, normative commitments by some states throughout the 1990s, and interpretations of the non-intervention and domestic jurisdiction rules that enabled certain actions in specific states, have impacted on collective expectations on what the UNSC should really be doing. In other words, there is disagreement among states, international bureaucrats, scholars, journalists, publics and global civil society as to what the essential purpose of the UNSC is. One prevalent view is that there are now more normative expectations for UN member states to justify themselves in association with humanitarian or human rights norms that they themselves have been promoting (ICISS 2001).[12] The UN has endorsed documents which stress the idea of interconnectedness of security (UN 2000, 2004d, 2005). Hence, UN member states will be expected to act according to the notion that local problems are global problems, and in line with the recognition that inherent in the purpose of maintaining international peace and security is an assumption of indivisibility of peace and security. Claims to protect civilians in the interests of international peace and security invoke both moral imperatives to save lives and national impulses to lessen costs and risks. One challenge is that higher levels of force, costs and political components tend to characterise these operations.

In 2009, current Secretary-General Ban Ki Moon, the UN General Assembly and the UNSC all restated the global commitment to the agenda of civilian protection and a global responsibility to protect, as well as to strengthen the contribution of peace operations to this agenda (UN 2009b). If acting on this agenda more and more seems a normative expectation for the UN, but such action is only selectively backed up by the majority of UN member states, it is clear that the UN in some ways relies on the decentralisation trend to be seen as meeting global peace operation challenges.

The interest–based explanation
An interest-based perspective considers the P5's selective approach to conflict response a function of their lack of direct strategic or economic interest in Africa. In the post-Cold War period, major powers were not interested in taking risks with their own men, in committing tax-payers' money, or in clashing with other P5 members over influence in former colonies. The interest calculus by the P5 is what informs how the incumbents interpret their responsibility for the maintenance of international peace and security. Ever since Somalia, the United States' policy has been to encourage African regional organisations to manage their own conflicts. One concrete effect of the lack of interest is material: states such as France, Britain and the United States prefer to support African peacekeeping capacity through ad hoc bilateral channels. Hitherto, UN member states have been unwilling to reinterpret the UN's financial rules in the direction of enabling funding for regional-led action, also for missions that the UNSC endorses. Therefore, the UN peacekeeping budget can only be used towards UN-led missions. Critics of this stance have opined that if no UN option is forthcoming, major powers should fund

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[12] The ICISS was set up to build consensus on how people might be put over governments in the UN's peace and security practice, while maintaining international order and sovereign equality as the foundation. Another prevalent view is that the UN ought to promote 'good governance' (often of a liberal democratic type).

comprehensive capacity-building of regional organisations before expecting them to protect civilians in their regions.

From the interest-centred viewpoint, the UNSC stepped up its investment in Africa's political future from 1999 onwards because the national interests of the P5 had changed. Africa was becoming a strategically important continent. Otherwise, expensive and large-scale UN peace operations such as the ones to the DRC and Sierra Leone in 1999, Liberia in 2003 and Côte d'Ivoire in 2004 would not have been deployed. One underlying factor is the post-9/11 belief coming out of the United States that 'failed states' are ideal staging and breeding grounds for international terrorists. Another factor is that involvement presented less of a political conflict because Africa was showing the political will to take on African conflict management and to adhere to transnational norms, including those of the international economic system. Other interests also play a part in the external re-involvement in Africa, such as strategic thinking on mineral extraction, energy supply and the regulation of migration (Atwood, Browne and Lyman 2004). The recently strengthened China-Africa relations (and resulting contracts relating to mining, infrastructure, oil, land, etc.) have not gone unnoticed in Western capitals. Recently UN member state representatives have argued that a partnership with the AU is necessary, given that the UN focuses about 60% of its time on African issues and deploys most of its peace operations in Africa (UN 2004c).

From this perspective, peace and security partnerships with Africa are valued by the major powers to the extent that they serve their foreign policy interests. They are seen as tools by which non-African states will attempt to influence Africa's political future in ways beneficial for them. This is an instrumental view of partnerships: they pave the way for external actors to pursue economic and other interests in Africa. For one, industrialised nations need developing countries in Asia and Africa to continue providing the bulk of troops to UN-led missions in poorer parts of the world. Regionalisation is clearly attractive, given the peace and security funding structure where Asian and African troops are sent to complex civil wars and can be paid and assisted on a voluntary basis by states which feel inclined to do so. The status quo in this funding structure is problematic in this regard, because bilateral funds are unreliable and may be steered towards regional missions which best suit donor objectives.

