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New-instutionalism and the origins of the African Union

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INTRODUCTION

The institutional design of the AU, its security architecture, as well as its Constitutive Act, suggest a principled shift in African security co-operation. The principle of the right to intervene, albeit under grave circumstances, and the responsibility to protect are central to the organisation's mandate. Article 4 of the Constitutive Act of the AU (2000) grants the organisation the right and the responsibility to protect. Article 4(h) affirms 'the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity', article 4(j) declares the right of member states to request intervention from the Union in order to restore peace and security' article 4(o) promotes the respect for the sanctity of human life and article 4(p) condemns unconstitutional changes of government.[1] Furthermore, the Protocol Relating to the Establishment of the Peace and Security Council of the African Union reiterates the right of the AU to intervene in grave circumstances and to enforce 'early responses to contain crisis situations so as to prevent them from developing into full blown conflicts'.[2] The African Charter on Democracy, Elections and Governance encourages principles promoting peace and security, respect for human rights and the advancement of democracy,[3] and the Ezulwini Consensus which reflects the Common African position on UN reform reconfirms 'the obligation of states to protect their citizens'.[4] These norms and principles are mirrored in the security architecture of the AU which includes a Peace and Security Council (PSC) an African Union Commission, a Panel of the Wise, a Continental Warning System and an African Standby Force.

[1] Article 4 is a central part of the Preamble of the Constitutive Act Establishing the African Union, and was adopted by the OAU Assembly of Heads of Government in Lome, Togo, on the 11th of July 2000. A copy of the Preamble is available at www.africa-union.org

[2] The Protocol Relating to the Establishment of the Peace and Security Council of the African Union was adopted by the 1st Ordinary Session of the Assembly of the African Union in Durban, South Africa on the 9th July 2002. A copy of the Protocol is available at www.africa-union.org

[3] The African Charter on Democracy, Elections and Governance was adopted by the 8th Ordinary Session of the Assembly in Addis Ababa, Ethiopia, on the 30th January 2007. A copy of the Charter is available at www.africa-union.org

[4] The Ezulwini Consensus was adopted at the 7th Extraordinary Session of the Executive Council of the AU in Addis Ababa, Ethiopia, on the 8th March 2005. A copy of the Consensus is available at www.africa-union.org

Ostensibly this research is interested in the role of institutions in determining social and political outcomes, the process whereby institutions originate or change as well as the relationship between institutions and behaviour.

Institutions are defined as organisational structures which enforce formal and informal rules and procedures, routines, norms and conditions upon the polity. The AU satisfies many of the criteria of institutionalisation in that it promotes political consultation among its members, it sets standards of behaviour to which members are expected to conform, it has established structures to prevent violent conflict before it occurs, it enforces procedures aimed at the peaceful settlement of disputes, it promotes co-operation and integration between its members and it encourages the establishment of democratic institutions within member states.

Furthermore it would appear that the development of the AU's peace and security architecture is closely connected to the evolution of the ideas inherent in the responsibility to protect concept. One might even argue that the AU is the only regional organisation which has institutionalised these ideas in a systematic way. The institutional design of the AU and particularly its evolving security architecture is evidence of a paradigmatic shift away from conservative interpretations of sovereignty and reflects the AU's commitment to taking the lead in resolving continental conflicts. It might also be argued that the institutional design of the AU is redefining the relationship between the continental organisation and the United Nations.

The research is divided into four chapters. Chapter One will briefly examine the evolution of the responsibility to protect concept and will identify some of the tensions inherent in its interpretation. The chapter will also outline the distinguishing characteristics of the AU's security architecture to demonstrate the organisation's institutional commitment to peace and security on the continent. Chapter Two will introduce the three approaches within new-institutionalism and will consider whether these approaches can explain the origins of the AU, particularly in terms of norms development and institutional design. Chapter Three conducts a case study of the intervention by ECOWAS (Economic Community of West African States) in Liberia in August 1990 and will suggest that this might represent the critical juncture to account for the principled shift in African regional co-operation, and the way in which the right to intervene is being redefined on the continent. Chapter Four will

examine in greater detail the evolution of the responsibility to protect into an emerging legal norm, and will consider whether the logic of appropriateness is sufficient to guarantee its enforcement, or whether member state behaviour in the AU reflects calculations of material interest and regime security over norm internalisation.

CHAPTER ONE

1.1 The Responsibility to protect and the interpretive dilemma.

Internationally, the responsibility to protect finds its legal justification in the report of the Commission on State Sovereignty and Intervention (ICISS), the UN High-Level Panel Report, the Report of the UN Secretary-General and the Outcome Document of the 2005 UN World Summit.[5]

The 2001 ICISS report is an elaboration of Francis Deng's 1995 conception of "sovereignty as responsibility"[6] and it attempts to clarify the relationship between sovereignty, human rights and intervention. The report helps to define the responsibility to protect by suggesting that host states have the primary responsibility for the well being of their citizens, but that intervention can be contemplated in instances where the state is unwilling or unable to extend protection to its polity. As such intervention assumes a responsibility on the part of the international community to react, prevent and participate in post-conflict rebuilding. Added to this is the view that sovereignty entails certain responsibilities for which governments are accountable, not only to their citizenry but to the international community as a whole. It is only by effectively, "discharging its responsibilities for good governance that a state can legitimately claim protection for its national sovereignty."[7] This re- conceptualisation of sovereignty as responsibility, as opposed to control, is a way of balancing the perception of intervention as an unacceptable assault on sovereignty with the realisation that the

[5] The Report of the International Commission on Intervention and State Sovereignty is entitled "The Responsibility to Protect" and is available at http://www.iciss.ca/report-en.asp . The ICISS was commissioned by the Canadian Government in September 2000 to examine the relationship between sovereignty, human rights and intervention. The UN High-Level Panel Report is contained in a document entitled, "A More Secure World: Our Shared Responsibility, Report of the High-Level Panel on Threats, Challenges and Change". The Report was commissioned in 2004 by the then Secretary General of the UN, Kofi Annan, and is available at http://www.un.org/secureworld/report.pdf. The Report of the Secretary General was published in 2005 and entitled, "In Larger Freedom: Towards Development, Security and Human Rights for all". The Report is available at http://www.un.org/largerfreedom/contents.htm. **In September 2005**,The concept of the responsibility to protect was incorporated into the Outcome Document of the High Level meeting of the General Assembly and was ratified as GA Res. 60/1, paras.138-139 (OCT.24,2005)

[6] Francis Deng is an academic, an ex- Sudanese Ambassador, and Minister of Foreign affairs. On the 29th May 2007 he was appointed a Special Advisor for the Prevention of Genocide by the current UN Secretary General Ban Ki- moon. However for the purposes of this paper he is relevant in that he coined the phrase, "sovereignty as responsibility." See, Deng, Francis M., 1995. 'Frontiers of Sovereignty', Leiden Journal of International Law 8 (2): pp. 249-286

[7] See, Williams,Paul.D and Bellamy,Alex.J. , 2005. 'The Responsibility to Protect and the Crisis in Darfur', Security Dialogue, 36(27): p.28

international community has the responsibility to respond to gross human rights violations. The Commission's report does not adopt a conclusive stance on the legitimacy of unauthorised interventions or on the means to be adopted, but develops five broad criteria for legitimate intervention, which include just cause, right intention, last resort, proportionality of means and reasonable prospect of success.

The 2004 UN High-Level Panel Report is closely related to the broader issue of UN institutional reform, and how the idea of the responsibility to protect can serve to improve the collective security system under the UN Charter.[8] Whilst recognising individual state responsibility towards its citizens it also refers to a collective responsibility to protect, where every state is obliged to react when a member state is unable or unwilling to protect its citizens. This seems to imply a multilayered system of responsibility which whilst prioritising the responsibility of a sovereign state, does confer a residual responsibility to all sovereign governments in relation to humanitarian catastrophes. Critically the Panel makes an express effort to direct all international intervention to the UN Security Council, and specifically where such intervention is initiated by regional organisations. The Panel is also specific in identifying the criteria of legitimacy for collective security and the use of force which includes the seriousness of the threat, proper purpose, last resort, proportional means and the balance of consequences.

The subsequent Report of the UN Secretary General whilst endorsing the notion of a collective responsibility to protect recognises the sensitivities that this issue might evoke.[9] The report detaches the notion from an automatic equation to intervention and the use of force, and attaches the responsibility to protect to a broader notion of a collective commitment to the rule of law, human security and development. As such the international community's residual responsibility to protect is defined as, "the use of diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations" [10] The report is also specific in that the responsibility to protect is intended to

[8] Available at http://www.un.org/secureworld/report.pdf
[9] Available at http://www.un.org/largerfreedom/contents.htm
[10] Stahn, Carsten. , 2007. 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', The American Journal of International Law, 101(1): p.107

constrain rather than enable the use of force, and suggests that where military action may be required in exceptional circumstances, it should occur with prior Security Council approval.

The 2005 UN World Summit Outcome Document reflects the inherent confusion which the concept of the responsibility to protect presents for the international community.[11] In paragraph 138 of the Document, Heads of state and government accept that, "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity."[12] However in relation to the residual responsibility of the international community, the Document distinguishes between the responsibility to prevent, react and rebuild. The responsibility to prevent is introduced as a general appeal and encourages the international community to assist states and the United Nations in preventing crimes, "where appropriate." Paragraph 139 of the Outcome Document deals with the responsibility to react by suggesting that, "the international community, through the United Nations , also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."[13] This might imply that the responsibility to react enjoys some legitimacy provided these measures fall short of the use of force.

Paragraph 139 of the Outcome Document is further confusing in relation to the responsibility to take collective action through the UN Security Council. Whilst heads of state and government reaffirm their commitment to collective action, the wording of paragraph 139 seems to suggest, voluntary as opposed to mandatory commitment, and engagement on a case by case basis as opposed to an assumption of a systematic duty. More ambiguously, the Outcome Document seems not to assume the primacy of the UN Security Council for sanctioning the use of force in response to mass atrocities, but allows for unauthorised intervention in, "cases that involve humanitarian catastrophes but for which there is also a

[11] Much of the confusion inherent in Paragraphs 138 and 139 of the Outcome Document might be attributed to the resistance of the United States and particularly to the utterings of its then UN Ambassador, John Bolton who argued that, " the responsibility of the other countries in the international community is not of the same character as the responsibility of the host, and we thus want to avoid formulations that suggest that the other countries are inheriting the same responsibility that the host state has." Ambassador Bolton's sentiments are available at http://www.responsibilitytoprotect.org/index.php/pages/2

[12] Stahn,Carsten. , 2007. 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', The American Journal of International Law, 101(1): p.108

[13] Ibid.p.109

legitimate basis for states to act in self-defence."[14] This seems to suggest a qualified commitment to co-operation between the international community and regional organisations, but is vague as to the extent to which unauthorised intervention is consistent with the UN Charter and International law. As for the responsibility to rebuild, the Outcome Document is again vague, and refers only to the commitment of signatories to assist states to develop capacity to protect their populations "where necessary and appropriate."

Williams contends that the responsibility to protect as accepted by UN member states seems to rest on three pillars, namely the responsibility of each state to use appropriate and necessary means to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity, the commitment that UN member states will help each other exercise this responsibility and build capacity, and a collective responsibility on the part of international society to respond through the United Nations in a timely and decisive manner where authorities are manifestly failing to protect their populations. [15] In many regards it would seem that the African Union defers to the UN Security Council as the primary custodian of international peace and security. At the 7th extraordinary session of the AU's Executive Council in 2005, it was stressed that force should not be used outside the limitations of article 51 of the UN Charter and article 4(h) of the AU Constitutive Act. Also intervention by African regional organisations should only occur with UN Security Council approval.

However, in the Ezulwini Consensus, the Executive Council of the AU suggests that, "since the General Assembly and the Security Council are often far from the scenes of conflict, and may not be in a position to undertake a proper appreciation of the nature and development of conflict situations, it is imperative that regional organisations, in areas of proximity to conflicts, are empowered to take actions in this regard".[16] Furthermore the AU considers it legitimate to sanction action in times of emergency without Security Council approval and then seek it retrospectively at which point the UN should also contribute financially to the actions taken by the AU. Hence, the "fact that no prior UN authorisation is provided for, and

[14] Loc cit
[15] See, Williams, Paul D., 2009. ' The Responsibility to Protect, Norm localisation and African international society', Paper presented at the International Studies Association annual convention, New York: pp.1-14
[16] The Ezulwini Consensus may be referenced as AU document Ext/EX.CL/2 (VIII)

that subsequent ratification may not be given, or requested, makes it clear that the AU sees the right, or possibility, for human intervention outside the UN Charter." [17]

This is significant in that the UN Charter seems to prohibit the use of force in interstate relations, and obliges states to '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'. Article 39 of the Charter exclusively sanctions the Security Council to determine the existence of a threat to 'the peace, breach of the peace, or act of aggression' and to decide on appropriate measures to 'restore international peace and security'. Chapter VII of the Charter allows the Security Council to impose sanctions against non-compliant states but also allows the General Assembly to convene emergency special sessions to recommend collective measures when the Security Council has failed to 'exercise its primary responsibility for the maintenance of international peace and security'.[18] The Charter also makes provision for regional organisations to respond to situations that threaten international peace and security, but only with prior Security Council approval.

Despite the contradictions inherent in the international perceptions of the responsibility to protect, there is a sense that regional organisations have a strategic role to play in the prevention and resolution of conflict, provided the latter are well defined and co-ordinated. Whilst the UN Charter seems to allow the international organisation to authorise regional enforcement actions it is clear that this should only occur with prior Security Council approval. However, in both its Constitutive Act and the Protocol establishing its Peace and Security Council, the African Union seems to grant itself the primary responsibility for peace and security in Africa, albeit that reference is made to co-operating and working closely with the UN Security Council. For example, Article 17(2) of the PSC Protocol states that where necessary, "recourse will be made to the United Nations to provide the necessary financial, logistical and military support for the African Union's activities in the promotion and maintenance of peace and stability in Africa, in keeping with the provisions of Chapter VIII

[17] Sarkin,Jeremy. , 2009. 'Dealing with Africa's Human Rights Problems: The Role of the United Nations, the African Union and Africa's Sub-Regional Organisations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect', Journal of African Law, 9(1): p.6

[18] All relevant Articles of the UN Charter are available at http://treaties.un.org/doc/Publication/CTC/uncharter.pdf

of the UN Charter."[19] This seems to imply a more autonomous and interventionist role for the AU.

