

Why African Norms Matter: Understanding Subsidiarity in Peacemaking in Africa

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Abstract

This article explains the problem facing the UN and African regional organizations in applying the principle of subsidiarity in peacemaking. It draws on the concept of norm subsidiarity and studies African norm-setting instruments. It finds that the African Union is a subsidiary agent in the global order and formulates parallel but distinct norms to retain autonomy, claim primacy and deflect implementing uncomfortable external principles. The AU policies show the norm subsidiary, not localizing, behaviour. Conversely, African subregional organizations exhibit the norm localizing behaviour, indicating the willingness to modify and accept global and regional rules. The significance is that existing knowledge assumes that the AU is or should be a localizing agent, as Chapter VIII of the UN Charter prescribed. Crucially, African norms matter because they are a fundamental characteristic of African agency. This paper contributes to a broader understanding of African agency in international relations and global security governance.

Keywords: norms, African agency, African Union, subsidiarity, localization, peacemaking

Introduction

The UN Charter established the structure of the current global order and stressed the Security Council's primary responsibility for international peace and security. Chapter VIII empowers 'regional agencies' to act in line with the UN values, based on subsidiarity. However, Africa's premier regional agency, the African Union (AU), has created two essential norms relating to the right of intervention and Heads of State immunity, contradicting the UN principles. The AU norm-making actions have raised the question of norm primacy in peacemaking, as the cases of Sudan, Kenya, and Libya illustrate. Both organizations have embraced partnership as the guiding principle of their relations, which the AU construes as grounding its priority, noting that the framework for cooperation 'constitutes a first concrete step towards meeting the priorities of the African Union.'¹

Studies in Chapter VIII have highlighted the importance of regional agencies in maintaining global peace and security and emphasized the Security Council's dominance.² Yet, the AU insists on African priorities while acknowledging the Security Council's primary responsibility for international peace and embracing subsidiarity.³ The question is, what

¹ African Union, Assembly Decision, Assembly/AU/Dec.140 (VIII), 30 January 2007, para. 2. For the broader dialogue, see United Nations, General Assembly, A/61/630, annex, 12 December 2006; United Nations, Report of the Secretary-General on the relationship between the United Nations and regional organizations, in particular the African Union, in the maintenance of international peace and security, S/2008/186, April 2008; African Union, Report of the Chairperson of the AU Commission on the partnership between the AU-UN on peace and security: Towards greater strategic and political convergence, PSC/PR/2. (CCCVII), 9 January 2012; African Union, Report of the Chairperson of the AU Commission on the AU-UN partnership: The need for greater coherence, PSC/AHG/3. (CCCXCVII), September 2013; Arthur Boutellis, and Paul D. Williams, *Peace operations, the African Union, and the United Nations: Toward more effective partnerships* (New York: International Peace Institute, 2013); United Nations, Report of the Secretary-General on strengthening the partnership between the United Nations and the African Union on issues of peace and security in Africa, S/2016/780, 13 September 2016; Cedric de Coning, Linnéa Gelot, and John Karlsrud, eds., *The future of African peace operations: From the Janjaweed to Boko Haram* (Uppsala; London: Nordiska Afrikainstitutet, 2016), pp. 139-40.

² Norman J. Padelford, 'Regional organization and the United Nations,' *International Organization* 8:2, 1954, pp. 203-16; Francis O. Wilcox, 'Regionalism and the United Nations,' *International Organization* 19:3, 1965, pp. 788-811; Andy W. Knight, 'Towards a subsidiarity model for peacemaking and preventive diplomacy: Making Chapter VIII of the UN Charter operational,' *Third World Quarterly* 17:1, 1996, pp. 31-52; David O'Brien, 'The search for subsidiarity: The UN, African regional organizations and humanitarian action,' *International Peacekeeping* 7:3, 2000, pp. 57-83.

³ See United Nations, 'Joint United Nations-African Union framework for enhanced partnership in peace and security,' 19 April 2017, https://unoau.unmissions.org/sites/default/files/signed_joint_framework.pdf; African

explains the AU's paradox of accepting the Security Council's global dominance and claiming norm priority in Africa? Put differently, what clarifies the AU's understanding of subsidiarity as its priorities in peacemaking?