States may have humanitarian concerns, but they are far more likely to act for regime supporting reasons. This would seem to explain why the UNSC has reacted pragmatically when regional actors failed to protect civilians in line with UN Charter principles, for example in the ECOWAS missions in Liberia and Sierra Leone. These missions were de facto peace enforcement missions, both deployed without prior UNSC authorisation. Since no P5 state had any significant interest in West Africa, the various counter-productive and anti-humanitarian effects of the ECOMOG actions did not make it onto the UNSC agenda. Indeed, these missions were condoned by the UNSC, and they were retroactively endorsed. Moreover, international institutions are insignificant political entities. The prevalent realist and neo-liberal view is that international organisations do not matter in any other sense than being interstate forums for the pursuit of national

interests (realism) or to solve cooperation difficulties or lessen costs by burden-sharing (liberal/institutionalists) (Mearsheimer 1994-1995: 9). Presumably, the best African states can do is to use the AU as a front through which to try and maximise their interests. Acting within an asymmetrical power relationship, they may try to attract funding, knowledge, foreign investment and favourable support from donors, the wider UN System as well as International Financial Institutions (such as the International Monetary Fund and the World Bank). Put crudely, African regimes will work for a politically more stable Africa, as long as this is what best protects their position in power.

One problem is that the interest-based approach is 'uni-directional', by which I mean that it rarely has as an objective to explore to what extent the regional actors can influence ideas, multilateral norms, and decisions. This leaves the impression that the major states within the UN determine and shape the organisation's policies, which are implemented in a top-down fashion. However, I argue that these explanations have neglected to consider the centrality of the idea of collective legitimation in constituting the possibilities for state actions in internal conflicts. I propose a particular understanding of international legitimacy as a lens through which we can comprehend regional-global relationships. Such a lens does not replace the interest-based explanation (nor others that focus on legal and material factors). Rather, I offer a further dimension and a more nuanced description of the regional-global civilian protection collaboration (Bergholm 2009b). Decisions by state representatives are driven by a complex mixture of factors, surely including national interests and power considerations and also material and legal considerations. They are surrounded by intense discussion, contestation, and judgment. The legitimacy approach helps us understand multilateral decision-making in international peace and security as dependent on collective political approval. By concentrating on legitimacy judgments, we may gain insight into how a certain institution functions, for what purposes states attempt to use it and why they value its existence.

The legitimacy explanation

This section makes the case that legitimacy offers a way of enhancing our understanding of the regional-global relationship. Legitimacy provides a way of analysing how far decentralisation of civilian protection has implications for the UN's primacy and the UNSC's capacity to act in certain crises.

An alternative explanation to the one above is that the post-1999 re-engagement of the UNSC in Africa indicates that the P5 were gradually becoming aware of the fact that 'African Solutions to African Problems' had not been implemented in a credible way. Additionally, that the wide-ranging criticisms of the decentralisation process reflected not only on African capacity but also on the way in which the UNSC had executed that process, and, in the long run, on the efficiency of the UN in conflict management. Indeed, critics warned that the effects of decentralisation had called into question the UNSC's normative standing and legitimacy (Boulden 2003: 307). Additionally, that overall the process had undermined the multilateral basis of conflict response. Such an explanation assumes that national interest also changes in reference to shared purposes such as global norms.

Decentralisation of international conflict management had been justified in reference to political principles such as democratisation of international affairs and empowerment of African regional organisations within their regions of concern. In reality, burden-sharing has been more akin to burden-shifting. Hence, critics were implicitly asking whether the UNSC had acted irresponsibly. Crucially, the question at stake was whether a loss of legitimacy on the part of the UNSC might over time harm its efficiency and capacity to maintain international peace and security. In a sense, the UNSC would appear indispensible. For instance, framing the protection of African civilians as a 'humanitarian imperative', the UN Secretary-General Kofi Annan cautioned UN member states that they had a shared stake in protecting African civilians (Annan 1998: paras. 46, 49). Therefore they should honour their commitments to human security, and its rationale of indivisibility of peace and security.