In relation to the World Summit Outcome Document Williams argues that, "disagreements over the responsibility to protect paragraphs are clearly evident. The WSOD thus stands as a somewhat contradictory symbol of the responsibility to protect status. In one sense it represents a major step forward in the diffusion of the responsibility to protect norm and an important marker of its universal character. On the other hand, the WSOD has all the problems commonly associated with other UN General Assembly declarations, not least the ambiguities surrounding its political and legal status." [20] Despite these contradictions however Williams concludes that, "compared to both the old OAU, and many other regions of the world the new African peace and security architecture, at least on paper, is arguably the closest institutional embodiment of the responsibility to protect three pillar structure currently in existence."[21]

1.2 The African Union's Peace and Security architecture.

The AU's Peace and Security Council (PSC) comprises 15 member states, and is tasked with facilitating efficient and timely responses to conflict and crisis situations, by promoting collective security and early warning arrangements. Whilst premised on certain norms which were inherent in the OAU, Article 7 of the Protocol establishing the PSC grants it powers which extend beyond the institutional design of its predecessor. Article 7(c) authorises the mounting and deployment of peace support missions, Article 7(d) provides guidelines for the conduct of such missions, Article 7(e) allows the PSC to make recommendations to the AU Assembly for intervention on behalf of the Union in a member state, Article 7(f) is concerned with the modalities governing such intervention, Article 7(g) makes provision for the institution of sanctions where there has been an unconstitutional change of government and Article 7(k) encourages the promotion of strong partnerships in the pursuit of peace and

[19] All Articles relevant to the Protocol Establishing the AU Peace and Security Council are available at www.africa-union.org

[20] Williams,Paul.D. , 2009. 'The responsibility to protect, norm localisation, and the African international society', Paper presented on the panel, "African Union and R2P: Synergy or Divergence?", International Studies Association annual convention, New York: p.8

[21] Ibid.p.6

security.[22] Unlike its predecessor therefore, the African Union now appears to be endowed with the right and responsibility to intervene, prevent, react and rebuild.

Linked to the PSC is the Commission of the African Union which is responsible for the daily management of the Institution. The Commission defends the interests of the African Union, prepares strategic plans for consideration by the Executive Council, and co-ordinates activities between the Union and regional economic communities. More importantly, the Peace and Security Directorate which is linked to the Commission deals with conflict and security issues. The Directorate is made up of a Conflict Management Division, a Peace Support Operations Department, a Defence and Security Department, a Darfur Integrated Task Force and a Secretariat to the Peace and Security Council.

In December 2007 a Panel of the Wise was inaugurated to assist the Union in pursuing long lasting peace and security on the continent. The panel is made up of 5 highly respected African personalities, selected on the basis of regional representation and appointed for a period of three years to act as a conflict prevention team.[23] Significantly the African Union is also empowered by a Continental Early Warning System (CEWS) responsible for anticipating and preventing conflicts on the continent. The CEWS has a Situation Room housed in Addis Ababa which is linked to the early warning mechanisms of regional economic communities, namely The Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC).[24] Finally, so as to support the work of the Peace and Security Council, and particularly in relation to the deployment of peace missions and

[22] Article 7 of the Protocol on the Peace and Security Council is available at www.africa-union.org

[23] The initial Panel of the Wise included Salim Ahmed Salim from East Africa who is a former Secretary General of the OAU, Dr Brigalia Hope Bam from Southern Africa and Chairperson of the Independent Electoral Commission of South Africa, Ahmed Ben Bella from North Africa and a former President of Algeria, Elisabeth K. Pognon from West Africa and President of the Constitutional Court of Benin, and finally, Miguel Trovoda from Central Africa and a former President of Sao Tome and Principe. Salim Ahmed Salim and Ahmed Ben Bella have been appointed for a second three year term as of December 2010. However the other three have been replaced by Mrs Mary Chinery Hesse, a Ghanaian representing West Africa, Dr Kenneth Kaunda, a former President of Zambia representing Southern Africa and Mrs Marie Madeleine Kalala-Ngoy of the DRC, representing Central Africa.More information on the Panel of the Wise is available at http://www.ssinformer.com/news/africa/african_union.html

[24] The Continental Early Warning System is authorised to collect and analyse data, to conduct early engagement with decision makers and to coordinate activities between the AU and regional organisations. However despite efforts to operationalise CEWS by 2009, progress has been slow. A notable exception has been the East African Intergovernmental Authority on Development (IGAD) which has developed its own early warning system to deal with small scale pastoral conflicts.

approved intervention, Article 13 of the AU Protocol on Peace and Security makes provision for the creation of an African Standby Force (ASF) made up of five regional brigades. The ASF is to consist of multi-disciplinary contingents, comprised of military and civilian members, and is expected to be ready for rapid deployment at appropriate notice. The ASF is assisted by a Military Staff Committee which is responsible for providing technical advice on military issues to the Peace and Security Council, so as to assist in decision making. The ASF is responsible for monitoring and observing missions, support operations, intervening in a member state under grave circumstances, deploying so as to prevent the escalation of a conflict, or its extension into neighbouring areas or states, peace building and post conflict disarmament and demobilisation, as well as humanitarian assistance to alleviate the suffering of civilian populations.

Chapter One has outlined some of the central features of the institutional design of the African Union, with particular reference to its peace and security architecture and its Constitutive Act. Reference has also been made to the various interpretations of the responsibility to protect concept as it continues to evolve into a universal norm. One might argue that in many respects, the Constitutive Act of the African Union is consistent with the pro sovereignty doctrine of the UN Charter, which assigns a high priority to the sovereignty and territorial integrity of member states. For example Article 4(f) of the PSC Protocol encourages "non-interference in the internal affairs of another" and Article 3(b) of the Constitutive act suggests that the objective of the AU is to, "defend the sovereignty, territorial integrity and independence of member states." [25] However to a greater degree, the Constitutive Act of the AU also places limitations on sovereignty, grants the organisation a more autonomous role vis-à-vis the United Nations, and prioritises human over regime security. More significantly the Constitutive Act grants the AU the right to intervene in a member state in respect of grave circumstances; the only international treaty containing such a right. All of the above demonstrate a principled shift in African security cooperation,

[25] The relevant Articles are available at www.africa-union.org. Suffice to say that Article 4(f) and Article 3(b) do not necessarily contradict the responsibility to protect principle or the right to intervene. Rather they are products of the gradualist approach which has been adopted by the AU to respond to the challenges and problems identified. The AU in this regard is still grappling with the philosophical and legal bases for closer cooperation.

something which the next chapter will attempt to analyse using approaches within new-institutionalism.

CHAPTER TWO

2.1 The three approaches in new- institutionalism. Construing the relationship between institutions and behaviour and understanding the process whereby institutions originate or change.

New-institutionalism is not a unified body of thought, but is comprised of three analytical approaches, namely historical, sociological and rational choice new -institutionalisms which have developed independently over a period of time. [26]However despite methodological differences, all three are concerned with "how to construe the relationship between institutions and behaviour and how to explain the process whereby institutions originate or change."[27]

All three approaches adopt either a calculus or cultural explanation for the relationship between institutions and state behaviour. The calculus approach assumes that state behaviour is instrumental and based on strategic calculation. Actors pursue goal maximisation presented by a specific preference function, by investigating all possible alternatives, and selecting strategically those alternatives which promise the greatest benefit. Institutions influence behaviour by providing certainty, information and enforcement mechanisms, so that actors might adjust their expectations relative to how others might respond to their actions. The cultural approach is more nuanced, and whilst not discounting strategic calculation, suggests that actor behaviour is constrained by a worldview. Hence the behaviour of actors is influenced as much by their interpretation of the situation as it is by instrumental calculation. Hence institutions provide moral or cognitive templates for interpretation and action. The individual is seen as an entity, "deeply embedded in a world of institutions, composed of symbols, scripts and routines, which provide the filters for interpretation, of both the situation and oneself out of which a course of action is constructed."[28] The calculus approach explains

[26] New- institutionalism does not necessarily imply the existence of an old-institutionalism. Rather the approaches in new institutionalism are generally a response to group-theories of politics and structural-functionalism which dominated political science discourse in the 1960's and 1970's.

[27] Hall,Peter.A and Taylor,Rosemary.C.R. , 1996. 'Political Science and the Three New Institutionalisms', Political Studies, XLIV: p.936

[28] Ibid.p.941

the persistence of institutions in that they reflect a type of Nash equilibrium, where the gains from exchange and the fact that no actor is ever really worse off, encourages actor compliance as opposed to deviation.[29] The cultural approach argues that because institutions are collective constructions, they cannot be transformed by the actions of an individual actor.

Rational choice new- institutionalism explains the origins of an institution, as an effort to reduce the transaction costs associated with conducting the same activity in the absence of that institution. This approach assumes that actors have a fixed set of preferences and behave instrumentally to maximise those preferences. Actors are consistently involved in collective action dilemmas, and whilst pursuing the maximisation of their preferences, do so in a manner which might achieve a Pareto optimum, where their gains would not necessarily make other actors worse off. [30]Critically this approach prioritises strategic calculation as opposed to historical forces as the basis for actor behaviour, and argues that actors are influenced in their strategic calculations by what they expect other actors to do. In this sense, institutions regulate these interactions by structuring the alternatives on the choice agenda so that actor calculations whilst satisfying gains, might also lead to better collective outcomes. Institutions are seen as the product of voluntary association by actors, and are influenced by competitive selection so that they persist only so long as they are able to provide benefits.

Sociological new- institutionalism argues that institutions originate not only because they are rationally efficient in terms of their function, but also because they have the ability to transmit cultural practices. Institutions are perceived in a constructivist sense, as products of societal norms and values which are then infused into the institution. Institutions are thus custodians of symbolic systems and cognitive scripts which guide the behaviour of actors, so that behaviour is governed by the logic of appropriateness as opposed to the logic of consequence. In this regard the concepts of culture and institution become fused. This

[29] The Nash Equilibrium is central to Game theory and presents a solution concept to a game involving two or more players. The assumption is that because each player is fully cognisant of the equilibrium choices of the other players, and because these choices are consistent with each other, there is no point in one player changing his own strategy unilaterally, since this will not lead to greater gains.

[30] The Pareto optimum is also known as the 80/20 principle and constitutes an observation as opposed to a scientific law. The central assumption is that most things in life are not distributed evenly and that even though some actors contribute or receive more than others, the gains are not disproportionally skewed.

cultural approach sees institutions performing roles whilst constrained by norms of behaviour. Actors internalise these norms and behave accordingly. This might be referred to as the normative way in which institutions influence behaviour. Sociological new-institutionalism also promotes inter-subjectivity and cognition, so that institutions provide the cognitive scripts whereby the behaviour of others can be interpreted. So behaviour is closely linked to interpretation. It is not sufficient for actors to merely identify a situation, but they have to be able to respond to it in a manner which reflects the scripts and templates of the institutional design. In summary, institutions originate and enforce new practices not because of the means ends efficiency of the organisation, but because it promotes the legitimacy of actor behaviour within a larger cultural environment.

Historical new- institutionalism is the most statist of the three approaches. It emphasises the structural aspects of institutional design, and examines how institutions privilege certain interests over others, thus leading to an inequality in outcomes. The state is not seen as a neutral broker among competing interests, but rather as an agent promoting institutional formation at a group level so as to pursue specific national interests. Institutions are defined in a formal sense as rules and conventions governing behaviour.

Historical new- institutionalism considers the relationship between the state and institutions to be sticky. Although member states may initially be strong when pushing through their interests at the institutional level, institutions are regarded as being capable of transforming state preferences over time. Thus institutions are said to enjoy a degree of autonomy from member states, and in certain instances can constrain state decision making. The fact that the institution might extend its autonomy over the state is considered an unintended consequence of states delegating authority to institutions. The increase in the functions the institution is expected to perform increases its autonomy, particularly when states have to delegate issues to expert committees to effectively resolve larger problems.

When states bargain at an institutional level, actors are said to make rational decisions, but only on the basis of perceived short term gains. Hence actors attempt to gain preferential access to the institution's decision making process, and as opposed to results reflecting collective gain, they are characterised by a win-lose scenario. Because states pursue short term gains, they often find themselves in a lock-in situation, where the decisions they have

made in the past may make their exit from the institution too costly, thus explaining the persistence of even unfavourable institutional designs. Because institutions are highly formalised in terms of structures and rules they cannot be changed arbitrarily. New institutions are said to come with high fixed costs.

Historical new- institutionalism is also concerned with historical development and particularly with path dependency, which assumes that institutional change is dependent on a particular situation, and a particular context inherited from the past. The policy legacy of a state in the institution limits the number of its rational choices since, "past lines of policy condition subsequent policy by encouraging societal forces to organise along some lines rather than others, to adopt particular identities, or to develop interests in policies that are costly to shift. In this context, historical new- institutionalism stresses the unintended consequences and inefficiencies generated by existing institutions, in contrast to images of institutions as more purposive and efficient." [31] Hence there is never complete congruence between state interest and institutional design. However, historical new- institutionalism does make provision for critical junctures in the flow of historical events, where significant institutional change occurs, thus creating a branching point from which the historical development of the institution moves along a new trajectory.