This article argues that appreciating the AU's norm priority claims requires clarifying the concept of regional agency in Chapter VIII of the UN Charter. Chapter VIII envisages localizing agents that would implement global norms. But the AU is a subsidiary agent in the world order. Subsidiary agents construct rules and institutions to retain autonomy, so the AU formulates parallel but unique norms to claim primacy and deflect implementing uncomfortable foreign rules. The AU's policy behaviour shows the norm subsidiary, not localizing, behaviour. The AU accepts partnership if the UN complements African peacemaking efforts with the necessary resources. Unlike the AU, African subregional organizations exhibit the norm localizing behaviour willing to consider, modify, and implement global and regional rules. They localize external principles to fit their objectives.

The significance of this study is that existing knowledge assumes that the AU is or should be a localizing agent, but it is not and unlikely to change. Crucially, this article shows that African norms matter because they are characteristic of African agency. Yet, the AU is the Security Council's essential partner likely to become a double agent in suitable circumstances and apply global norms. Then subsidiarity in the UN-Africa partnerships becomes progressively pragmatic rather than predetermined. This article contributes to understanding

Union, 'Report on the proposed recommendations for the institutional reform of the African Union,' African Union Commission,' 29 January 2017, p. 11, <https://au.int/en/documents/20170129/report-proposed-recommendations-institutional-reform-african-union>.; African Union, Assembly Decision, Assembly/AU/Dec.635(XXVIII), 30-31 January 2017, para. 5; Martin Welz, 'Cooperation and competition: United Nations–African Union relations,' in Stephen Aris, Aglaya Snetkov, and Andreas Wenger, eds. *Inter-organizational relations in international security: Cooperation and competition* (Oxon: Routledge, 2018), pp. 54-70; Theresa Reinold, 'The promises and perils of subsidiarity in global governance: Evidence from Africa,' *Third World Quarterly* 40:11, (2019) pp. 2092-2107.

the African agency in international relations⁴ and injects fresh thinking about how the AU may sometimes serve as the Security Council's agent and apply external rules.

This study implements conceptual and qualitative analysis methods. It adopts Amitav Archaya's norm subsidiarity and localization concepts to understand African agency in the global order⁵ and utilizes content analysis⁶ to analyse African norm-setting instruments. The examination focuses on two critical African norms, 1) immunity and 2) the right to intervene. The article has two main sections: the first discusses the differences between subsidiary and localizing agents in the international order; the second explores African agency and shows that the AU is a subsidiary agent, while subregional organizations are localizing agents. The conclusion considers the implications for effective peacemaking in Africa.

Subsidiarity in the Global Order

The principle of subsidiarity is easy to understand. The Oxford English Dictionary defines subsidiarity as 'the principle that a central authority should have a subsidiary function, performing only those tasks which cannot be performed at a more intermediate or local level.' Similarly, the Cambridge English Dictionary defines subsidiarity as 'the principle that

⁴ William Brown, 'A question of agency: Africa in international politics,' *Third World Quarterly* 33:10, 2012, pp. 1889-1908; Karen Smith, 'Africa as an agent of international relations knowledge,' in Scarlett Cornelissen, Fantu Cheru, Timothy M. Shaw, eds., *Africa and International Relations in the 21st Century* (London: Palgrave Macmillan, 2012), pp. 21-35; Danielle Beswick, and Anne Hammerstad, 'African agency in a changing security environment: Sources, opportunities and challenges,' *Conflict, Security and Development* 13:5, 2013, pp. 471-486; Sophie Harman, and William Brown, 'In from the margins? The changing place of Africa in International Relations,' *International Affairs* 89:1, 2013, pp. 69-87; William Brown, and Sophie Harman, eds., *African agency in international politics* (Abingdon; England: Routledge, 2013), pp. 1-16; Jo-Ansie van Wyk, 'Africa in international relations: Agent, bystander or victim?' in Paul-Henri Bischoff, Kwesi Aning, and Amitav Acharya, eds., *Africa in global international relations: Emerging approaches to theory and practice*, Oxon: Routledge, 2016), pp. 108-120; Lesley Blaauw, 'African agency in international relations: Challenging great power politics?' in Bischoff, Aning, and Acharya, *Africa in global international relations*, pp. 85-107.

⁵ Amitav Acharya, 'Norm subsidiarity and regional orders: Sovereignty, regionalism, and rule-making in the Third World,' *International Studies Quarterly* 55:1, 2011, pp. 95-123; Amitav Acharya, 'How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism,' *International Organization* 58:2, 2004, pp. 239-275.