From this perspective, the UNSC's members are vulnerable to criticism because their membership endows them with certain privileges and symbolic power which depend on the institution and its practices being perceived as rightful and implemented in the collective interest. Because the United States, United Kingdom and France in particular had advocated humanitarian intervention norms, at this same time there were normative expectations in the wider international society that these states should act in accordance with their ideational commitments. In this sense, the legitimacy perspective takes seriously that the UNSC may have re-engaged in Africa - seeking a partnership with the AU - in part to remain a significant and credible global institution. To develop such a claim, I draw on Inis Claude's term of 'collective legitimation'. His argument was that the UN membership has conferred on the world body the most significant function of collective legitimation. This means an ability to impart multilateral endorsement of states' policies and positions (Claude 1966: 370-372). Claude found that states make use of international organisations because they prefer to pursue policies that have the collective approval of their memberships. By deferring to such organisations' symbols or decisions or by justifying their actions in reference to shared norms, states ascribe to them a function and a value in international politics. Therefore, international organisations can be seen as arenas whose three constituent parts (collectives of states, specialised agencies and international civil service) recognise the value of collective political approval. These are places where we see the reactions to when states make legitimacy claims, leading to endorsement, challenge or rejection (Coleman 2007: 49). Legitimacy claims in this context are statements made on behalf of states that are associated with common rules and norms. What sets legitimacy apart from other values is the dependence on social recognition (Clark 2005; Clark and Reus-Smit 2007). So, international legitimacy connotes collectively accepted 'rules of the game' within a particular social setting at a particular point in time.

The more multilateral in membership, the more powerful an international organisation is. The UN comes closest to an 'expression of a global version of the general will' because its membership approximates universality (Claude 1966: 372).[13] The UNSC legitimates the organisation's peace and security activities because it has been invested, through the Charter, with the primary responsibility for maintaining international peace and security. The UNSC's power comes with the responsibility to ensure that its actions are directed at the attainment of international interests (Coleman 2007: 56). By implication, regional and sub-regional organisations possess a collective legitimation function but since they have less inclusive memberships than the UN, their legitimacy judgments do not carry as much weight as those of the UN. They express the will of a section of international society, but not the society as a whole. This means that when regional actors wish to be perceived as acting for international peace and security interests, and not just regional ones, they rely not only on their own internal collective legitimation but also on the UNSC's seal of approval.[14] A key assumption of this perspective is that multilateral organisations prevent even powerful states from dominating the organisation. They do so in their capacity of a social structure that embodies a shared normative framework which has integrative effects on its members. State actors, the officials and other representatives and constituencies such as global civil society are socialised in such an environment, although it is true overall that major powers have more influence and are more powerful (Hurd 1999: 209). Under certain conditions, the normative context constitutes international state conduct. In this context, norms are defined as 'socially shared expectations, understandings, or standards of appropriate behaviour for actors with a given identity' (Finnemore and Sikkink 1998: 891-892).

Thus, the ability to make legitimacy judgments is a persuasive form of power which may help an international organisation to reach its objectives and to engender change in the conduct of its constituent parts. The collective legitimation function is crucial for international organisations because they depend on voluntary compliance in the absence of an effective enforcement authority. Controversy offers ample opportunities for reinterpreting an organisation's legitimacy and, if such reinterpretations take hold, for setting new limits and power for the institution. These new terms are often but not always supportive of the interests of strong states.

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[13] We see that the UN is continuously reinforced as the most legitimate world forum to discuss global issues such as the recent financial crisis, peace and security, environment, and so on. Swiss President Hans-Rudolf Merz warned the UN General Assembly that the bloc of major economies known as the Group of Twenty (G20) lacked legitimacy to do the same because it was an unaccountable and unrepresentative entity (*UN News,* 2009). The G20 has power, but this power is not always legitimate. The G20 members represent nearly 70% of the world population and 90% of global gross domestic product (GDP). Its members are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, the Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom and the United States, as well as the EU.

[14] Katharina Coleman (2007) uses a model called 'the global legitimacy pyramid' to explicate the regional-global relationship. The model helps explain why individual states use an international organisation to legitimate action. She concludes that states almost always deploy peace enforcement operations through international organisations because they are concerned with the international legitimacy of such risky and contested operations.