It is the contention of this paper that a wholesale acceptance of only one of the approaches within new- institutionalism, to account for how institutions originate or change, and how they affect behaviour, offers a myopic interpretation. Rather an interchange between the three has greater heuristic value. There is no doubt that actors might concurrently be influenced by strategic calculation and by moral and cognitive templates, each of which are dependent on the design of an existing institution. Hall and Taylor encourage an integration of the three approaches by arguing that good analyses show how, "historical actors select new institutions for instrumental purposes, much as rational choice analysis would predict, but draw them

[31] Hall,Peter.A and Taylor,Rosemary.C.R. , 1996. 'Political Science and the Three New Institutionalisms', Political Studies, XLIV: pp.942-943

from a menu of alternatives that is made historically available through the mechanisms specified by sociological institutionalism."[32]

Historical new- institutionalism is attractive in that it utilises both a cultural and calculus approach to describe the relationship between institutions and behaviour, which allows for a more holistic interpretation of human motivation. Rational choice new- institutionalism has a more specific view of behaviour, perceiving it as instrumental, particularly as pertains to power relations and political outcomes. However emphasis is placed on the importance of information flows and the management of uncertainty in political action. Whilst focusing on the primacy of human intentionality and strategic calculation in political outcomes, rational choice new- institutionalism also makes provision for the influence of institutions as structural variables on such outcomes. Sociological new- institutionalism is concerned with the instrumental behaviour of actors, as well as the way in which institutions provide cognitive or culturally specific repertoires which might influence the strategic calculations of actors.

In terms of explaining how institutions originate or change, rational choice new-institutionalism is mostly concerned with the functions institutions perform and the benefits they provide. This accounts best for institutional persistence, in that it assumes that so long as there is potential gain, actors will stick with the institutional design. This approach is highly functionalist and intentionalist, and prioritises the role of actors and their perceived benefit in institutional persistence. The approach is also voluntarist, in that it suggests that institutions are the product of a voluntary contract between relatively equal and autonomous actors. Historical and sociological new- institutionalism argues that institutional creation does not occur in isolation, but rather in an environment already replete with institutions. Hence institutional reform is often the product of borrowing from already existing institutional templates. Sociological new- institutionalism emphasises how institutional reform often goes beyond the parameters of institutional efficiency, and incorporates the importance of collective processes of interpretation and social legitimacy. Historical new- institutionalism

[32] Ibid.p.957

whilst also recognising a world replete with institutions emphasises the importance of power relations in existing institutions, and the way in which institutional creation often leads to power asymmetries between actors. Historical new- institutionalism further emphasises the role of competing interests in institutional creation and how these interests might influence future institutional design and reform.

As indicated, rational choice new- institutionalism perceives the design of institutions to be the consequence of rational decision making by states, which deliberately create an institution to solve a common problem. One might argue that this approach is methodologically individualistic, in that state actors and their behaviour is central to institutional creation. Actors are utility oriented and the institution is merely an equilibrium way of doing things. Using non-cooperative game theory and the Nash equilibrium, rational choice new-institutionalism suggests that collective action dilemmas are resolved so long as actors perceive cooperation to be mutually beneficial. In reality however, the calculating of benefits is difficult, and it is presumptuous to assume that actors always have complete information in a game theoretic context. Rather, new approaches within rational choice new- institutionalism now suggest that, "actors are boundedly rational agents who do not necessarily seek perfect equilibrium outcomes but accept satisfactory solutions for themselves." [33]

Whereas rational choice new- institutionalism emphasises the role of state interest in institutional design, historical new- institutionalism focuses on the way in which institutional structures constrain the behaviour of actors, and how rule structure and style influence institutional arrangements. So whilst not excluding the role of state interests, historical new-institutionalism describes how institutional structures might impose lock in effects and decision traps on state actors. Conversely, Sociological new- institutionalism argues that whilst important, explaining institutional design exclusively from a statist and cost benefit perspective is limiting. Rather, "it is the normative and cultural environment that guides institutional change. Accordingly institutional adaptation is seen not as a functional

[33] Brosig,Malte, , 2010. 'Governance between International Institutions: Analysing Interaction Modes between the EU, the Council of Europe and the OSCE', in Galbreath and Gebhardt (eds) Cooperation or Conflict? Problematising Organisational Overlap in Europe. London: p.5

consequence of individual gain maximising but as a reaction to legitimacy claims based on cultural premises. Change in the normative world structure which is expressed in discourses of legitimacy triggers changes in institutional design."[34]

2.2 Operationalising the three approaches in new-institutionalism to account for the origins of the African Union.

Intuitively, it would seem that all three approaches within new- institutionalism, or combinations thereof, have the capacity to explain the origins of the African Union. From the perspective of historical new- institutionalism, the emergence of the African Union may be regarded as the consequence of a systemic shift in International law, which now links state sovereignty to the protection of human security. Consequently, the international community replete with institutions is prioritising institutional reform, so that institutions are now better endowed to protect human and community interests. From a sociological new-institutionalism perspective it might be argued that the concept of the responsibility to protect has moved beyond an idea, into an emerging universal norm, which now provides a normative and cognitive framework for institutional design. Rational choice new-institutionalism might argue that the strengthening of regional organisations is the most conducive way for states to develop their capability to protect.

Rational choice new- institutionalism might account for the origins of the AU and its institutional design, as a calculated strategy by member states to enhance capacity, so as to better arrogate to the institution the primary responsibility for promoting peace, security and stability in Africa. Although the UN Security Council seems more willing to approve actions undertaken by regional organisations, tensions pertaining to the scope of the division of responsibilities, might suggest that the transaction costs associated with partnership and co-

[34] Ibid.p.6

operation, justify a more independent role for regional organisations. The AU, together with sub-regional organisations might be perceived by member states as more effective because of their proximity to conflict, sensitivity to the actors and issues involved in a crisis, and a perceived interest on the part of regional organisations to more effectively resolve conflicts in their own neighbourhoods. Rational choice new- institutionalism might also point to the advanced security architecture of the AU as a functional and intentional attempt to give institutional backing to the organisation's Constitutive Act.

Rational choice new- institutionalism might further argue that the African Union is a response by member states to the inconsistencies in international discourse over the concept of the responsibility to protect. According to the calculus perspective of rational choice new-institutionalism, institutions are intended to provide certainty, information and enforcement mechanisms, so that actors might make strategic calculations and adjust their expectations based on how others might respond to their actions. Institutional predictability is important in that it allows collective action dilemmas to be resolved when actors view co-operation to be mutually beneficial.

As demonstrated earlier, international discourse, particularly in the context of the UN, has vacillated between the right to intervene, the redefinition of military intervention into the more subtle responsibility to protect, and the subsequent re-posing of the latter concept into the responsibility to prevent, react and rebuild. In this regard Chandler argues that it appears inevitable, "that in shifting the emphasis from intervention to prevention rather than establishing an international consensus on coercive action, we are left merely with a set of questions as to what responsibility to protect could mean or how it could be operationalised."[35] Rational choice new- institutionalism might suggest that the current emphasis of the United Nations on prevention, as opposed to humanitarian intervention, represents a tacit derogation of that organisations responsibility. (in relation to international peace and security) As such African states might have concluded that despite the transaction costs involved, it was necessary for them to establish their own mechanism for external intervention.[36]

[35] Chandler,David. , 2009. 'Unravelling the Paradox of the Responsibility to Protect', Irish Studies in International Affairs, Vol.20: p.34

[36] Chandler is particularly critical of this phenomenon. He argues that, "the institutionalist perspective of the responsibility to protect is conceptually and institutionally a reflection of the evasion of Western responsibility

Historical new- institutionalism might offer a more nuanced interpretation for the origins of the African Union. The AU might be perceived as the unintended consequence of Western states desiring to divest themselves from the responsibility to protect, in post- conflict and failing states. The current international emphasis on prevention seems to prioritise institutional capacity building and good governance responsibilities, over military intervention, to protect humanity against mass atrocities. In this sense, the AU is the product of the international community taking the responsibility for, "social, economic and political crisis away from both international power inequalities and from Western states as policy actors." [37] The AU is thus the product of a structural shift in international relations, where policy makers emphasise the strengthening of regional institutions to enforce stability, so that Western states might perform a less interventionist role. Bellamy suggests that, "far from a licence for Western states to take responsibility for ' ending mass atrocity crimes' in sub-Saharan Africa, it appears that the emphasis on ' African solutions to African problems' permits the Security Council to defer its responsibilities to the AU in cases where the former lacks the political will to act" [38]

Sociological new- institutionalism might account for the origins of the African Union, relative to the responsibility to protect having moved from political rhetoric, to an emerging legal and universal norm. Therefore sociological new- institutionalism would also seek to explain the process whereby the continent's norm entrepreneurs are attempting to institutionalise this at an inter-state and regional level.

Amitav Acharya argues that whereas certain norms might have a universal appeal, their diffusion at a regional level is not automatic, but varies in relation to a local context. Furthermore he argues that 'insider proponents' are critical to the process of norm localisation, since change in institutional design is normally conducted by local agents.

for others. Conceptually, it denies the economic, social and political frameworks that would inculcate Western powers in the problems and underdevelopment of post-colonial regimes. Institutionally, it seeks to relieve Western states of direct responsibility to respond to crises, through establishing indirect mechanisms of policing and military intervention." See, Chandler, David. , 2009. 'Unravelling the Paradox of the Responsibility to Protect', Irish Studies in International Affairs, Vol.20: p.38

[37] Ibid.p.36

[38] Bellamy,Alex.J. , 2009. Responsibility to Protect: The Global Effort to end Mass Atrocities, London:p.79

Insider proponents have the capacity to establish congruence between transnational norms and local beliefs and practices. This depends on whether opportunities for localisation are perceived, and whether local agents are motivated to reinterpret and re-represent an external norm, so that they reconstitute it in relation to a pre-existing local normative order. In this regard one might argue that institutions are identities which are constructed from within, rather than externally. Although external processes cannot be excluded, it is local responses and the manner in which local actors respond to external norms that determines the extent of norm localisation and subsequent institutional design.[39]

Williams too seems to adopt a sociological argument for the origins of the African Union when he suggests that its institutional design reflects a collective identity, solidarity and what counts as appropriate and legitimate conduct. Williams stresses the logic of appropriateness in a security culture and the extent to which institutions create behavioural norms. According to Williams to endorse a norm, "not only expresses a belief, but also creates impetus for behaviour consistent with the belief. While ideas are usually individualistic, norms have an explicit inter-subjective quality because they are collective expectations. The very idea of proper behaviour presupposes a community able to pass judgements on appropriateness." [40] Williams argues that the AU is involved in the process of norm localisation, which entails a contestation between transnational norms and pre-existing regional and normative social orders, where local norm entrepreneurs reconstruct foreign norms to ensure the norms fit with the agents' cognitive priors and identities.

For sociological new- institutionalism therefore, the African Union represents a transition by African ' insider proponents ' from traditional notions of sovereignty, statehood and security towards the localisation of new norms inherent in a broader international society. The African Union in this sense is a revision of the early African security culture which was characterised by the unanimous acceptance after independence of the Westphalian notion of the state, and the acceptance of arbitrary colonial territorial boundaries.[41] Since then one might argue that

[39] See, Acharya, Amitav. , 2007. 'The Emerging Regional Architecture of World Politics', World Politics 59(4): p.642.

[40] Williams,Paul.D. , 2007. 'From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture', African Affairs, 106(423): p.258

[41] Traditionally this notion of statehood is derived from the Treaty of Westphalia in 1648 which concluded the Thirty Years War in Europe. More recently this notion of statehood is linked to Realist approaches in International Relations which argue that sovereign states have a fundamental right of political self-

the period post- independence has served to create an African cognitive region, and an African international society, where discourse around shared experiences and common cultural ties prevails. At one level, the African Union may be perceived as an effort by African states to conform to what is considered as appropriate behaviour by the international society of states. Its institutional design therefore might have less to do with the means ends efficiency of the organisation, and more to do with an attempt to enforce new practices, because they promote the legitimacy of actor behaviour within a larger international cultural environment.

At another level however, sociological new- institutionalism might argue that the creation of the African Union and its systematic institutionalisation of the responsibility to protect, now provides a cognitive template to which the international society of states should aspire. [42]Williams concludes that whilst one may speak of an international society and the impact that this has on the way in which African states think about sovereignty, statehood and security, the latter also constitute a partially autonomous international society, in that the emergence of the principle of the responsibility to protect, was intricately linked to African politics and particularly the indigenous conception of community responsibility, and that it was an African Secretary General of the United Nations who instructed member states to consider the issue of humanitarian intervention and formulate plans to prevent large scale atrocities. [43]

Historical new- institutionalism, whilst not ignoring the cultural dimensions of institutional origin, might argue that attempts at creating African security communities have been influenced more by historic necessity, than by shared values and cognitive scripts. Historical new- institutionalism might therefore account for the origins of the African Union as an effort

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determination, assume, a legal equality between states, and promote the principle of non intervention in the internal affairs of another state.

[42] There is some validity to this argument. Historically Africa might be regarded as having been central to the conceptual development of the responsibility to protect principle. In 1967 the Kenyan academic, Ali Mazrui was speaking of a Pax Africana allowing for continental jurisdiction and inter-African intervention. President Kwame Nkrumah was also promoting the idea of an African High Command under a unitary continental structure.

[43] Ostensibly, Williams is referring to UN Secretary General Kofi Annan of Ghana who initiated the High-Level Panel on Threats, Challenges and Change. During his tenure, and despite the lack of consensus over the responsibility to protect, Annan went as far as appointing a special advisor on the matter in the form of Edward Luck.

to overcome the shortcomings which characterised its predecessor, the OAU. A central assumption of historical new -institutionalism is the existence of inefficiencies generated by institutions, in contrast to the notion that institutions are more purposive and effective. Historical new- institutionalism might argue that the institutional design of the OAU privileged certain interests over others, thus leading to an inequality of outcomes. Historical new -institutionalism might also argue that the looseness of the OAU's security design did not allow the institution to transform state preferences, or constrain state decision making. Furthermore, the OAU was not able to extend its autonomy over member states, nor did its constituents delegate sufficient authority to the institution to effectively resolve larger problems. In effect the OAU came to represent a forum where member states were able to manipulate institutional design to pursue specific national interests.