⁶ Margaret Hermann, 'Content analysis,' in Audie Klotz and Deepa Prakash, *Qualitative methods in international relations: A pluralist guide* (London: Palgrave Macmillan, 2008), pp. 151-67.

decisions should always be taken at the lowest possible level or closest to where they will have their effect, for example in a local area rather than for a whole country.’ Although these explanations indicate a clear rationale for subsidiarity, the application in specific situations is complex. As Ann-Marie Slaughter put it:

[Subsidiarity] is a principle of locating governance at the lowest possible level—that closest to the individuals and groups affected by the rules and decisions adopted and enforced. Whether this level is local, regional, national, or supranational is an empirical question, dictated by considerations of practicability rather than a preordained distribution of power.⁷

Indeed, the problem with applying subsidiarity lies in different interpretations, so studies on the principle tend to specify the context.⁸ Accordingly, this section is about understanding subsidiarity in the global order, as represented in the UN governance system, which stresses the Security Council’s primary responsibility for maintaining international peace and security. Essentially, the UN Charter predetermined power distribution between the Security Council and regional organizations. So, the vital interest in Chapter VIII of the UN Charter, which deals with the role of ‘regional arrangements and agencies’ in maintaining global peace and security, is clarifying the idea of a regional agency. In other words, what kind of agents does Chapter VIII anticipate? The concepts of localization and subsidiarity provide the intellectual guide to understand agencies in the global order through actors’ behaviour toward norms, rules, and institutions.

⁷ Anne-Marie Slaughter, *A new world order* (Princeton: Princeton University Press, 2009), p. 30.

⁸ For a helpful survey of the history, interpretations, and uses of subsidiarity, see John F. Kenney, ‘The principle of subsidiarity,’ *The American Catholic Sociological Review* 16:1, 1955, pp. 31–6; Andrew Murray, ‘The principle of subsidiarity and the Church,’ *The Australian Catholic Record* 72:2, 1995, pp. 163–72; Andreas Follesdal, ‘Subsidiarity,’ *Journal of Political Philosophy* 6:2, 1998, pp. 190–218; Michelle Evans, and Augusto Zimmermann, eds., *Global perspectives on subsidiarity* (New York: Springer, 2014).

Amitav Acharya's concepts of norm localization and subsidiarity explain actors' agency in norm evolution. The localization framework explains the interaction between local actors as agents in the global system and international norms. The model describes how such agents engage with, accept, or refine external norms and institutions. It involves 'the active construction (through discourse, framing, grafting and cultural selection) of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices.' Crucially, the localization process can lead to changes to the institutional design of the localizing actor or the creation of 'new institutions mimicking existing institutional design.' Also noteworthy is that localization can 'settle most cases of normative contestation' through the adaption, by local actors, of foreign norms. Significantly, such local actors rarely produce rules or institutions contradicting or contesting external norms or institutions. Instead, localizing agents strive to 'strengthen, not replace, existing institutions' and accept ideas and programs that promote their goals, 'without fundamentally altering existing social identity.' Finally, the 'wholesale' localization process involves agents accepting foreign norms and institutions without any modification.⁹

Unlike norm localization, norm subsidiarity is '*a process whereby local actors create rules with a view to preserve their autonomy from dominance, neglect, violation, or abuse by*

⁹ Acharya, 'How ideas spread,' pp. 239-254. See also Amitav Acharya, *Whose ideas matter? Agency and power in Asian regionalism* (Ithaca; London: Cornell University Press, 2009). For a helpful examination of norm contestation in international politics, Martha Finnemore, and Kathryn Sikkink, 'International norm dynamics and political change,' *International Organization* 52:4, 1998, pp. 887-917; Antje Wiener, *Contestation and constitution of norms in global international relations* (Cambridge: Cambridge University Press, 2018). For applications of the localization concept in Africa, see Paul D. Williams, 'From non-intervention to non-indifference: The origins and development of the African Union's security culture,' *African Affairs* 106:423, 2007, pp. 253-279; Aarie Glas, and Emmanuel Balogun, 'Norms in practice: People-centric governance in ASEAN and ECOWAS,' *International Affairs*, 96:4, 2020, pp. 1015-32. For other applications, see David Capie, 'Localization as resistance: The contested diffusion of small arms norms in Southeast Asia,' *Security Dialogue* 39:6, 2008, pp. 637-658; Daisuke Minami, 'Lost in translation: Problematising the localization of transnational activism,' *European Journal of International Relations* 25:2, 2019, pp. 511-537; For critical insights, see Lisbeth Zimmermann, 'Same same or different? Norm diffusion between resistance, compliance, and localization in post-conflict states,' *International Studies Perspectives* 17:1, 2016, pp. 98-115; Lisbeth Zimmermann, 'More for less: The interactive translation of global norms in postconflict Guatemala,' *International Studies Quarterly* 61:4, 2017, pp. 774-785.

more powerful central actors.’ In other words, it involves how subsidiary agents produce norms, rules, and institutions to counter foreign ideas and preserve their independence because they fear control by external actors. Importantly, norm subsidiarity is primarily concerned with ‘relations between local actors and external powers, in terms of the former’s fear of domination by the latter.’ Notably, an agent may engage in norm localizing and subsidiary behaviour and become ‘complementary’ or ‘run in tandem,’¹⁰ otherwise, a double agent. Table I provides a visual summary of three significant behavioural differences between subsidiary and localizing agents to ease understanding.