States, in turn, value legitimacy because when socially perceived as legitimate, they can expect that their application of policies will be met with voluntary compliance and agreement. Actions that are seen as socially beneficial face lower levels of opposition and do not necessitate the use of coercion or bribes. Therefore, legitimacy may mean that state actors can employ for example power, loyalty and armies in ways that are conducive to international order. The normative context can imbue material, legal and political components with social meaning. Such meaning may have effects for the international acceptability of their application. Conversely, being seen as illegitimate impairs the ability of an actor to take action. It incurs direct and indirect costs, for example an actor may have to use coercion, bribes or rely on the self-interest of other actors to ensure compliance. Additionally, states share an interest in upholding the order and predictability of international society. In multilateral decision-making, states justify their preferred actions in reference to shared norms and values. However, this does not refute that states continue to pursue what they perceive as their core national interests. The legitimacy argument does not stand in opposition to the realist insights about power and interests in IR. But most of the time, states seek voluntary agreements and comply with international norms. They prefer to pursue policies that have the collective approval of larger collectives of states.

From the legitimacy perspective, regional and sub-regional actors have some agency and do influence norm change and international legitimacy even within existing power structures. They are dependent on international validation from the UNSC, but they are not predetermined subordinates. They are instead both enabled and constrained when acting within the shared social structure. Normative contestation within the regional entities may impact on the relationships of legitimation between the regional and global actors. So, regional organisations seek to legitimate themselves to the UN, and, conversely, the UN needs the regional level to legitimate itself. My core argument is that the relations of legitimation between the regional and global levels are best characterised as 'co-dependent'. To some extent, both organisations' legitimacy is dependent on socially shared perceptions that they are contributing to the provision of international peace and security. They are mutually dependent on the common value of peace and security. With the term co-dependency we can make sense of why much of the critique of regional-UN civilian protection in peace operations has not only pointed out material, legal and political deficiencies but has also called into question the UNSC's credibility in terms of implementing its global mandate in peace and security (Bergholm 2009b). This approach provides a way of differentiating between the social standing of international and regional actors without reducing this question to the distributions of power in the material or political sense, or to the quality of a legal framework (Bergholm 2009b).

African conflict management during the 1990s can be seen as a process of contesting claims to legitimacy and as a sign that a large section of international society (53 African states) felt unrepresented in international peace and security management. African collectives of states interrogated their relationship with the UNSC. They displayed distrust in the UNSC's ability to expeditiously endorse their interpretations of what was in the regional and international interest. African states as well as a broader range of actors such

as civil society, journalists and scholars began to interrogate and examine the UNSC's legitimacy. This process illustrates the regional ability to influence norm interpretation and norm change, because it was justified in reference to a shared framework, the UN Charter. Some African states were willing to risk international opprobrium in pursuit of African peace and security in Liberia and Sierra Leone because they questioned the UNSC's normative standing. They argued that they were getting involved in peace operations on behalf of, not instead of, the UNSC. As a result, the extent to which the OAU, ECOWAS and SADC could imbue interventions with international legitimacy was enhanced (Coleman 2007: 309). One contributing reason for the legitimacy 'boost' of African regional organisations is that simultaneously, the legitimacy limits of the UNSC are being revealed by the ever greater number of people worldwide who find it undemocratic and unrepresentative (five permanent members with veto powers, with no seat for South America or Africa). It is perceived as insufficiently universal. As the Swiss President put it, 'The UN should continue along its reform path in order to reinforce its legitimacy' (UN News 2009; see Morris 2000). At the same time, African regional organisations rely on the broader international society for international legitimacy. African organisations have remained determined that they need the relationship with the UNSC and a voice on it, no matter how imperfect they have found it to be. Collective legitimation is a fundamental long-term value, a process where all participants may potentially influence acceptable visions of international peace and security. Therefore, it is significant for the authority and capacity of African states and institutions.

The next section investigates the AU's legitimating potential and the effects of the AU's role in Darfur on the AU-UN relationship.