Starting with the competing ideological claims between Francophone, Anglophone and Arab African states after independence, and the subsequent creation of the Monrovia, Brazzaville and Casablanca negotiating blocs[44] around the design of African unity, historical new-institutionalism might argue that the pursuit of national state interest prevailed over consensus. There were divisions with regards the extent to which already decolonised states should support national liberation movements in non-independent states, and whether to retain existing territorial boundaries to discourage secession. Furthermore, the fervour of new found nationalism promoted the principle of sovereign equality so as to mitigate against future imperial interference, and more significantly to assure smaller African states that they would not be exposed to potential intervention by bigger ones. Hence the OAU which was established in 1963 to promote integration and co-operation represented a loose security design. Despite the presence of a Defence Commission, which was ostensibly responsible for harmonising member state defence policies in pursuit of collective security, it was far less authoritative than an African High Command might have been. The emphasis on non

[44] The negotiating blocs refers to the ideological differences that existed around the issue of African Unity. This became particularly pronounced after the independence of the Gold Coast, now Ghana in 1957, and the sentiments espoused by Ghana's first President Kwame Nkrumah. Nkrumah was a fervent Pan- Africanist who argued that all African states had to become independent and then unite politically in a United States of Africa, which he aspired to lead. Newly independent French African states argued that political union could not be achieved without economic and cultural emancipation first. In the end the Monrovia group offered a compromise solution recommending the creation of a management body to guide African Unity. Essentially the OAU was the product of this compromise.

intervention and the fear of being accused of subversion in the internal affairs of member states ensured that the OAU played only a limited role in the resolution of continental human rights problems.

Furthermore, historical new- institutionalism might argue that the type of African personality being developed after independence was characterised by elite as opposed to collective socialisation. Reference is made to the early elite culture of summit diplomacy, its highly privatised and personalised nature, and the propensity for intra-elite allegiances to be formed. The origins and design of the early African security culture can therefore be said to be the unintended consequence of personal affiliations between African statesmen. Since the OAU was largely comprised of Heads of State, attending annual Summits, and fearing the possibility of criticism resulting from violations or human rights abuses, there was wholesale resistance to human intervention, and instead sovereignty and non-interference became the preferred foreign policy tools. This was evidenced by OAU inaction during the Congo crisis over Katanga secession, limited support for resolving the Sudanese civil war and only minor commitments to the Federal government during the Biafra war.

Williams contends that the evolution of the OAU was characterised by contradictions between evolving transnational norms and the institutions own principles. The prioritising of national interests over norm localisation became manifest in the responses to instances of secession, non-interference and African autonomy.[45] Support for self-determination was promoted during colonialism, but opposed after independence. The altering of borders was seen as an extreme political initiative which might lead to a domino effect on the continent. Whilst on the one hand the OAU considered secession an issue of domestic jurisdiction it did pass some resolutions condemning it. This contradiction became manifest in the institution's support for liberation movements in Angola, Mozambique and Guinea Bissau, but not in Nigeria, southern Sudan, Chad, Eritrea and the Comoros. Historical new- institutionalism might account for this contradiction as a consequence of member states promoting non secession because of their resistance to decentralising governance structures at home and their unwillingness to provide sufficient safeguards for human and minority rights in their own countries.

[45] See, Williams, Paul,D. , 2007. ' From Non-intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture', African Affairs 106(423):pp 267-271

A further contradiction was the propensity of the OAU to condemn minority regimes in Rhodesia and South Africa, but not the human rights abuses committed by other African governments in Uganda, the Central African Republic and Equatorial Guinea. This contradiction was ostensibly one between domestic jurisdiction and sovereign equality, and the international consequences of national policies such as apartheid and segregation. So whilst the OAU was willing to promote human rights it was less eager to protect them.

The final contradiction pertains to the OAU's commitment to providing African solutions to the continents problems, and the propensity of member states to seek external assistance. This not only resulted in the reliance on foreigners to solve African problems, but came with attendant financial costs, particularly where development assistance was linked to conditionality, and where aid was associated with the need to subscribe to a Western discourse of human rights and liberal democracy.

Historical new- institutionalism might therefore conclude that the African Union is the product of historical development and particularly path dependency, which assumes that institutional change, is dependent on a particular situation and context inherited from the past. The deficiencies of the OAU might be said to account for the subsequent reforms undertaken by the organisation in the 1990's paving the way for the AU. The Abuja Treaty in 1991 led to the creation of the African Economic Community, the Kampala document in the same year created a framework for collective political action, and as a result of the ECOWAS experience in Liberia, the Organisation of African Unity (OAU) institutionalised the Mechanism for Conflict Prevention, Management and Resolution. Furthermore in the late 1990's the OAU played a mediation role to resolve the conflict in the DRC, it brokered the peace between Ethiopia and Eritrea in 2000, it took initiatives to conclude the peace and security component of the New Partnership for Africa's Development, it promoted the Conference on Stability, Security, Development and Cooperation in Africa, and it formulated the Declaration on a Framework for an OAU Response to Unconstitutional Changes in Government. Most significantly in Sirte in 1999, the OAU committed itself to a qualitatively superior form of co-operation to promote greater unity and solidarity, leading to the creation of the AU.[46]

Rational choice new- institutionalism might concur with its historical counterpart in this regard. For the former, institutions are influenced by competitive selection so that they persist only so long as they are able to provide benefits. Even though actors behave instrumentally to maximise their preferences, they are concurrently involved in collective action dilemmas, so whilst they seek to maximise their preferences they do so in a manner where their gains would not necessarily make other actors worse off. The institutional inadequacies of the OAU in this regard might therefore account for its demise and subsequent replacement by the African Union.

Sociological new- institutionalism might concur that the African Union represents institutional reform, but might add that it is the normative commitment to protect which distinguishes the AU from its predecessor. In this regard sociological new- institutionalism would describe the origins of the AU as being linked to the evolution of a culture of security communities on the continent.

As early as 1957, Karl Deutsch introduced the sociological concept of a security community to International Relations literature. According to Deutsch a security community is constructed by a collective identity and held together by shared values and meanings, as opposed to the mere need to balance a common threat. Deutsch argues that the continued interaction between states leads to a collective identity and the creation of dependable behaviour and common norms, which in turn promotes mutual trust and a sense of affiliation.[47]

In 1996 Adler and Barnett extended Deutsch's conceptualisation by introducing a three tiered framework to clarify the forces necessary for peaceful change, and the establishment of a security community. Tier one prioritises the conditions necessary for greater co-operation, tier two reflects on how states and their polities engage in social interactions which transform the environment in which they are embedded, and the third tier assumes the presence of

[46] See, Franke, Benedikt. , 2008.' Africa's Evolving Security Architecture and the Concept of Multilayered Security Communities', Journal of the Nordic International Studies Association, 43(3):pp321-323

[46] See, Deutsch, Karl.W. , 1957. 'Political Community and the North Atlantic Area- International Organisation in the Light of Historical Experience', Princeton, NJ. Princeton University Press.

mutual trust and collective identity, which promote dependable expectations towards a security community.[48]

Whereas the Charter of the OAU prioritised sovereignty, territorial integrity and non-interference in the affairs of member states, the Constitutive Act of the AU places limitations on these. These privileges are considered conditional on the ability of a member state to protect its citizens, failing which the Union reserves the right to intervene. The fact that the AU has developed a comprehensive security design and has made a paradigmatic shift from regime to human security might be evidence that the AU has moved towards collective identity and mutual trust. Franke argues that the re-emergence of Pan- African ideology after the end of the Cold War serves to promote shared identities, values and meanings. In particular the AU displays a shared commitment among member states to the peaceful resolution of conflict, a shared knowledge in this regard and a regulation structure that encourages trust. Franke argues that the treaty arrangements and the actual behaviour of AU member states reflect this. Articles 4(e) and 4(f) of the AU's Constitutive Act for example emphasise the peaceful resolution of conflict and the expression of power by means short of physical violence.[49]

Sociological new institutionalism might also contend that the presence of mutual trust and collective identity goes some way in explaining the co- operation between distinct security communities, as well as the potential for states to be considered members of more than one security community, at the same time. Historical new –institutionalism would concur with its sociological counterpart, in that that both approaches assume that institutional creation does not occur in isolation, but rather in an international environment replete with institutions. Hence institutional creation or reform is often the product of borrowing from existing institutional templates. Franke introduces the concept of a multilayered security community to account for this phenomenon on the continent. The security system in Africa is characterised by multiple and often overlapping jurisdictions, where regional layers sometimes act relatively autonomously from the continental layer, within a framework of

[48] See, Adler,Emanuel and Barnett, Michael. , 1996. 'Governing Anarchy: A Research Agenda for the Study of Security Communities', Ethics and International Affairs, No.10:pp.63-98

[49] See, Franke, Benedikt. , 2008. ' Africa's Evolving Security Architecture and the Concept of Multilayered Security Communities', Journal of Nordic International Studies Association, 43(3):pp.313-334

organised complementarity.[50] As such the AU is said to favour the rationalisation and harmonisation of integration and co-operation with sub regional institutions consistent with shared values and understandings. Williams suggests that the analysis of the ideational dimensions of Africa's security culture and process of norm localisation is important .This helps to determine the extent to which ethical and normative questions of African identity influence institutional design and legitimacy. This is contrary to a rational institutional approach which might assume that security policies are based on material and balancing calculations alone. Williams proceeds to define a security culture as a "pattern of thought and argumentation that establishes pervasive and durable security preferences by formulating concepts of the role, legitimacy and efficacy of particular approaches to protecting values. Through a process of socialisation, security cultures establish the core assumptions, beliefs and values of decision makers about how security challenges can and should be dealt with."[51]

Depending on which approach within new institutionalism one finds most convincing to account for the origins of the African Union, one might distinguish between an instrumental commitment to a norm, where actors commit to a norm based on a cost benefit analysis, and how commitment might help them achieve some greater objective; the institutionalisation of a norm whereby institutions are created based on the values and principles inherent in a norm, and where the costs of deviation make compliance desirable, and situations where a norm has been internalised in local identities and interests.

[50] See, Franke, Benedikt. , 2008. ' Africa's Evolving Security Architecture and the Concept of Multilayered Security Communities', Journal of Nordic International Studies Association,43(3):pp331-334. However there is little agreement as to the extent to which one may speak of Multilayered Security Communities and Organised Complementarity. Khadiagala for example argues that this is rarely achieved even at the regional level. Investigating the Eastern African Standby Brigade (EASBRIG) Khadiagala contends that, "no regional block incorporates all putative members of EASBRIG. In this region, the East African Community, the Common Market for Eastern and Southern Africa, and IGAD can all claim to do the task. In the Eastern African region, neither EAC nor COMESA possesses a mandate or structure directly related to the issue of peace and security. Thus, a decision was made to assign such a role to IGAD, albeit on an interim basis. The debate regarding which sub-regional organisation should lead in the operationalisation of EASBRIG was rarely informed by the original intent of the AU." See, Khadiagala,Gilbert.M. , 2008.'Eastern Africa: Security and the Legacy of Fragility', Africa Program Working Paper, International Peace Institute.p12

[51] Williams,Paul.D. , 2007. 'From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture', African Affairs, 106(423): p.256

Historical new- institutionalism might argue that the institutional design of the African Union reflects an instrumental commitment to norms, as a consequence of the structural realities presented by the end of the Cold War. The collapse of the bi-polar system of order that traditionally kept African conflicts in check led to an increase in continental crises. Furthermore, the end of superpower competition resulted in the declining in importance of the continent strategically and geopolitically. Finally, the negative effects of globalisation further marginalised the continent and promoted inter and intra state conflicts resulting in violence, poverty and underdevelopment.

As such, the decision by the Assembly of Heads of State and Government of the OAU to adopt the right of intervention into the Constitutive Act of the African Union in 2000 reflects their concerns about the inability of the OAU to intervene, so as to contain gross human rights violations, as had occurred in the Central African Republic under Bokassa, in Uganda under Amin and the genocide in Rwanda in 1994. Furthermore it might have been recognised that the deficiencies in OAU peacekeeping and peacemaking was a result of non-cooperation among member states, and the weakness of the OAU's Mechanism for Conflict Prevention and Management. The latter often did not discuss conflict issues, or chose not to engage because of member state assurances that the matter was being dealt with effectively at a domestic level. In addition there was a recognition that member states involved in conflict often did not consent to OAU engagement, which was compounded by the non committal responses of Heads of state in fear of criticising their colleagues.

There was also recognition of the need to redefine the concepts of security and sovereignty, and their relationship with development. As early as 1991 leaders such as Museveni and Obasanjo warned that sovereignty, "has become a sacred cow and many crimes have been committed in its name. If the European countries can surrender some of their sovereignty for greater development, African states should similarly surrender some of their sovereignty for greater security, both at the intra and inter-state levels." [52] This calculus approach, might account for the origins of the African Union, as an institution where actors have committed to a norm on the basis of a cost-benefit analysis, in the hope of achieving some greater objectives, which might include greater levels of democracy, good governance and respect

[52] President Museveni of Uganda, 22nd Ordinary Session of the OAU Assembly of Heads of State and Government, Addis Ababa, Ethiopia.

for human rights, popular participation, stability and justice. African leaders have ostensibly endowed the African Union with sufficient powers to intervene, even if this requires a delegation of state sovereignty and authority to the continental institution. This delegation of state authority is manifest in the institutional design of the African Union.[53]

The transition from the OAU to the African Union however seems counter intuitive to a central premise of historical new- institutionalism which argues that institutions are highly formalised in terms of structures and rules, and can thus not be changed arbitrarily. Historical new- institutionalism argues that because exit costs increase over time, states prefer to persist with an existing institutional design. One might only suggest that the perceived benefits to be derived from creating an alternate institution, more capable of decisive and effective action, exceeded the costs of sustaining a loose security institution which was inadequately attempting to resolve conflict and human rights problems on the continent. Furthermore one might argue that the costs of sustaining an institution which did not have the political will to criticise or effect changes in domestic human rights practices were too high.