Table I. Behavioural Differences between Subsidiary and Localizing Agents

Subsidiary Agents	Localizing Agents
Develop local norms and institutions	Accept and modify external norms and institutions
Reject external norms and institutions	Take external norms and institutions
Export local norms and institutions	Import external norms and institutions

Regional Agencies in the Global Order

As highlighted above, the UN Charter established the structure of the current global order, giving the Security Council priority over keeping international peace and security. It empowers ‘regional arrangements and agencies,’ such as the EU, the AU, and the Organization of American States, to undertake ‘appropriate regional action,’ ‘consistent with the principles and purposes of the United Nations.’ Early scholars like Norman Padelford and Francis Wilcox

¹⁰ Acharya, ‘Norm subsidiarity and regional orders,’ pp. 97-9. Emphasis is in the original text. For an earlier application of the idea of norm subsidiarity in Europe, see Kees van Kersbergen, and Bertjan Verbeek, ‘The politics of international norms: Subsidiarity and the imperfect competence regime of the European Union,’ *European Journal of International Relations* 13:2, 2007, pp. 217-238.

have indicated that the Charter organized the international system into a two-tier, hierarchical order in which the Security Council takes precedence over regional arrangements or agencies based on the principle of subsidiarity and the concept of regionalism. Put simply, subsidiarity in the global order refers to the role of regional organizations in advancing the Security Council's mandate to sustain global stability.¹¹ The presumption is that regional organizations are localizing agents of the UN and would implement global ideas and rules. This assumption underscores the realization that the universalism embodied in Chapter VII and invested in the Security Council may be insufficient in tackling threats to the world order.

The Cold War made much of the idea of subsidiarity and regionalism redundant. Still, the UN Secretary-General, Boutros Boutros-Ghali, revived the vision in the 1992 groundbreaking report on making the Security Council more efficient. Boutros-Ghali placed regional organizations at the core of the UN strategy, thus:

regional arrangements or agencies in many cases possess a potential that should be utilized in serving the functions covered in this report: preventive diplomacy, peace-keeping, peacemaking and post-conflict peacebuilding. Under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security.¹²

The regional organizations are essential agents of the Security Council, vital in creating what David Dewitt, David Haglund, and John Kirton called 'a new global order,' or as Andy Knight put it, addressing the post-Cold War's 'global disorder.'¹³ The consensus is that measures for

¹¹ Padelford, 'Regional organization and the United Nations,'; Wilcox, 'Regionalism and the United Nations.' For a helpful discussion of the implications of rising regional organizations for the stability or instability in the international system, see Ronald J. Yalem, 'Regionalism and world order,' *International Affairs* 38:4, 1962, pp. 460-471.

¹² United Nations, An agenda for peace: Preventive diplomacy, peacemaking and peace-keeping,' Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council, A/47/277 - S/24111, 17 June 1992, para. 64.

¹³ David B. Dewitt, David G. Haglund, and John J. Kirton, eds., *Building a new global order: Emerging trends in international security* (Toronto; New York: Oxford University Press, 1993); Andy W. Knight, 'Towards a subsidiarity model for peacemaking and preventive diplomacy: Making Chapter VIII of the UN Charter operational,' *Third World Quarterly* 17:1, 1996, pp. 31-52, p. 45. See also David O'Brien, 'The search for subsidiarity: The UN, African regional organizations and humanitarian action,' *International Peacekeeping* 7:3, 2000, pp. 57-83. For a useful analysis of the post-Cold War global security architecture, see Barry Buzan, and

maintaining international security must centre in the regions without qualifying the Security Council's primacy.