3 A legitimacy perspective applied to Darfur, 2004–2007

In this paper, I do not discuss the conflict in Darfur and the specific events there. What is of most importance is that the UNSC determined in Resolution 1556 in July 2004 that the situation in Darfur was a 'threat to international peace and security and to stability in the region' (UN 2004b). Resolution 1556 expressed grave concern at the ongoing humanitarian crisis and widespread human rights violations that were placing the lives of hundreds of thousands at risk and leading to a refugee and internal displacement crisis. It recalled that the Government of Sudan (GoS) bears the primary responsibility to 'respect' its civilian population, and that it should disarm the Janjaweed.[15] Thus, the UNSC placed

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[15] There is substantial information and reports regarding the government's air bombardments on Darfuri villages, the raids by Janjaweed militias – sometimes accompanied by regular units of the Sudanese Army – and the use of terror strategies such as sexual violence against girls and women, wanton destruction and cattle rustling (UN 2004a: 10-11). A comprehensive overview of the international reactions to Darfur is found in Black and Williams (2010). This section draws heavily from the detailed case study in my thesis (see Bergholm 2009b).

the conflict on its agenda, recognising that the situation including its regional and international implications required international involvement. However, having recognised the urgency and proportions of the crisis, the UNSC argued that the AU was best placed to take the political and military lead in the response to the conflict in Darfur. To have an 'African solution to an African problem' was a consensus position that developed between a majority of member states of both the UN and the AU. A regional organisation, that the UN had quite strained working relations with, was considered best placed to take the lead in this case. This decision only makes sense given the post-Cold War context in which regionalisation in line with the principles of the UN Charter became seen by some UNSC members as a legitimate response to the security problems of Africa due to their own reluctance to take risks or commit resources there (Boulden 2003: 28-30). This section will now discuss the AU's legitimacy claims to protect civilians in Darfur: first, how these were accommodated within the AU, and then how the quest for international validation played out at the UNSC. I proceed to illustrate how the relationship can be understood as co-dependent, as a relation of mutual need which is constraining and enabling for both the actors involved.

The African heads of state took great care in establishing their actions over Darfur as legitimate because they, especially Nigeria and South Africa, saw this intervention as a step towards a more self-reliant role in peace and security. For this to be achieved, the Darfur mission, AMIS, needed the social recognition of the UNSC. In the context of the Darfur crisis, the AU's intergovernmental bodies (the Peace and Security Council, the Assembly of Heads of State and Government, the Executive Council) and its Secretariat (the Commission) were focal points for the mediation between material, political and legal factors. An intense legitimacy contest centred on the three norms of non-intervention (no breach of Sudan's sovereignty), African solutions to African problems (self-reliance), and non-indifference (humanitarian impulse), and a compromise had to be found. South Africa and Nigeria promoted the legitimacy claim made by prominent AU Commission officials that the AU could not appear indifferent to events in Darfur without this critically eroding the organisation's legitimacy. It was essential for the AU to take on an effective civilian protection role for humanitarian reasons and for the purpose of developing the international legitimacy of its peace and security structure. The states on the AU Peace and Security Council authorised AMIS on 20 October 2004 to protect civilians if it 'encountered [them] under imminent threat and in the immediate vicinity [and if this was possible] within resources and capability, it being understood that the protection of the civilian population was the responsibility of the GoS' (AU 2004, paras. 65, 67). The civilian protection element was re-emphasised one year later (AU 2005b). This mandate represents a concrete attempt by the AU to apply the non-indifference norm in Darfur; however, without having to activate Article 4(h). South Africa and Nigeria, and other lead states involved in AMIS such as Rwanda and Senegal, were motivated to intervene in Darfur in a manner acceptable on the world stage because they have a stake in the AU process and in a programme of transformation of Africa's external relations. Hence, the civilian protection mandate for AMIS responded to internal as well as external pressure for the AU's member states to demonstrate their political will to work through AU peace and security institutions for human protection in Africa. Some of the

AU Commission's senior humanitarian and human rights officials used this momentum to act as norm mediators for the non-indifference norm. At the same time, all of the AU's efforts were predicated on Sudan's consent. The situation in Darfur was determined to be the AU's legitimate concern – the organisation did not defer to Khartoum's initial arguments that this was an internal matter. The AU as a collective actor disapproved of the behaviour of one of its members, in stronger and more public terms than had been previously possible in the history of security cooperation in Africa. But the intervention was only implemented after Khartoum's reluctant green light had been secured. The terms of the mandate were influenced by the Sudanese regime that coincidentally had a seat on the AU Peace and Security Council at this time.