Sociological new institutionalism might argue that the African Union is the product of the universal evolution of the responsibility to protect norm and its internalisation by the international society of states. An international society of states might be defined as an aspect of international anarchy where participants, specifically understood as sovereign states, have a sufficient degree of confidence in the behaviour of fellow members as pertains to the pursuit of common interests and shared values. At an ontological level, international society is a social structure which determines and constrains behaviour, and at an agential level the society of states has the authority to act through its attendant representatives and institutions. Clark adds that an international society is further defined by membership and mutual recognition, as well as by particular norms of conduct. The combination of the two represents

[53] This is a significant point. The historical new-institutionalism approach argues that institutions are capable of transforming state preferences over time. In this way, institutions can enjoy a degree of autonomy from member states. Institutional autonomy is further enhanced when the expert functions an institution is expected to perform are increased. The elaborate security architecture of the AU certainly distinguishes it from its predecessor. The presence of rules and structures certainly deters the buddy-buddy system of diplomacy which characterised the OAU. To this extent it might be argued that the AU is less vulnerable to the individual interests of member states.

the struggle over legitimacy, where there is contestation over the social agreement that determines who is entitled to participate in international relations and what the parameters of appropriate social conduct are. Legitimacy thus denotes the existence of an international society. Legitimacy in this sense is attached to society as the subject. Separately, the actors within international society are engaged in endless strategies of legitimation, in order to present certain activities or actions as legitimate. [54]

The logic of appropriateness dictates that norms are standards which distinguish between right and wrong and which grant legitimacy to certain activities. Furthermore by defining the parameters of legitimate conduct, norms shape the identities and preferences of actors, but crucially do not always determine their behaviour. As Williams cautions, "the crucial test of a norm's existence is thus not that members of the community never violate it. Rather, a norm's strength is measured by the level of opprobrium community members attract from their peers for engaging in behaviour that violates the norm. If no criticism occurs then a norm cannot be said to exist" [55]

Sociological new institutionalism might therefore argue that the African Union originated so as to legitimately entitle the continent's states to participate in international relations within the evolving parameters of what constitutes appropriate social conduct.

Chapter Two has examined the three approaches within new- institutionalism in an effort to discern the relationship between institutions and behaviour, and to understand the process whereby institutions originate or change. Finally the Chapter has examined the extent to which the approaches within new -institutionalism might account for the origins of the African Union in particular.

[54] See, Williams,Paul.D. , 2009. 'The responsibility to protect, norm localisation, and the African international society', Paper presented on the panel, "African Union and R2P: Synergy or Divergence?", International Studies Association annual convention, New York: p.3

[55] Williams,Paul.D. , 2007. 'From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture', African Affairs, 106(423): p.258

CHAPTER THREE

3.1 The ECOWAS intervention in Liberia. Building- blocks for the origins of the African Union?

Chapter Three conducts a case study of the intervention by ECOWAS (Economic Community of West African States) through its military Monitoring Group (ECOMOG) in Liberia in August 1990, and will suggest that this might represent the critical juncture to account for the principled shift in African regional co-operation and the subsequent origins of the African Union.

This is consistent with a central tenant of historical new- institutionalism which focuses on historical development, and particularly with path dependency, and which assumes that institutional change is dependent on a particular situation, and a particular context often inherited from the past. Furthermore, historical new- institutionalism makes provision for critical junctures in the flow of historical events, where significant institutional change occurs, thus creating a branching point from which the historical development of the institution moves along a new trajectory.

The case study adopts a process tracing approach to the events which motivated the intervention by ECOWAS in Liberia in August 1990, as well as the unravelling of the conflict until 1997. Whilst not claiming that the intervention exclusively caused the radical transformation in continental security design, one might argue that it does offer vital clues to account for the type of security architecture which the AU has subsequently adopted. The intervention was instrumental in redefining collective intervention in internal conflicts, as well as offering new insights into the legal basis for such intervention. Chapter Three will also apply a degree of theorising, using the various approaches in new- institutionalism, to determine whether the ECOWAS experience might help account for the relationship between the AU and member state behaviour.

The case study hopes to show that ECOWAS broke with conventional wisdom, by demonstrating that intervention in another state can be undertaken on a number of grounds.

This occurred prior to the principle of the responsibility to protect becoming fashionable, it demonstrated the impotence of the AU's predecessor in dealing with crises in Africa, it prompted international debate around the relationship between the security of states and humanity, and it confirmed the need for strong and well resourced security building institutions in the future.

Although this is not a contemporary case of intervention it is chronologically significant, in that it occurred soon after the conclusion of the Cold War and the perceptible shift in how the international community perceived its role in civil wars. Furthermore it was a unique instance where an ostensibly regional economic institution, exceeded its mandate to bring peace to another country. The intervention by ECOWAS was also contrary to the OAU Charter which prioritised non interference and non aggression among member states. Sesay even goes as far as to suggest that, the ECOWAS intervention in Liberia represents a "strange case" of peacekeeping and conflict resolution. Firstly, by the time ECOWAS decided to intervene there was no peace to keep, as most of the Liberian factions were still fighting. Secondly, none of the warring parties formally requested intervention and finally, there was an insufficient legal basis for ECOWAS's involvement.[56]

3.2 How and Why ECOWAS intervened.

On Christmas Eve in 1989, Charles Taylor, a former Liberian government official, together with a small group of armed dissidents crossed into Liberia from the neighbouring Ivory Coast, and announced that he intended to overthrow President Samuel K Doe. The latter himself had come to power in the early 1980's through a bloody coup that had overthrown President William Tolbert, and his long reigning True Whig Party. Doe who was a member of the minority Krahn ethnic group, justified his actions as a response to the corrupt misrule of the Americo-Liberian oligarchy (descendants of former slaves from the American South who had established the Liberian state in 1822) that had reigned supreme for over a century,

[56] See, Sesay,Max.A. , 1996. 'Civil War and Collective Intervention in Liberia', Review of African Political Economy, No. 67: pp.35-52

and had reduced the indigenous population to near subservience.[57] In 1985, Doe himself had survived a coup, initiated by a former ally, General Thomas Quiwonpka and responded by brutally massacring the latter's supporters in his ancestral home of Nimba County. Taylor, an Americo-Liberian, was able to manipulate the ethnic card after his incursion, by mobilising the Gio and Mano ethnic groups of Nimba County, to join his National Patriotic Front of Liberia (NPFL) against Doe. Suffice to say the conflict soon took on ethnic dimensions, with Doe's Krahn and Mandingo supporters, pitted against the Gio and Mano of the NPFL. Interestingly at about this time, the NPFL was split into two, with the formation of a new grouping calling itself the Independent National Patriotic Front of Liberia (INPFL) under the leadership of Prince Yormie Johnson.

Within the first year of fighting, over 700,000 Liberians had fled the country to neighbouring Ivory Coast, Guinea, Sierra Leone, Ghana and Nigeria. This immediately impacted negatively on regional trade and tourism, and the fighting threatened to spill into bordering states. Crucially the refugee crisis, and particularly the pressure it was placing on the struggling economies of Guinea and Sierra Leone, prompted the ECOWAS Heads of state to initiate a five member Standing Mediation Committee (SMC) in May 1990, made up of representatives from Gambia, Ghana, Mali, Nigeria and Togo, in an attempt to resolve the conflict peacefully. Doe's refusal to step down thwarted initial mediation efforts. Attempts by the SMC to impose travel restrictions, freeze assets out of Liberia and limit the use by rebels of sovereign territories for recruiting and training personnel, proved equally ineffective. At this time Taylor was moving steadily towards the Liberian capital, Monrovia, and was insistent that he would not accept an ECOWAS peacekeeping mission, a proposition which he considered tantamount to an invasion. In June 1990 the United States deployed six ships to coastal waters off Liberia in response to the targeting of foreign nationals in the fighting. US marines evacuated embassy personnel and other foreign nationals who had sought refuge in the American compound.

Nonetheless, in July 1990, the ECOWAS sub-committee on defence began preparing for a military intervention force. In August of the same year, the SMC adopted the "ECOWAS Peace Plan for Liberia" which formally constituted the creation of the ECOWAS Monitoring Group in Liberia (ECOMOG). On the 23 August 1990, 4000 troops from Nigeria, Ghana,

[57] Gberie,Lansana. , 2004. 'Liberia's War and Peace process: A Historical Overview', http://www.iss.co.za/pubs/Books/Tortuous Road /Chap3.pdf: p.52

Guinea, Sierra Leone and Gambia were sent into Liberia under the command of the Ghanaian Lieutenant General, Arnold Quainoo. Needless to say the NPFL condemned the action, and threatened to resist the invasion force. ECOMOG's mandate was to perform a peacekeeping role, which included the imposition of a ceasefire, the disarmament of the warring parties, the ending of attacks against civilians, and the imposition of an embargo on the importing of arms, the establishment of an interim government, creating an enabling environment for elections, and the evacuation of foreign nationals.

By the time ECOMOG seized Monrovia, President Doe, with the support of his weakened but heavily equipped Armed Forces of Liberia had been confined to a small enclave around the Presidential palace. Embarrassingly for ECOMOG, on the 9 September 1990, President Doe was captured by members of Johnson's INPFL whilst on his way to ECOMOG's headquarters in Monrovia's Freeport. Upon Doe's public execution, the ECOMOG commander Quainoo, was replaced by the more competent Nigerian, General Joshua Dongonyaro. A ceasefire agreement was subsequently initiated by ECOWAS, and an interim government led by a Liberian intellectual, Dr Amos Sawyer was elected by an "All-Liberia Conference" at Banjul, and was installed early in 1991. In response to this, Taylor formed his own government in Gbarnga, Bong County, thus effectively dividing the country and forcing the ECOMOG contingent to choose sides. Furthermore, Taylor who at this point controlled 90 percent of the country, continued to mount counter-attacks against ECOMOG forces in Monrovia, so that in defending itself, it soon became clear that ECOMOG had changed from a humanitarian body into a political and military force.

A ceasefire was negotiated in Mali in November 1990 which led to a series of peace meetings being initiated by President Houphouet –Boigny of the Ivory Coast. The UN Security Council also met for the first time at the request of the Ivory Coast on the 22 January 1991 to discuss the crisis in Liberia, and to add credence to what had been agreed upon in Bamako. Peace meetings culminated in the signing of the Yamoussoukro IV Accord in October 1991. Ostensibly Taylor used the ceasefire as an opportunity to reconsolidate his forces and in October 1992 he initiated "Operation Octopus" in an attempt to lay siege on Monrovia. It was only heavy ECOMOG bombing raids on strategic NPFL positions that thwarted Taylor's advance.

In November 1992 the UN Security Council voted unanimously to pass Resolution 788 supporting the arms embargo imposed by ECOWAS. Further peace talks led to the signing of the most comprehensive agreement of the Liberian conflict in Benin, in July 1993. Known as the Cotonou Accord it made provision for encampment, disarmament and demobilisation, and laid down specific criteria for the conduct of elections. ECOMOG was instructed to continue applying intense military and diplomatic pressure to ensure that Taylor did not once again renege on his commitments. The UN Security Council Resolution 788 led to two further international commitments. In August 1993 a Security Council resolution made provision for a special programme of economic assistance aimed at rehabilitating the Liberian economy, and providing urgent humanitarian support. In September 1993 the Security Council passed a resolution creating the framework for a technical team to monitor the ceasefire and for the establishment of a future UN Observer Mission in Liberia (UNOMIL), which was to cooperate closely with ECOMOG.

In December 1994, President Jerry Rawlings of Ghana, and then also Chairman of ECOWAS initiated the Accra Accords, in an effort to speed up the election process. However talks collapsed due to disagreement over the composition of a proposed Liberian five-man Council of State. More frustratingly, an additional splinter group had been formed in Liberia under the leadership of Alhaji Kromah and called the ULIMO-K. Early in 1995, General Sani Abacha of Nigeria, and then Chairman of ECOWAS adjourned a meeting of all the Liberian factions in Abuja. Finally, agreement was reached on the proposed Council of State, incorporating all the major factions, and elections were scheduled for August 1996. Strategically, provision was also made for a massive deployment of ECOMOG troops, which now numbered over 10,000, to monitor and oversee the disarmament and reintegration process. However in April 1996, heavy fighting again broke out between the NPFL and INPFL over Taylor's threat that he wished to invade Monrovia, and have his opponents arrested and detained. This necessitated the convening of Abuja II where the Council of State was reconstituted and elections postponed until May 1997. Abuja II also empowered ECOMOG to order warring factions to dismantle their military wings and enforce disarmament by January 1997.

Finally on the 19 July 1997, Liberians conducted elections for a new government. Taylor was able to use his wealth, resources and vast territorial control to steal the result leading to the now famous Liberian motto, "he killed my ma, he killed my pa, but I'll vote for him." [58]

3.3 Lessons learnt from the ECOWAS intervention.

The decision by ECOWAS to intervene militarily in Liberia in 1990 certainly represents a strange case of peacekeeping and conflict resolution, yet its timing and consequences perhaps offer vital clues to account for the origins of the African Union, its subsequent security architecture, and the evolution of the responsibility to protect into a continental and international norm.