The UN's practice on partnership in relations with regional organizations reflects control or, as the Security Council stated, 'the requirement for oversight by the Security Council for operations authorized by the Security Council and under the Security Council's authority consistent with Chapter VIII of the Charter.'¹⁴ In the global order, the Security Council's dominance is inherent in the structure of the international order – a system that stresses power and, therefore, the preponderance of the ideas of influential actors and obscures and marginalizes the views of weaker actors, such as African organizations and states.¹⁵ Notably, the UN-based international order is hierarchical and subordinative, so the meaning of subsidiarity contrasts with the more general understandings, including the definitions discussed above.¹⁶ Here, actors' agency is relevant to the extent that it serves the UN principles and values.

Scholarship on agency in international relations emphasizes different forms of power and underlines less powerful actors' ability to cause or contribute to systemic or structural

Ole Wæver, *Regions and powers: The structure of international security* (Cambridge: Cambridge University Press, 2003). For discussion of African perspective in the new global system, see Christopher Clapham, *Africa and the international system: The politics of state survival* (Cambridge: Cambridge University Press, 1996), chap. 2.

¹⁴ United Nations, Security Council Resolution, S/RES/2320 (2016), 8 November 2016, para. 6.

¹⁵ William I. Zartman, 'Africa as a subordinate state system in international relations,' *International Organization* 21:3, 1967, pp. 545-564; Kenneth N. Waltz, *Theory of international politics* (New York: McGraw Hill, 1979); Hans J. Morgenthau, *Politics among nations: The struggle for power and peace* (New York: Alfred Knopf, 1985); Ian Taylor, and Paul Williams, eds., *Africa in international politics* (Oxon: Routledge, 2004).

¹⁶ In Europe, for example, subsidiarity refers to the division of power between the EU and the Member States, and the purpose is to limit or constrain the EU's power over the Member States' concerns about domination, see Nicholas Emiliou, 'Subsidiarity: An effective barrier against 'the enterprises of ambition'?' *European Law Review* 17:5, 1992, pp. 383-407, p. 384; Kees van Kersbergen, and Bertjan Verbeek, 'The politics of subsidiarity in the European Union,' *Journal of Common Market Studies* 32:2, 1994, pp. 215-36, p. 216; Alain Delcamp, *Definition and limits of the principle of subsidiarity: Report prepared for the steering committee on local and regional authorities* (Strasbourg: Council of Europe Press, 1994), p. 24; Christoph Henkel, 'The allocation of powers in the European Union: A closer look at the principle of subsidiarity,' *Berkeley Journal of International Law* 20, 2002, pp. 359-85, p. 360; Kersbergen, and Verbeek, 'The politics of international norms.'

change.¹⁷ From this perspective, scholarship on African agency in global politics stresses Africa's capabilities despite structural constraints on their actions. As William Brown described the research agenda, the African agency facilitates the engagement with the 'narratives of Africa that present the entire continent as perpetual victim and lacking political initiatives.' Equally, Danielle Beswick and Anne Hammerstad explained that African agency involves the 'assumption of African actors wielding real agency – making decisions based on their own imaginations and perceptions of aims and interests.' Brenden Vickers' essay underpins the empirical angle of African agency: 'African countries are no longer passive players in international relations,' because 'African Group has been far more active and assertive' in multilateral negotiations on security governance.¹⁸ This understanding informs the analysis of African norm-setting instruments to understand the problem facing the UN and African regional agencies in applying the principle of subsidiarity in peacemaking.

Subsidiarity and African Agency

This section implements the concepts of norm subsidiarity and localization to study African agency in the international order. It comprises two subsections. The first component analyses African norm-setting instruments to show that the AU is a subsidiary agent that establishes and retains African autonomy and priority. The second segment demonstrates that subregional organizations are localizing agents willing to accept and modify global and regional norms and institutions. These different normative behaviours have had a practical adverse impact on the

¹⁷ Alexander Wendt, *Social theory of international politics* (Cambridge: Cambridge University Press, 1999); Michael Barnett, and Raymond Duvall, 'Power in international politics,' *International Organization* 59:1, 2005, pp. 39-75; Martin Hollis, and Steve Smith, 'Two stories about structure and agency,' *Review of International Studies* 20:3, 1994, pp. 241-251.

¹⁸ Brown, 'A question of agency,' p. 1904; Beswick and Hammerstad, 'African agency in a changing security environment,' p. 480; Brenden Vickers, 'Africa and the rising powers: Bargaining for the 'marginalized many',' *International Affairs* 89:3, 2013, pp. 673-693, p. 673.

effectiveness of peacemaking endeavours on the continent. Laurie Nathan summarized the complicated situation, thus:

The African Union's position is contradictory, promoting subsidiarity in terms of AU-UN relations, but not in terms of AU-REC relations, whereas the United Nations has an ambivalent stance, content to support the maxim of "African solutions to African problems" unless a particular conflict is of great concern to the UNSC, in which case the primacy of the Council prevails. It is only the RECs that wholeheartedly endorse the principle.¹⁹

Other empirical studies have noted the challenges and offered solutions to minimizing the problem. For instance, Bjørn Møller suggested a structural change to create a seamless interaction, while Michelle Ndiaye proposed a 'diverse and less hierarchical approach.'²⁰ This policy analysis focuses on understanding and explaining the AU agency in the global order.