The compromise that the AU arrived at illustrates the value that African states have ascribed to maintaining a united front. Without this, they have worried that the AU would lack legitimacy in the eyes of wider international society, and crucially those UN bodies upon whom it depended for both its authority to act and its capacity to do so. International legitimacy was in a sense prior to and a fundamental condition for the material and political considerations that are usually invoked to explain the limitations and successes of the AU's actions in Darfur. The involved countries wanted, more than pursuing national interests, to be regarded as projecting their capabilities towards new and legitimate purposes in Africa. It was not only humanitarian concern, or political interest, and the peace operation was not undertaken solely in the hope of attracting donor funding. In the longer term, being seen as internationally legitimate was the value that might constitute new material and political possibilities for the AU. However, it is true that the AU needed the donor-recipient relationships for AMIS as it was not in a position to fund or sustain AMIS, and also that legitimacy is often followed by funding, attention, capacity-building and stamina for a comprehensive peace process among observers and donors.

Turning our gaze to the UN, the UNSC was divided over what type of response would be legitimate, faced with Khartoum's argument that Darfur was an internal matter (and therefore within the domestic jurisdiction of the GoS). The GoS made strong references to the core non-intervention principle; the P5 states of China and Russia (and also Algeria and Pakistan) shared Sudan's traditional interpretation of this norm and supported its refusal to consent to UN-led intervention in Darfur. The United States and United Kingdom preferred to uphold the consensus in the UNSC, and to abstain from proposing any military adventurism in Sudan. France was concerned about regional instability because of the numbers of Darfuris who had crossed over into Chad, but did not want UN-led troops in Darfur. States debated responses to Darfur in reference to the norms of non-intervention, civilian protection and African solutions to African problems. A compromise was made between these norms with non-intervention clearly being the winner. Despite the humanitarian feeling for the civilians in Darfur, and the UNSC's debates about the need for protection there, no state defended the view to force a military solution on Sudan. It was not possible for the UNSC to decide, as UN emergency relief coordinator Jan Egeland argued, to protect civilians through a comprehensive peace process, and a large-scale peace operation mandated to protect civilian lives as well as

humanitarian aid (Egeland 2008: 90). However, the argument that Darfur was an internal matter was ultimately not socially defensible. Nonetheless, the mounting evidence about war crimes committed by Khartoum created a normative conflict for the United States and the United Kingdom. Their many references to the need to protect civilians created a benchmark against which actors such as UN senior officials, domestic publics, journalists and scholars tried to hold them accountable. Those states felt the pressures and the normative expectations that the UNSC must 'do something' after passing Resolution 1556. The compromise, which allowed the UNSC to argue that it had found a protection solution for Darfur, was the turn to the AU. A turn facilitated by how African regional organisations are seen as legitimate first responders to conflicts in Africa.

The AU-UN relationship for civilian protection in Darfur had effects for the legitimacy of both institutions. The AU was both constrained and enabled by its relations with the UNSC. The AU managed to deploy its first large-scale peace operation. Without the material and political donor support from outside, the AU could not have deployed these men or sustained the mission for as long as they did. The African representatives gained ground because they were willing to act when the UNSC would not do so, in yet another African security problem. The only third party that had Sudan's consent for a military presence was the AU. Hence the AU was the only organisation that could offer some physical protection for Darfuris without having to breach the global rule of non-intervention. The AU was afforded a lot of positive attention: a two-year old organisation was lead actor in a situation that at this time was considered one of the world's worst humanitarian crises. The UK's former Permanent Representative on the UNSC, Sir Emyr Jones Parry, said at a UNSC Nairobi meeting in 2004, 'it has become fairly obvious that the problems we all confront are just about the same [. The UN's] responsibility to work with the African Union to address African issues [...] is actually very substantial' (UN 2004c). At the same time, the AU was constrained by its reliance on the UNSC for international validation. It had to defend itself from criticisms regarding its institutional but also human limitations and weaknesses, and it struggled to preserve a measure of autonomy in the relation.

The states on the UNSC were enabled in the sense that a peace operation was present in Darfur towards which the P5 could volunteer political support and financial and material assistance. AMIS presented world leaders with a way of providing some civilian protection in Darfur. Hence, the support for the AU and the humanitarian relief effort allowed the UNSC, especially the United States and United Kingdom, to portray themselves as 'doing something' about Darfur. The turn to the AU importantly safeguarded the existing geo-political and trade related interests, involving intelligence exchange and arms deals between several P5 states and Sudan. Western powers avoided having to commit their soldiers. This was the best way for Western powers to remain as uninvolved as possible in Darfur, which seemed a risky place to intervene in for any actor. As one UN Department of Peacekeeping Operations (DPKO) official stated, 'for the UN it was more convenient to engage the AU in a situation that looked as if it could get so messy' (Bergholm 2009b).