Coming as it did soon after the end of the Cold War, the ECOWAS intervention went contrary to the traditional position of the time that any form of intervention in the affairs of another state was illegal. This constituted a violation of sovereignty and the prohibition of the use of force as articulated by the UN Charter. Certainly there was a legal debate internationally as to the need for a doctrine promoting humanitarian intervention, but suffice to say there was, " still tension between the values of ensuring respect for fundamental human rights and the primacy of the norms of sovereignty, non-intervention and self-determination which were considered essential factors in the maintenance of peace and international security."[59]

The intervention also occurred at a time where the UN understood peacekeeping to entail neutrality, and the deployment of competent and well equipped multinational forces responsible for maintaining the peace, and only responding militarily in self defence. Furthermore, peacekeeping was understood to require multilateral financing, a legitimate international mandate and UN Security Council approval. The ECOWAS experience seems to have set an early precedent to suggest that intervention in another state could be

[58] Gberie,Lansana. , 2004. 'Liberia's War and Peace process: A Historical Overview', http://www.iss.co.za/pubs/Books/Tortuous Road /Chap3.pdf: p.61

[59] Kioko,Ben. , 2003. 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention', IRRC, 85(852): p.809

undertaken on humanitarian grounds, and in instances where the, "government is universally recognised to have collapsed, leading to a breakdown in law and order and the possibility of irreparable injury to lives and human rights."[60]

Significantly, when ECOWAS was established in 1975, it was intended to be a sub-regional economic institution promoting the integration of West Africa's Anglophone, Francophone and Lusophone countries. There was however a recognition that regional economic development was linked to peace and security. In this regard ECOWAS adopted a Protocol on non aggression in 1978, requesting that member states refer all inter-regional disputes to the organisation, and in 1981 a further Protocol on mutual defence made provision for regional responses to extra-regional aggression, and identified procedures for dealing with, "internal armed conflict within any member state engineered and supported actively from outside likely to endanger the security and peace in the entire community".[61] Whilst these protocols might have tacitly served to legitimise the ECOWAS intervention, they certainly did not satisfy the accepted parameters of peacekeeping discussed earlier. Also the extent to which the ECOMOG experience satisfied the criterion of neutrality in peacekeeping appears negligible. It was inevitable at the point that Taylor identified ECOMOG as an invasion force, that its ability to exercise neutrality would be difficult. Taylor's consistent attacks on ECOMOG forces led to continuous adjustments of the latter's mandate, ranging from peacekeeping to peace enforcement and even to defensive-offensive strategies.

Most importantly, the ECOWAS intervention exposed the legal ambiguities inherent in the United Nations. Chapter VIII of the UN Charter certainly makes provision for regional organisations to participate in conflict situations when international peace is threatened, but only with prior Security Council approval. Although destabilising for the region, the extent to which the Liberian conflict posed a threat to international peace is questionable. The ECOWAS intervention did not obtain prior Security Council approval, although at the time, President Dauda Jawara of Gambia, who was also Chairman of ECOWAS, insisted that he had been advised that Security Council approval was not required, and that he had been contacted personally by the UN Secretary General to wish him success in the organisation's endeavours. It was even argued that subsequent UN Security Council resolutions on Liberia

[60] Sesay,Max.A. , 1996. 'Civil War and Collective Intervention in Liberia', Review of African Political Economy, No. 67: p.36

[61] The Protocols are available at www.com.ecowas.int/sec/index.php

prioritised co-operation with ECOMOG, thus further legitimising the intervention. Also it can be argued that over the question of the use of force, "the Security Council's arms embargo on the warring factions in Liberia did not affect ECOMOG, a clear endorsement of the need for ECOMOG to use minimum force to contain recalcitrant factions and bring peace to Liberia"[62]

The ECOWAS intervention also went against the OAU Charter which prioritised non interference in the internal affairs of another state, non-aggression between member states, the maintenance of regional peace, stability and security through the promotion of good neighbourliness, and the peaceful settlement of disputes among member states.

For all intents and purposes, the ECOWAS intervention in Liberia went against all of the cardinal rules governing international relations at the time. Despite this, ECOWAS continued to argue the point that its involvement was based on humanitarian and regional necessities. This holds some credence when one considers that over the seven year duration of the conflict, close to a million citizens were internally displaced, a similar amount had become refugees and almost 200,000 people had been killed. It was also clear that even though Doe was in control of the Presidential Palace in Monrovia at the time of ECOWAS's intervention, his authority and capacity to govern was at best nominal. Mass starvation, the collapse of essential services, the overflow of the conflict into the broader sub-region and the overall disintegration of law and order, were all compelling justifications for the intervention along humanitarian grounds.

It is also true that in the early stages of the conflict, ECOWAS used the traditional recipe of mediation, negotiation, facilitation and arbitration, to try and broker the peace and even after the intervention, used minimal force, which might be considered proportionate, thus allowing humanitarian efforts to proceed. It was only the continued resistance and counteroffensives instigated by Taylor which led to the greater militarisation of ECOMOG. In summary, the jury is still out as to the effectiveness and legality of the ECOWAS intervention. Kwesi Aning however, is vociferous that, "ECOWAS's intervention succeeded in overcoming the overriding international perception of Africa, and especially the sub-region's status as the

[62] Sesay,Max.A. , 1996. 'Civil War and Collective Intervention in Liberia', Review of African Political Economy, No. 67: p.44

cradle of Afro-pessimism and new-nihilism. It became the first sub-regional organisation to intervene in a crisis militarily that has occurred within the ambit of its authority. As a result, ECOWAS's intervention has also contributed to the Africanisation of peacekeeping and undermining the popular impression that black African lives were of less value than white European ones".[63]

Despite many shortcomings, it could be argued that ECOMOG restored peace and stability in Liberia. As the earlier narrative indicated, ECOMOG was able to negotiate peace accords and cease fires, it disarmed warring factions, it evacuated foreign nationals and it created conditions which allowed for elections. This however has to be transposed against the many downsides of the intervention. Throughout the conflict many Liberians referred to ECOMOG's acronym as ' Every Car or Moving Object Gone'. This refers to the propensity of many ECOMOG officers to use the conflict and the prevailing warlord economy to amass fortunes through racketeering. Boas argues that often ECOMOG accepted the assistance of breakaway or emerging factions in Liberia, to serve as proxy forces against Taylor and also to give ECOMOG soldiers and officers an advantageous position in the emerging underground economy of the civil war. In many instances ECOMOG undertook massive military operations, which whilst containing Taylor, also served to kill many innocent civilians, disrupt relief convoys and violate the territorial space of neighbouring countries.

3.4 Does the ECOWAS intervention serve to account for the subsequent security architecture of the African Union?

A historical new- institutionalism approach might argue that the ECOWAS intervention had more to do with selfishness than with selflessness. This is consistent with a central tenant of historical new- institutionalism which emphasises the structural aspects of institutional design, and which examines how institutions privilege certain interests over others, thus leading to an inequality in outcomes. The state is not seen as a neutral broker among

[63] Aning,Kwesi. , 1999. 'Eliciting compliance from Warlords: the ECOWAS experience in Liberia, 1990-1997', Review of African Political Economy, 26(81): p.336

competing interests but rather as an agent promoting institutional formation at a group level so as to pursue specific national interests.

According to Natalie E. Brown, "ECOWAS, in reflecting on the Liberia experience, also appears to have forgotten that there was no consensus on the decision to intervene. The West African nations had competing interests ,and what the organisation achieved was more a result of sixteen member states coming together to satisfy their individual needs than it was a manifestation of a shared desire to end the bloodshed. Self preservation overruled any common commitment to peace, stability, or regional cooperation, although member states convinced themselves otherwise."[64] So although at one level historical new- institutionalism might view the ECOWAS intervention as a critical juncture to account for the principled shift in African security cooperation, at another level it also might interpret it as an instrumental response by member states ,based on a cost-benefit analysis, in pursuit of national interest.

It is true that the West African sub region has traditionally been characterised by different levels of development, as well as by differences in language and cultural allegiance. Furthermore the divide between the Francophone and Anglophone members of ECOWAS has always been palpable. Although ECOWAS member states may have convinced themselves that intervention was necessary to secure regional peace and stability, motivations might have certainly varied.

Nigeria's leading role in the intervention is often attributed to the close personal relationship between Presidents Doe and Babangida and the covert support which Nigeria often extended to prop up the Doe regime. Nigeria considered Liberia a close ally in a region dominated by Francophones, and was concerned with the negative impact the fighting would have on Nigerian interests if it spread to Gambia, Sierra Leone and Guinea. Nigeria was also concerned with the protection of its citizens working in Liberia, especially after close to a thousand of them were murdered by NPFL guerrillas in the mid 1990's, whilst seeking refuge at the Nigerian Embassy. Nigeria was also motivated by its desire to control ECOWAS activities so as to entrench its position as the regional hegemon. It was no wonder then that Nigeria provided the majority of funding as well as military and political leadership to ECOMOG. By the time ECOMOG was entrenched in Liberia, more than half of its 10,000

[64] Brown,Natalie.E. , 1999. 'ECOWAS and the Liberia Experience: Peacekeeping and Self Preservation', Report prepared for the US Department of State:p.4

troops were made up of Nigerian recruits, and after the fiasco leading to Doe's capture and murder on ECOWAS's watch, Nigeria insisted that the position of ECOMOG Field Commander, the highest in the force's command structure, be permanently occupied by a Nigerian. It is also not surprising that by the time President Abacha came to power in Nigeria, the country was experiencing somewhat of a pariah status internationally, as a result of the execution of human rights activist Ken Saro Wiwa in November 1995. As a result Nigeria was expelled from the Commonwealth and one way, "for the country to break international isolation was to emerge stronger than ever before on the regional scene as the powerbroker and peacemaker in neighbouring countries such as Liberia".[65]

The Ivory Coast on the other hand saw itself as a counter balance to Nigerian leadership aspirations. To this extent, the Ivory Coast, together with Libya and Burkina Faso, initially provided training, funding and ammunition to Charles Taylor and his rebels. The Ivory Coast further provided safe haven for refugees and for a long time insisted that ECOWAS had exceeded its mandate in Liberia, and argued that intervention was in direct contradiction of the OAU Charter. Despite peace initiatives undertaken by the Ivorian President Houphouet-Boigny in early 1991, including the first sitting of the UN Security Council on Liberia, prior to that, the Ivory Coast was insistent that the Liberian situation was an internal and African matter. In fact the Ivory Coast was able to keep the civil war in Liberia off the UN agenda for a long while by convincing Zaire, which held the Security Council presidency at the time, that by pushing the Liberian agenda, Zaire would be initiating a precedent that would probably be applicable to it in the future.

Mali was also concerned with curbing Nigerian hegemony, particularly after President Abacha used coercion to force ECOWAS members to elect him Chairman of the organisation, even though Mali's President, Konare, was in line for the leadership position. In response Mali cited Nigeria internationally for human rights abuses, and although contributing only minimally to ECOMOG, made it clear that the peacekeeping mission was to reflect a regional initiative. Ghana perceived itself as an honest peace broker in the Liberian conflict because bar the protection of around 10,000 Ghanaians living in Liberia, the

[65] Boas,Morten. , 2001. 'Liberia and Sierra Leone- dead ringers? The logic of neopatrimonial rule', Third World Quarterly, 22(5): p.712

country did not have a political stake in the civil war. Ghana also perceived its military to be highly organised and professional; something which had been demonstrated by Ghana's participation in UN sponsored peacekeeping initiatives all over the world from as early as 1978.

By and large it might be argued that ECOWAS member states participated in the intervention for a variety of strategic, political and economic reasons. In summary therefore, historical new- institutionalism might question the extent to which the ECOWAS intervention set a precedent for the origins of the African Union, since its intervention in Liberia represented nothing more than member states attempting to gain preferential access to the institutional decision making process of ECOWAS, in order to satisfy short term interests. This is further indicative of the inability of ECOWAS's institutional structure to constrain the behaviour of actors or to influence institutional arrangements. To a greater or lesser extent almost all ECOWAS member states made financial contributions to the ECOMOG effort, but it cannot be said that all benefitted equally from bringing the peace to Liberia. In fact one might even argue that ECOWAS's efforts in Liberia sidetracked the organisation from its primary mandate of promoting economic development and integration, to alleviate the economic and social tensions that were causing instability in the sub-region.

A sociological new- institutionalism approach however might disagree. Rather than representing cultural and linguistic tensions or the pursuit of national interests, the ECOWAS intervention might in fact represent the ability of states to set aside their differences, and use appropriate military and diplomatic means, to provide humanitarian assistance and restore peace. To this extent, the intervention may have provided the moral template for the AU's subsequent design.

Perhaps ECOWAS was able to demonstrate that institutions are custodians of symbolic systems and cognitive scripts, which guide the behaviour of actors, so that behaviour is governed by the logic of appropriateness as opposed to the logic of consequence. Franke argues that the emergence of regional security communities is embedded in a growing feeling that the regions, "common cultural and social affinities, common historical experiences, common problems and aspirations implied the existence of a foundation for common actions

and thus a clear indication of a shared future." [66] The ECOWAS experience might also be said to have inspired the notion of community building institutions, which promote cooperation, because they are based on mutual trust and a collective identity among member states. These institutions provide a framework for collective security and military integration.

In fact the long engagement of ECOWAS in Liberia convinced member states that there was a need for a more structured system for ensuring regional stability. The 1978 Protocol on Non-aggression and the 1981 Protocol on Mutual Assistance on Defence were clearly insufficient. In December 1997, the ECOWAS Heads of state and government proposed the creation of a mechanism for the collective management of regional security. Subsequently, ECOWAS defence and internal affairs ministers developed and sanctioned a strategy for identifying, monitoring and responding to sub regional conflicts. Known as the Mechanism for the Prevention, Management, Resolution of Conflicts, Peacekeeping and Security, the strategy allows for ECOWAS intervention in the internal affairs of member states, "where conflict in a country threatens to trigger a humanitarian disaster, poses a serious threat to peace and security in the sub region or erupts following the overthrow or attempted overthrow of a democratically elected government."[67] It is not coincidental that this precedes the later Constitutive Act of the African Union which also endorses the responsibility to protect, the right to intervene in a member state in respect of grave circumstances and the intolerance of unconstitutional changes of government. Furthermore in order to determine when intervention is appropriate ECOWAS has also recommended monitoring indicators which include the price and availability of food, environmental catastrophes, political progress and development, relations between the military and civilians as well as internal security. Whilst developing its peacekeeping apparatus ECOWAS has also placed a moratorium on the manufacture and distribution of light weapons.

The refusal by ECOWAS to identify with the OAU norm on non interference is also significant, in that it demonstrated that in the early 1990's ,there was not a developed shared

[66] Franke,Benedikt. , 2008. 'Africa's Evolving Security Architecture and the Concept of Multilayered Security Communities', Journal of the Nordic International Studies Association, 43(3): p.331. Again there is little consensus in this regard. In fact some authors argue that rather than regions reflecting common cultural and social affinities Africa is characterised by competing regionalisms which accounts for the proliferation of sub regional organisations on the continent.