The AU as a Subsidiary Agent

The AU is the premier regional organization in Africa. It occupies a unique position in the global order, bestriding the UN and eight African subregional organizations known as Regional Economic Communities (RECs) and two Regional Mechanisms for Conflict Prevention, Management and Resolution (RMs).²¹ This prime position carries the dual

¹⁹ Laurie Nathan, 'Will the lowest be first? Subsidiarity in peacemaking in Africa,' in Pamela Aall and Chester Crocker A., eds., *Minding the gap: African conflict management in a time of change* (Waterloo: Centre for International Governance Innovation, 2016), pp. 157-70, pp. 166-7.

²⁰ Bjørn Møller, *The pros and cons of subsidiarity: The role of African regional and subregional organisations in ensuring peace and security in Africa* (Copenhagen: DIIS, 2005); Bjørn Møller, *Africa's sub-regional organisations: Seamless web or patchwork?* (London: Crisis States Research Centre, London School of Economics and Political Science, 2009), p. 18; Michell Ndiaye, 'The relationship between the AU and the RECs/RMs in relation to peace and security in Africa: Subsidiarity and inevitable common destiny,' In De Coning, Gelot, and Karlsrud, *The future of African peace operations*, pp. 52–64. See also Darkwa, 'The strategic relationship between the African Union and its partners,' in De Coning, Gelot, and Karlsrud, *The future of African peace operations*, 65–75; Laurie Nathan, 'How to manage interorganizational disputes over mediation in Africa,' *Global Governance* 23:2, 2017, pp. 151-162.

²¹ The RECs are the Arab Maghreb Union, the Community of Sahel-Saharan States, the Common Market for Eastern and Southern Africa, the East African Community, the Economic Community of Central African States, the Economic Community of West African States, the Inter-Governmental Authority on Development, and the Southern African Development Community. The RMs are the East Africa Standby Brigade Coordination

responsibility for developing norm-setting instruments and frameworks to coordinate the RECs' policies and asserting and defending such policies in Africa's relations with the international community.

This analysis shows that the AU has developed instruments that created subsidiary norms in two critical international security subjects: the use of force and transitional justice. The AU has subsidiarized the rule of 'the right to intervene' in article 4(h) of the Constitutive Act and rejected the responsibility to protect (R2P) concept and established immunity for Heads of State and Government and senior government officials in the Malabo Protocol contrary the global norm against impunity. These rules contradict international standards espoused in the UN principles and values. Pertinently, these policy actions underpin the norm subsidiary behaviour, not localization.

The AU's norm-setting instruments and frameworks are organized under what the Assembly²² described as 'a Pan-African Architecture on Governance' based on 'African Shared Values'²³ to inform African peace and security interventions. The Assembly defined African Shared Values as 'democratic governance, popular participation, the rule of law, human and peoples' rights and sustainable socioeconomic development' and seeks to 'ensure greater synergy between peace and security matters and governance and democracy, [and] that developments in the terrain of shared values feature prominently in the Peace and Security Council.'²⁴

Mechanism, and the North Africa Regional Capability, see African Union, 'Memorandum of Understanding on Cooperation in the Area of Peace and Security between the African Union, the Regional Economic Communities, and the Coordinating Mechanisms of the Regional Standby Brigades Eastern Africa and Northern Africa,' (Addis Ababa: African Union Commission, 2008), the 'Memorandum of Understanding'.

²² The Assembly is the highest decision-making organ of the AU and comprise all the Heads of State and Government of the 55 Member States

²³ African Union, Assembly Decision, Assembly/AU/Dec.304(XV), 27 July 2010, para. 1.

²⁴ African Union, Assembly Declaration, Assembly/AU/Decl. 1(XVI), 30-31 January 2011, para. 4.