However, the way in which the AU-UN relationship came about led to criticisms. The UNSC was constrained in the relationship in the sense that it was criticised for not empowering the AU more. There was evident reluctance on the part of the UN membership to follow through on some of the proposals by the UN Secretary-General to strengthen the mission and make it credible, to take it over as was originally planned, or to take on a larger responsibility for comprehensive peace talks. AMIS's operations were hampered by a lack of Armoured Personnel Carriers (APCs), attack helicopters, and other means of transport and communications. These were the material capabilities that would have been necessary to enable AMIS to carry out anything beyond selective and ad hoc protection measures. Indeed, the UN DPKO had made assessments of what physical protection was possible in Darfur and the UN Secretary-General had repeatedly asked the member states to contribute attack helicopters for AMIS. In the field, AMIS war seriously under-funded, out-manned and out-gunned. The mission had at its peak 7,000 troops in an area the size of France. This meant fewer patrols, and less of a deterrent capability in its areas of deployment. AMIS did initiate water and firewood patrols but could only do these subject to troop levels and the security situation. In only a few instances in 2005 did AMIS do preventive deployments to stop attacks on civilians. Additionally, international media focused on how AMIS relied on bilateral pledges for equipment and cash, and therefore on the issue that financial responsibility for regionally led missions is not carried by the UN even if they are UNSC endorsed.

In the areas of disarmament and access, the protection of civilians was complicated by the AU-UN relationship in Darfur. The case can be made that the UN, if supported by a united P5, could have led comprehensive peace talks on the crisis and that these should have started in 2003-2004. Important political pressure from the P5 could have made a difference for AMIS in the field. For instance, disarmament of the proxy militia, Janjaweed, was entrusted to the same government that was using them to crush a rebellion in Darfur. When Khartoum did not take sufficient steps to comply with international demands for disarmament of the Janjaweed, nothing happened. As time passed, these militias grew and were no longer under the government's control. Second, despite the Status of Mission Agreement that the AU had with Khartoum, they were not granted freedom of movement in Darfur. The GoS even imposed a curfew on the mission, denying them any freedom of movement between 8pm and 8am daily. Sometimes the GoS denied AMIS access to areas where attacks were planned. As a consequence, all of AMIS's operations had to be agreed with Khartoum since without its consent, the mission would have folded. Third, the P5 needed to look over their own trade relations with Khartoum to ensure that none of their existing agreements or contracts fuelled violence against civilians on the ground.[16]

Furthermore, the UNSC was constrained in the relationship because it was dependent on the AU's continued willingness to play this role. In 2006, an attempt sponsored by the United States and the United Kingdom to see a UN takeover of AMIS could not happen because Khartoum did not give its consent to this transition. A direct request by the UN

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[16] A case in point was Chinese and Russian arms exports to Sudan (Amnesty International 2007).

Secretary General was made for the AU to stay on the ground until the end of 2006. It was only because AMIS stayed in place that the transition could finally take place on 31 December 2006 from AMIS to the UN-AU 'Hybrid' Mission for Darfur (UNAMID). In sum, the UNSC's reaction to Darfur did not silence the criticism that its approach to the protection of civilians in Africa was disengaged and detached. The UN's legitimation of the AU's mission was not followed by a substantial degree of formalised empowerment and support. There was pressure for the UNSC to show what substance the talk of partnership really had.

It is possible to make the case that from 2006-2007 onwards, the UNSC started showing some recognition of its dependence on the AU's continued willingness to be a first responder in civil wars in Africa. The constraining dimension of the relationship encouraged some significant and unprecedented decisions. For example, on 28 April 2006, the UNSC acknowledged especially the value of the AU's steps in regard to the protection of civilians in armed conflict in Resolution 1674 (UN 2006a). Moreover, the UNSC is considering ways of formalising the AU-UN relationship and it has consulted with the AU Commission on ways to enhance the predictability, sustainability and flexibility of financing the AU when it undertakes UN-mandated peacekeeping operations. The UNSC is expected to continue discussing a UN-based financial responsibility for AU missions (authorised by the UNSC and only under certain circumstances) (Bergholm 2009a). By so doing, the UNSC implicitly accepts the African position that when the AU authorises peace and security interventions (and the UNSC does not protest), this is done on behalf of the wider international community (Bergholm 2009b). On 16 May 2009, the UNSC and the AU Peace and Security Council held their third joint meeting, the first such meeting having occurred in June 2007. These developments herald a deepening recognition of the role that the AU can play in contributing to the attainment of international peace and security. Arguably, the AU-UN relationship over Darfur has boosted the AU's international legitimacy. Although the relationship threatened to erode further the UNSC's capacity to act in Africa, the recent strengthening of the partnership may have helped restore some of the damage.