[67] Information on the Mechanism is available at www.com.ecowas.int/sec/index.php

cognitive space on the continent, or , "an agreement among the members of all security 'layers' on certain core constitutive norms." [68] Although some might argue that by 1994 the OAU was beginning to rethink the principle of non interference, and even appointed the former President of Zimbabwe, Canaan Banana, as an eminent person to assist ECOWAS in the search for a peaceful solution in Liberia, in reality the ECOWAS intervention exposed the OAU's deficiencies, and for a while devolved interstate cooperation to a regional level.[69] The sociological new- institutionalism approach might argue further that the ECOWAS intervention and the exposure of the OAU's limitations, inspired a shared cognitive space creating a continental peace and security architecture, characterised by a multilayered approach to inter- African cooperation. Therefore by, "applying the principles of subsidiarity, burden sharing and sub-contracting, the AU does not regard the regional organisations as competitors in a zero sum game, but instead relies on them as essential building blocks and implementation agencies for its continental programmes." [70]

The civil war in Liberia, and the ECOWAS intervention, also demonstrated the apparent derogation of the international community's responsibilities, and the emerging propensity of Western states to divest themselves from involvement in conflict and failing states.

The earlier narrative clearly shows that despite historical allegiances between the United States and Liberia, the former was more concerned with evacuating its own citizens than involving itself in finding a solution to the conflict. Successive U.S administrations perceived the Liberian civil war as a purely internal affair, and as an African problem requiring African solutions. As for the United Nations, it took three years after the outbreak of the fighting to adopt a more interventionist approach to the conflict, and even then its involvement occurred under the auspices of the ECOWAS initiative, which led many factions in the conflict to question the UN's neutrality. It was only in September 2003 that the UN Security Council

[68] Franke,Benedikt. , 2008. 'Africa's Evolving Security Architecture and the Concept of Multilayered Security Communities', Journal of the Nordic International Studies Association, 43(3): p.329

[69] This is important as it demonstrates that on certain levels the AU originated out of the experiences of sub-regional organisations. One might argue that the ECOWAS intervention in Liberia did in fact serve to bring member states closer together .At a practical level they perhaps recognized the incompetence of the OAU but at a cultural level they may have also understood the need to overcome past suspicions and the benefits of a non-conflictual relationship. However there is also a Realist perspective to this which is encompassed in Regional Security Complex Theory. The basic assumption is that because security problems travel more easily over short distances security interdependence is ideally centred into regionally based clusters. Here see, Buzan,Barry and Waever,Ole. , 2003. Regions and Powers-The Structure of International Security.Cambridge: Cambridge University Press.

[70] Ibid.p.330

passed Resolution 1509, establishing the UN Mission in Liberia (UNMIL). The resolution provided for 15,000 UN peacekeeping troops to be deployed to the country with the mandate to oversee voluntary disarmament and to collect and destroy weapons. Furthermore, UNMIL was mandated to provide humanitarian assistance and to protect civilians from the threat of physical violence. The muted response by the international community to the civil war in Liberia has perhaps influenced the origins of the African Union and it's more structured and formalised security design.

Rational choice new institutionalism might argue that civil wars in "minor" states, particularly since the end of the Cold war, no longer justify unilateral or collective responses. It would seem that intervention in the modern era, despite the evolution of the norm of the responsibility to protect, is contemplated on the basis of a cost-benefit analysis, particularly as this relates to justifying the disbursing of material and political costs associated with peacekeeping. Kwesi Aning argues that unlike the international community, "ECOWAS perceived the civil conflict as presenting a concrete threat to its member states. These differences in perception resulted in ECOWAS's endeavours being denied international support initially. This was because the international community did not perceive threats arising from Liberia to the West African sub-region as threatening or undermining alleged international security."[71]

The ECOWAS intervention certainly influenced the subsequent Constitutive Act of the AU as well as the Ezulwini consensus, which now encourage the role of sub-regional organisations in conflict resolution, because of their proximity to conflict, sensitivity to the actors and issues involved in a crisis, and a perceived interest on the part of regional organisations to more effectively resolve conflicts in their own neighbourhoods. A sociological new- institutionalism approach might account for the greater interplay between the AU and sub-regional organisations as the product of increasing norm localisation and the evolution of common values, meanings and understanding.

More recent rational choice new- institutionalism approaches might explain the interplay between the continental and regional layers as a result of states, now representing "boundedly rational agents" seeking satisfactory as opposed to perfect equilibrium outcomes for

[71] Aning,Kwesi. , 1999. 'Eliciting compliance from Warlords: the ECOWAS experience in Liberia, 1990-1997', Review of African Political Economy, 26(81): p.336

themselves. The African Unions security architecture, and particularly its Standby Force and Continental Early Warning System, clearly provides for a division of labour between the continental and regional organisations.

The AU benefits from the experience of the regional organisations and can call upon their security structures and mechanisms. Similarly the regional organisations benefit from their increased credibility and the financing which the continental security layer is able to provide. The role of regional organisations as implementation agencies for the AU ensures that they have a vested interest in the process of establishing a continental security architecture which also serves to eliminate competition between the security layers. In summary the existence of this organised complementarity characterised by cooperation and a division of labour, serves to reduce transaction costs associated with membership, allows actors to maximise their preferences, and creates more alternatives on the choice agenda so that actor calculations whilst satisfying gains might also lead to better collective outcomes.

Although not representing the causal mechanism to account for the origins of the African Union, the ECOWAS intervention in Liberia might be said to offer crucial clues for subsequent continental security design. The ECOWAS experience demonstrated that intervention in the internal affairs of another state could be undertaken on several grounds including humanitarian catastrophe, unconstitutional changes of government and threats to regional peace and security. This served to redefine traditional notions of sovereignty and introduced an early sense of the responsibility to protect to the International relations agenda. Even though ECOWAS member states may have often acted in pursuit of national interest there is a compelling argument, that the intervention was a legitimate effort at co-operation, based on mutual trust and a collective identity. This has subsequently become manifest in the revised institutional design of ECOWAS and the level of organised complementarity that the former enjoys with the AU. The more advanced security architecture of the AU might also be said to be a consequence of the lessons learnt in Liberia.

CHAPTER FOUR

4.1 Explaining the Logic of Appropriateness.

The Constitutive Act of the African Union, as well as the Protocol establishing its Peace and Security Council certainly seem to endorse the responsibility to protect principle. This is further enhanced by the elaborate security design of the AU which includes an AU Commission, a Panel of the Wise, a Continental Warning system and an African Standby Force. As suggested, this paper is not only concerned with the process whereby institutions originate or change, but also with the way in which institutions affect member state behaviour. Chapter Four examines the extent to which calculations of material interest and power balancing might compete with norm localisation in the AU, thus affecting institutional predictability, and the ability of the institution to fulfil its mandate. In particular this chapter is concerned with whether the logic of appropriateness is sufficient to guarantee the enforcement of the responsibility to protect as an emerging norm in the activities of the African Union.

The logic of appropriateness is a perspective on how human action is to be interpreted. Action, "policy making included, is seen as driven by rules of appropriate or exemplary behaviour, organised into institutions. The appropriateness of rules includes both cognitive and normative components. Rules are followed because they are seen as natural, rightful, expected and legitimate. Actors seek to fulfil the obligations encapsulated in a role, an identity, a membership in a political community or group, and the ethos, practices, and expectations, of its institutions. Embedded in a social collectivity they do what they see as appropriate for themselves in a specific type of situation."[72]

The logic of appropriateness is thus closely connected to the sociological new-institutionalism approach which might argue that rules of appropriate behaviour are codified as rules in political institutions. Institutions are thus organisational arrangements which combine the identities and roles of actors, with resources and prescriptive rules. Specific

[72] March,James.G and Olsen,Johan.P. , 2009. 'The logic of appropriateness', Arena Working Paper, Centre for European Studies. University of Oslo: p.3

institutional settings, also "provide vocabularies that frame thought and understandings and define what are legitimate arguments and standards of justification and criticism in different situations."[73] The logic of appropriateness might therefore argue that actors pursue certain policy courses because they are perceived as normal and right, as opposed to actors calculating consequences and expected utilities. The normative component inherent in the logic of appropriateness is contrary to the conception of rationality, and assumes that cognitive processes, experiences, and intuition, provide actors with a series of roles and identities which allows them to exercise appropriate behaviour in situations which are relevant to them. Hence this definition of institutionalism, contradicts the rational choice new- institutionalism approach, which might argue that politics is governed by self interested and rationally calculating actors behaving in a consequentialist and instrumental manner.

The ability of an institution to prescribe rules to its constituency is thus necessary for behaviour based on the logic of appropriateness. In this sense rules are understood as, "prescribing, more or less precisely, what is appropriate action. They also more or less precisely, tell actors where to look for precedents, who are the authoritative interpreters of different types of rules, and what the key interpretative traditions are." [74]

4.2 The African Union and its Critics. Why calculations of interest persist in Africa.

Critics of the African Union, and particularly those writing from a more Realist perspective, might argue that the institution's ability to fulfil its mandate is restricted by member state calculations of material interest and power balancing.

According to this perspective, Africa constitutes part of the global periphery which is characterised by a Hobbesean struggle for power, where predictability based on a set of shared norms does not exist. In this regard the continent is characterised by weak security communities and regional security complexes, where peace between members has not become predictable, and where disputes are often resolved by coercion. Africa's regional security complexes are also said to be characterised by quasi or failing states which continue to prioritise regime over human security, and where patterns of enmity and amity, ensure that

[73] See, Mills,C.W. , 1940. 'Situated actions and vocabularies of motive', American Sociological Review, 5(6):pp.904-913

[74] March,James.G and Olsen,Johan.P. , 2009. 'The logic of appropriateness', Arena Working Paper, Centre for European Studies. University of Oslo: p.7

these states view their neighbours as rivals or enemies, thus restricting the pursuit of common security policies. Furthermore, because weak and quasi states cannot secure dependable expectations of peaceful change within their own borders, it cannot be expected that they can achieve this regionally. Finally Realist approaches refer to the persistence of corrupt and authoritarian state elites, and the absence of domestic legitimacy, as factors negatively affecting AU activities. Needless to say therefore, behaviour based on the logic of appropriateness is not to be expected in Africa.

Furthermore critics argue that behaviour based on the logic of appropriateness is compromised, since rules do not always dictate behaviour, but merely influence the processes whereby actors translate rules into actual behaviour. The ambiguity between rules and actions might therefore lead to inconsistencies in behaviour. In certain instances actors might respond in a way precisely reflecting the institutional rules and best practices. In other instances actors might be conflicted between their own identity of self, the interpretation of a situation, and institutional prescriptions of appropriateness.

Furthermore, critics of sociological new- institutionalism might argue that actors often find it difficult to draw on their cognitive priors and historical experiences to determine which behaviour is appropriate for a current situation. Inter-subjectivity may result in competing interpretations of a situation, and may lead to differing perceptions of which rules or arguments are relevant. Furthermore the presence of a series of rules might confuse actors with regards why certain rules rather than others should be applied to a particular situation. Also, because rules do not always determine behaviour and policy outcomes precisely, and because often rules might be obscure in their formulation, actors might find it difficult to determine between right and wrong, and the institutional design might be threatened by actors wanting to change rules and structures, to accommodate shifting circumstances.

Critics might further argue that it is presumptuous to assume that the institutional design of the African Union promotes a sense of common identity and belonging. They might argue that rather than serving to enhance cooperation and legitimacy, actual AU behaviour has demonstrated unwillingness on the part of the organisation to challenge the sovereignty of its more powerful members, and has been inconsistent in its criticism of norm violating behaviour. Finally, critics might argue that because behaviour and action are only partly rule-based, one cannot assume homogeneity in the motivation of actors. Although behaviour often

has a normative dimension, one cannot exclude the influences of emotion, coercion and calculations of utility. This inevitably might lead to tensions between behaviour governed by the logic of appropriateness and behaviour which is more motivated by preference- based consequential logic.

Certainly since the ECOWAS experience in Liberia post-1997 and the promise which the formation of the African Union offered in 2002, the contestation between calculations of self interest and norm localisation has been telling. Despite the AU institutionalising the responsibility to protect, it might be argued that the principle is not being internalised consistently by member states.

One might suggest that despite evidence of an emerging and partially autonomous international society of African states, it is still premature to speak of a unified African position on the responsibility to protect. Williams argues that debate in the AU continues over two general ideas. "The first is how resources should be allocated between initiatives designed to prevent atrocities as opposed to initiatives designed to manage ongoing conflicts. The second is when to apply coercive measures without the consent of the recognised authorities" [75] In this regard Williams identifies three discernable African camps.

The first includes African Arab states which are traditional critics of the responsibility to protect in both substantive and principled terms. They suggest that since the responsibility to protect does not enjoy substantive international consensus it should be afforded little political significance. Furthermore they view the concept as subject to abuse in interpretation and thus susceptible to exploitation by foreign governments to interfere in domestic matters. The second group includes countries such as Rwanda, South Africa, Ghana and Nigeria. This group insists that the principle of the responsibility to protect should be taken seriously, albeit that they often raise legitimate concerns about the precise meaning of the concept. They argue that the principle should be endorsed internationally, and that its execution should be closely related to the idea of inclusive development and the rule of law. The final group is the most representative, and whilst broadly accepting the principle of the responsibility to protect, seems loathe enforcing it when crises occur.

[75] Williams,Paul.D. , 2009. 'The responsibility to protect, norm localisation, and the African international society', Paper presented on the panel, "African Union and R2P: Synergy or Divergence?", International Studies Association annual convention, New York: p.15

The existence of diverse camps and the debate over the allocation of AU resources certainly implies that the logic of consequence often overrides behaviour based on appropriateness. There is no question that the AU is under-resourced, often as a result of its insistence that funding should come from member states and not donors. This often results in a disconnect between bloated domestic defence budgets and limited member state contributions to Pan-African security. One might argue that, "this is a natural consequence of the overemphasis on state sovereignty and the illusion that one can secure one's security without adequate concern for the security of others." [76]

A historical new -institutionalism approach might further account for the presence of the three camps as a throwback to early debates around African unity, and the almost precise similarity between the current camps and the Monrovia, Brazzaville and Casablanca groups that appeared after independence. A historical new-institutionalism approach might suggest that because states pursue individual gains, they often find themselves in lock-in situations, where decisions they have made in the past influence their current behaviour. In this regard, the ability of the African Union to affect member state behaviour is restricted by the cognitive scripts of the past, and institutional reform is hampered by the organisation's inability to adapt spontaneously to changing circumstances, and by the refusal of member states to eliminate sub-optimal rules and identities.