The Pan-African Architecture on Governance (AGA) has three pillars: 1) the norm-setting instruments, such as the Constitutive Act, the Protocol Establishing the Peace and Security Council, the African Model Anti-Terrorism Law, the Lomé Declaration for an OAU Response to Unconstitutional Changes of Government, and the African Charter on Democracy, Elections, and Governance; 2) the norm implementing institutions, including the Assembly, the Peace and Security Council, the African Union Commission, the RECs, the African Court, the African Commission on Human and People's Rights, the African Peer Review Mechanism, the New Partnership for Africa's Development, Planning and Coordinating Agency; and 3) the norm interaction mechanisms and processes, like the African Governance Platform involving civil society groups, non-governmental organizations, and youth groups. AGA has five tangible clusters, 1) democracy, 2) human rights and transitional justice, 3) governance, 4) constitutionalism and the rule of law, and 5) humanitarian affairs.

In addition, the Protocol establishing the Peace and Security Council (the Protocol) 2002 identified five central norm implementing institutions: The Peace and Security Council, the AU organ in charge of the day-to-day responses to threats to regional peace and security, the AU Commission; the African Standby Force; the Peace Fund; the Panel of the Wise; and the Continental Early Warning System. These institutions, including the RECs, are broadly called African Peace and Security Architecture (APSA), the dynamic, continent-wide blueprint for peacemaking.²⁵

Article 16 of the Protocol instituted the primacy of the AU over peace and security matters on the continent, and article 7 mandates the Peace and Security Council and the

²⁵ For more discussion on APSA, see Stephan Kingebiel, 'Africa's new peace and security architecture: Converging the roles of external actors and African interests,' *African Security Studies* 14:2, 2005, pp. 35-44; David J. Francis, *Uniting Africa: Building regional peace and security systems* (London: Routledge, 2006); Ulf Engel, and João Gomes Porto, eds. *Africa's new peace and security architecture: Promoting norms, institutionalizing solutions* (London: Ashgate, 2010), pp. 1-12; Alex Vines, 'A decade of African peace and security architecture,' *International Affairs* 89:1, 2013, pp. 89-109.

Commission to ‘develop policies and action required to ensure that any external initiative in the field of peace and security on the continent takes place within the framework of the Union’s objectives and priorities.’ These provisions anticipate that the AU must act to subordinate foreign ideas and clarifies the Assembly’s decision that the initial framework on relations with the UN ‘constitutes a first concrete step towards meeting the priorities of the African Union.’²⁶ The legal mandate and the Assembly’s action demonstrate a claim to the primacy of African ideas and illustrate a subsidiary behaviour.

Specifically, Article 17 of the Protocol addresses relations with the UN. It acknowledges the Security Council’s ‘primary responsibility for the maintenance of international peace and security,’ and provides that:

Where necessary, recourse will be made to the United Nations to provide the necessary financial, logistical and military support for the African Unions’ activities in the promotion and maintenance of peace, security and stability in Africa, in keeping with the provisions of Chapter VIII of the UN Charter on the role of Regional Organizations in the maintenance of international peace and security.

This provision shows that the AU envisages a complementary partnership, where the UN supplies resources advancing African ‘priorities’ in the context of maintaining international peace and security.²⁷ In essence, article 17 offers the guide to understanding the AU’s interpretation of the clause ‘cooperation based on complementarity’ in the latest framework for partnership with the UN.²⁸ The AU anticipates that the UN complements or supports its

²⁶African Union, Assembly Decision, Assembly/AU/Dec.140 (VIII), 2007, para. 2.

²⁷ For more details on the African Union’s interpretation of partnership with the United Nations, see African Union, ‘Report of the Chairperson of the AU Commission on the partnership between the AU-UN on peace and security: Towards greater strategic and political convergence, PSC/PR/2. (CCCVII), 9 January 2012; African Union, ‘Report of the Chairperson of the AU Commission on the AU-UN partnership: The need for greater coherence, PSC/AHG/3. (CCCXCVII), September 2013.

²⁸ United Nations, ‘Joint United Nations-African Union framework for enhanced partnership in peace and security,’ p .1

priorities, making the Security Council's concerns or ideas secondary. Notably, the AU asserts the primacy of African ideas; it does not contest the Security Council's primary responsibility for global peace and security.

The Peace and Security Council have further developed the concept of complementarity in the common African position on the review of peace operations, adding that 'partnership on the basis of division of labour' is the guiding principle of subsidiarity. The Council reiterated African 'priority-setting,' noting that the AU and the UN 'need to engage in dialogue to establish a mutually agreed division of labor to foster coherence and limit competition.'²⁹ The outcome of that dialogue is the current framework for partnership, which observed that 'the United Nations and African Union recognize that their efforts must be combined in a complementary and mutually-reinforcing manner [and] a clear division of labour and consultation are essential for implementation.'³⁰ The Peace and Security Council interprets 'division of labour' as the UN support for African ideas, thus: 'The AU has a very limited in-house capacity to support its own missions and will therefore have to rely on outsourcing and partnerships.'³¹ The point is the AU does not intend to follow foreign ideas and has consistently pursued African priorities, an evident behaviour of a subsidiary agent in the global system.