4   Conclusion

The AU-UN relationship regarding peace and security has evolved dramatically in recent years. Presently, both institutions are responsive to the idea that there should be a 'partnership' between them, although the parameters of such a partnership remain vague. There is a remarkable consensus - by Africans and non-Africans alike - on the necessity for an African civilian protection capability. The UNSC is highly supportive of the AU as the primary peace operation actor on the continent. Notably, the UNSC has started referring to the AU's potential contribution to shared, global, interests: namely the maintenance of international peace and security.

The UNSC's and the UN Secretariat's steps towards a closer partnership with African organisations can be seen as a process of repairing and restoring some of the UN's legitimacy damage.[17] Both the UNSC and the UN Secretariat have conferred valuable political approval on the AU through their encouragement, lack of condemnation, weak monitoring mechanisms (a laissez-faire attitude) and steps towards institutionalising the relationship with African regional and sub-regional actors in relation to conflicts in Africa. The intensified direct dealings between the UNSC and the Secretariat and their AU counterparts in recent years denote that the AU is considered the legitimate first responder in African conflicts. The UNSC sometimes prefers to wait for the AU Peace and Security Council to pronounce on an issue in Africa (Aning 2008). This means that while African member states of the UN have less impact on UNSC decision-making than more developed and powerful states, their input cannot be discarded. The partnership is not fully captured from an interest-based perspective since it is not fully controlled by anyone, and since it is not of a purely instrumental nature. The UNSC's decisions in regard to its partnership with the AU are inextricably linked to the UNSC's collective legitimation function: if large sections of international society were to argue that the UNSC has failed to live up to the ideals and principles which justify it (maintenance of international peace and security), this may lead to a gradual erosion of its ability to act. This is because the UNSC's ability to play that role derives from the continued loyalty and respect of international society but also from the global public. One potential implication for multilateralism of an improved AU-UN partnership may be that the UNSC can claim with more legitimacy that it lives up to its global mandate (international peace and security) also in Africa. However, outstanding issues such as reform of the UNSC and its procedures will continue to indicate legitimacy limits.

An overall conclusion is therefore that for the UNSC to protect its collective legitimation function, it also has to recognise and protect that of the other organisations termed partners in international peace and security (Bergholm 2009b). Undermining one's partner, in short, can harm oneself. Conversely, if African states want to be seen as acting with international legitimacy through the AU, they must also adhere to principles and prevalent norms of multilateralism. Research has found that African states exercise the most power and influence in UN affairs when they defend the global mandate of the UN, yet act strategically by speaking with one voice on issues of concern to Africa (Adebajo 2009). This underscores the mutual and integrative dynamics of international organisations and the role that they play in international politics. Against such a background, it is significant that African states have recognised the potential for strategic behaviour within the AU. They have conferred a collective legitimation function on its intergovernmental bodies. Through a discussion of the AU's lead role in Darfur, I have illustrated the legitimating potential of the AU. I have argued that international legitimacy is a necessary pre-condition to be seen as responsible political actors and as representing political, material and moral objectives that are common to those of their counterparts, or equally defensible.

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[17] A 10-year declaration was signed in 2006 by UN Secretary-General Kofi Annan and AU Chairperson Alpha Oumar Konaré to enhance UN-AU cooperation (UN 2006c).

The AU-UN relationship for civilian protection is currently 'the only game in town'. This paper has discussed the urgent need to examine its effectiveness and performance. Using the notion of international legitimacy, I have indicated the potential offered by fostering and encouraging decision-making within international organisations as opposed to unilateralism. The multilateral approach may often seem slow and less effective, but it offers a more stable political path in the sense that not even the strongest of actors can completely control the process.

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