Critics further argue that the decade long humanitarian crisis in Zimbabwe is further evidence of the inability of the African Union to enforce the responsibility to protect principle, and the way in which traditional notions of sovereignty and non-interference still persist.

Although Zimbabwe was expelled from the Commonwealth in 2003 and from the African Union the year before, it is argued that greater reliance was placed on mediation efforts, than on alternative and more proactive forms of intervention to resolve the crisis. The AU divested much of the responsibility for the resolution of the conflict to SADC which exposed the divergence of member state interests.[77] While many remained silent on the issue, Angola and

[76] Murithi,Tim. , 2006. 'The responsibility to protect, as enshrined in article 4 of the Constitutive Act of the African Union', African Security Review, 16(3): p.23

[77] This demonstrates the contestation between an elaborate security architecture and member states pursuing national interests. At one level, just like the AU, the Southern African Development Community is characterised by a Protocol on Politics, Defence and Security Cooperation, signed in August 2001, a Mutual Defence Pact

Namibia demonstrated tacit support for Mugabe's authoritarian regime and electoral fraud, while Botswana and Zambia were vociferous in their opposition.

When the AU finally did become involved in Zimbabwe in 2008, it only did so to ensure free elections. Furthermore, since 2008, and because of pressure from certain member states, the AU has recalled certain critical statements, which have included the condemning of violence in Zimbabwe, the role of observer missions, and the residual responsibility of the international community. According to Williams the AU's failure in Zimbabwe demonstrates the ambiguities about the type of situations in which the responsibility to protect should be invoked, the persistence of conservative notions of sovereignty particularly when imperial sentiments are evoked and the difficulty that arises when international organisations are expected to implement policies which are contrary to local regional arrangements.[78]

Not unlike Zimbabwe, the crisis in Darfur seems to represent a further example of the inability of the AU to enforce appropriate behaviour among member states.

Darfur is a unique case. For a while the international community perceived the conflict as genocide, thus seriously testing the UN Charter, particularly as pertains to legitimate intervention. In 2004 the then UN Secretary General Kofi Annan, suggested that the organisation undertake a continuum of steps, including military action to resolve the situation. Surprisingly, even Colin Powell the then US Secretary of State, made a similar determination, but also suggested that no new action would be taken by the American administration.[79] In June 2004 the UN Security Council passed Resolution 1547 on Darfur which imposed an arms embargo on the region, supported the deployment of the AU Protection Force and gave the Sudanese government 30 days to disarm the janjaweed or face sanctions. Despite the resolution it was clear that the international community was nervous to threaten military intervention, leaving the AU responsible for future actions. This was the

signed in August 2003 and a Standby Brigade (SADCBRIG) which was declared operational in 2007. Yet at another level institutional design is never a guarantee of a communality of values and a commitment to the peaceful resolution of conflicts.

[78] See, Williams,Paul.D. , 2009. 'The responsibility to protect, norm localisation, and the African international society', Paper presented on the panel, "African Union and R2P: Synergy or Divergence?", International Studies Association annual convention, New York: p.14

[79] Many argue that Powell was silenced by President Bush who instructed him never to use the g-word again. (implying genocide)

perfect time for the AU to test the notion of African solutions for African problems, as well as its security architecture. However the AU, despite the obvious complicity of the Sudanese government in fuelling civil strife among its own citizens, refused to intervene without the consent of the Sudanese authorities. For all intents and purposes this compromised Article 4(h) of the AU Constitutive Act, permitting collective intervention in grave circumstances, and seriously questioned the seriousness of the organisation in terms of its new role. Bellamy contends that although responses to the Darfur crisis represent some evolution in the moral right of intervention, considerations of consequence trumped the logic of appropriateness.[80]

For Bellamy, the Darfur crisis has served to increase scepticism about the West's commitment to humanitarian intervention and has highlighted the importance of strategic calculations and interests in determining the extent of such intervention. More importantly the crisis demonstrated that there are material and political risks involved to protecting those in danger. On the one hand the West might perceive intervention as an affront to Arab sentiments, and might fear that involvement in the conflict might compromise interests in Sudan, particularly access to oil. In relation to the AU there might be recognition of a lack of capacity, and the realisation that the organisation is likely to require substantial financial and technical assistance, thus creating dependence on Western donors for the deployment of a sustainable Protection Force. With regards the AU then, calculations of capacity might be said to prevail over the appropriateness of intervention. Even though the AU is attempting to promote peace in the Darfur region through its African Union Mission in Sudan (AMIS) concerns over capacity means that AMIS has a weak and narrow mandate, limited to monitoring the humanitarian crisis, with little finance allocated to comprehensive peace building operations. Bellamy concludes that, " despite the AU's adoption of a more interventionist charter than its predecessor, the norm of non-interference continues to trump human rights concerns. Following an AU 'mini-summit' in October 2004, a final communiqué reaffirmed the participants' commitment to Sudanese sovereignty and pledged the rejection of any foreign intervention by any country whatsoever." [81]

This however might be considered against instances where the AU and its sub-regional constituents have successfully initiated interventions. In the early part of the decade, then

[80] See, Bellamy,Alex.J and Williams,Paul.D. , 2005. 'The Responsibility to Protect and the Crisis in Darfur', Security Dialogue, 36(27):pp.29-47.
[81] Ibid.p.43

South African President Nelson Mandela, took the lead in pressing SADC to authorise interventions in Lesotho and Burundi and the AU played a key role in deploying African peacekeeping troops to the DRC and Ivory Coast. One might argue that the inconsistencies in commitment have to do with the fact that there is no single template for the successful implementation of the responsibility to protect principle, rather than the assumption that there are interests and power struggles at play.

The relationship between the AU and the United Nations might also be compromising a normative international commitment to the responsibility to protect principle. Critics of the AU might argue that the organisation's sanctioning of intervention is inconsistent with the UN's Charter, and exposes the AU to regional hegemons, who are able to employ financial and military resources to satisfy personal gain. This is further aggravated in that there is no monitoring body to protect the interests of smaller states. Critics might further argue that even though the responsibility to protect is limited to genocide, war crimes, ethnic cleansing and crimes against humanity, the fact that the AU has formalised the right to intervene in its Constitutive Act ,opens the door for member states to interpret these parameters liberally thus starting down a slippery slope. Critics might further argue that the AU's emphasis on peace-building runs contrary to the UN's emphasis on peacekeeping. They might also suggest that post conflict peace- building offers an opportunity for regional hegemons to impose themselves on the national ownership and sovereignty of the country they are ostensibly meant to be assisting. Critics might also point to the recent demands by African leaders for the drawdown and withdrawal of UN Peacekeeping forces from their countries as an example of African elites preferring to be held accountable to their own peers, and perhaps a more lenient judgement on what constitutes appropriate behaviour.[82]

4.3 The future of the African Union and the responsibility to protect.

[82] Between 2009 and 2010 President Joseph Kabila of the DRC requested the withdrawal of MONUC and President Idriss Deby of Chad asked for the withdrawal of MINURCAT.

Despite the persistence of calculations of material interest and power balancing, one might argue that the AU has undergone a significant normative change. Aning and Atuobi argue that, "the AU has moved to a more preventative, principled and coercive role. The complexity of challenges faced by the African continent has contributed to the novel idea that the notion of non -interference must be revised because it must never be associated with indifference. And this non- indifference must lead to coercive measures, to well adapted and active policies. In whatever sense one examines this statement it is a radical departure from the nature of traditional African international relations after 1963, when the OAU was formed." [83]

Proponents of the African Union, and particularly those from a sociological new-institutionalism approach might contend, "that the presence of widespread intra-state conflict should be part of the explanation for the emergence of an African security community rather than a criterion for its disqualification on definitional terms."[84] Sociological new-institutionalism might further argue that Africa's emerging security culture is undergoing the process of norm localisation, where the continent's norm entrepreneurs, are attempting to combine collective meanings and understandings, as well as shared knowledge of the peaceful settlement of conflicts, with the institutionalisation of the responsibility to protect.

Whilst true that the AU's ability to manage the contestation between norm localisation and instrumental responses to crisis situations will determine its success, it is also true that such processes are not perfect. For example, "the encoding of history, either through experiential learning or through evolutionary selection does not necessarily imply intelligence, improvement or increased adaptive value. There is no guarantee that relevant observations will be made, correct inferences and lessons derived, proper actions taken or that imperfections will be eliminated. Rules encode history, but the coding procedures and processes by which the coded interpretations are themselves decoded are filled with behavioural surprises."[85] One might further argue that institutional design is crucial in the settlement of ambiguities. Institutions which are legitimate, consistent, purposeful and well

[83] Aning,Kwesi and Atuobi,Samuel. , 2009. 'Responsibility to Protect in Africa: An analysis of the African Union's Peace and Security architecture', Global Responsibility to Protect, Vol.1: p.108

[84] Franke,Benedikt. , 2008. 'Africa's Evolving Security Architecture and the Concept of Multilayered Security Communities', Journal of the Nordic International Studies Association, 43(3): p.320

[85] March,James.G and Olsen,Johan.P. , 2009. 'The logic of appropriateness', Arena Working Paper, Centre for European Studies. University of Oslo: p.13

designed, are said to better suit an automatic relation between rules and behaviour. In this regard the AU may be considered to be better prepared than its predecessor.

Furthermore one cannot assume that history is characterised by efficiency, where sudden and costless rule adaptation occurs in favour of a new normative environment. Although institutions are expected to provide continuity and predictability they are also expected to demonstrate flexibility and adaptation, particularly when they encounter new experiences, which is what the responsibility to protect might be said to represent. As such the ability of institutions to enforce the logic of appropriateness on member state behaviour is influenced both by path dependency and path departure. When situations change quickly, institutions are often required to adjust the repertoire of behavioural rules suddenly, even though the relationship between rules and standard operating procedure often changes more slowly.

In this regard, although the proliferation of humanitarian catastrophes on the continent has forced a sudden adjustment of behavioural rules, it cannot be said that there is consensus over the responsibility to protect constituting standard operating procedure. Internationally, there is little to suggest that the responsibility to protect principle has been resolved in definitional and substantive terms. Furthermore, there is little consensus over when outsiders should intervene in the affairs of a sovereign state and what the credentials of these outsiders should be. As such it might take time for the African Union to determine what constitutes appropriate conduct generally, and particularly in relation to the responsibility to protect.

Finally, norm localisation characterised by identity formation and reinterpretation is itself a slow process. The persistence of inter and intra-state conflict on the continent will continue to provide the African Union with opportunities to fulfil its mandate. Current events in the Ivory Coast and what amounts to an unconstitutional attempt by President Gbagbo to retain power are a case in point. Suffice to say that the AU and its members are involved in a continual process of argumentation about what the central tenants of the organisations security culture should be, this is because, "Africa's states and regional organisations do not devise security policies based on material and balancing calculations alone. In practice, ethical and normative questions about what it means to be 'African' play a role in defining what count as legitimate security challenges and the appropriate form of response."[86]

[86] Williams,Paul.D. , 2007. 'From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture', African Affairs, 106(423): p.278

CONCLUSION

This paper has focused on the origins of the African Union and its ability to manage the processes influencing the behaviour of its members.

It has been suggested that the African Union represents an ambitious project to establish frameworks and institutions that promote regional integration and co-operation to address the continent's perils. The origins of the African Union have been directly linked to the emergence of the responsibility to protect as an emerging universal legal norm, and it has been suggested that the African Union is one of the few regional organisations to have institutionalised this norm in any systematic way. It has been argued that the institutional design and security architecture of the African Union is evidence of a paradigmatic shift away from conservative notions of sovereignty and reflects the organisation's commitment to taking the lead in resolving continental conflicts.

The African Union is now said to interpret sovereignty, as responsibility, which implies the responsibility of each state to use appropriate and necessary means to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity. This also implies a residual responsibility on the part of the international community to use collective measures to respond to crises through the United Nation. However it has also been demonstrated that since 2001 there has been little universal consensus as to what the concept of the responsibility to protect entails.

This paper has used approaches within new- institutionalism to possibly account for the origins of the African Union. Explanations have varied from calculated strategies by member states to enhance the AU's capacity, to the AU being a response to the United Nations derogating its responsibility, to the argument that the African Union is the product of a structural shift in International relations , to the idea that there has been an evolution in African identity and mutual trust , to the notion that the AU is a revision of the early African security culture, to the argument that the African Union is a consequence of the deficiencies of its predecessor.

This paper conducted a case study of the intervention by ECOWAS in Liberia to suggest that this might represent the critical juncture to account for the principled shift in African regional co-operation, and the subsequent creation of the AU. The intervention redefined traditional conceptions of peacekeeping and significantly ECOWAS was able to initiate elections and restore peace and stability in Liberia. Despite glaring shortcomings which included the inability of ECOWAS to maintain its neutrality during the conflict, and the fact that there was no real legal precedent for the intervention, the ECOWAS experience demonstrated that there is potential to finding African solutions to African problems, and most importantly the experience helped to develop the early rules of interplay between the AU and sub-regional organisations.

Finally this paper considered the extent to which calculations of material interest and power balancing might be competing with the process of norm localisation in the AU, thus affecting institutional predictability and the ability of the institution to fulfil its mandate. In particular this paper examined whether the logic of appropriateness is sufficient to guarantee the enforcement of the responsibility to protect as an emerging norm in the context of the African Union. It was concluded that the contestation between norm localisation and the pursuit of material interest by member states might represent the greatest challenge for the AU, but that the organisation has travelled a significant normative distance since the days of the old OAU. It was also concluded that despite deficiencies, the continual process of argumentation among member states as to what the organisation's security culture should look like, offers hope for the future.

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