Two significant norm-creating actions illustrate the AU as a subsidiary agent. These relate to norms of 1) transitional justice or impunity and 2) the right to intervene, which parallel UN principles but with significant differences. First, the Assembly amended the Protocol to the Statute of African Court of Justice and Human Rights (the Malabo Protocol) 2014 to

²⁹ African Union, Common African Position on the UN review of peace operations, PSC/PR/2(DII), 29 April 2015, para. 6. For a helpful discussion of African common positions as agency, see Siphamandla Zondi, 'Common positions as African agency in international negotiations: An appraisal,' in Brown and Harman, *African Agency in International Politics*, pp. 33-47.

³⁰ United Nations, 'Joint United Nations-African Union framework for enhanced partnership in peace and security,' p .3

³¹ African Union, Common African Position on the UN Review of Peace Operations, para. 25

establish the immunity of African Heads of State and Government. Particularly, Article 46 provides that:

No charges shall be commenced or continued before the Court against any serving AU Head of State and Government, or anybody acting or entitled to act in such capacity, other senior state officials based on their functions, during their tenure of office.

The Malabo Protocol parallels the Statute of the International Criminal Court (the Rome Statute) 1998 to the extent that both Statutes broadly seek to prevent core crimes, such as genocide and aggression, war crimes, and crimes against humanity. The notable difference is that article 27 of the Rome Statute states that:

This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

Both Statutes have similar objectives but contrasting ideas, and in this sense, the AU's rule of immunity for serving senior officials shows subsidiary policy behaviour.³²

The Peace and Security Council conceived the Malabo Protocol as a norm underpinning African ideas and institutions on transitional justice. The AU developed the rule out fear of the Security Council's domination and the International Criminal Court (ICC) prosecution that jeopardizes transitional administrations in societies emerging from war and conflict. The norm

³² For a helpful discussion of the difficult relations between the ICC and the AU in the context of norm contestation, see Adam Bower, 'Contesting the international criminal court: Bashir, Kenyatta, and the status of the nonimpunity norm in world politics, *Journal of Global Security Studies*, 4:1, 2019, pp. 88–104.

is derived from international customary but has generated robust academic exchange.³³

Nevertheless, the Council envisages the Security Council cooperation, thus:

The UN should support the AU in the latter's efforts to articulate more fully the intersection and prioritising of peace, justice and reconciliation as it obtains on the African Continent, and should view the AU's efforts as a contribution to the global search for principled responses to the challenges of the new conflicts the world faces. The UN should support the AU's efforts to enhance its capacity to prosecute and adjudicate serious crimes. The UNSC should treat with the seriousness they deserve the AU's decisions and requests to defer cases before the ICC in order to ensure that peace efforts are not undermined.³⁴

Here, the Peace and Security Council claims priority of the subsidiary norm of immunity for sitting senior officials amidst the ICC prosecution of President of Sudan, Omar al-Bashir, President of Kenya, Uhuru Kenyatta, and Kenya's Deputy President, William Ruto. The AU's subsidiary rule on international criminal justice is about prioritizing peace, an idea the AU Commission managed to insert in the new framework for partnership with the UN in the following language: 'Cooperation in response to conflict will be based on agreed principles, including the primacy of political solutions.'³⁵ The AU policy construction and actions advancing African ideas on avoiding impunity underscore subsidiary agency in the international system, not localizing agency, leading to the localization of global rule on transitional justice, particularly the norm against sitting Heads of State impunity. Here, African

³³ Steffen Wirth, 'Immunity for core crimes? The ICJ's judgment in the Congo v. Belgium Case,' *European Journal of International Law* 13:4 (2002), pp. 877-893; Dapo Akande, 'The legal nature of Security Council referrals to the ICC and its impact on Al Bashir's immunities,' *Journal of International Criminal Justice* 7:2, (2009), pp. 333-352; Paola Gaeta, Paola, 'Does President Al Bashir enjoy immunity from arrest?' *Journal of International Criminal Justice* 7:2 (2009), pp. 315-332; Dapo Akande, and Sangeeta Shah, 'Immunities of state officials, international crimes, and foreign domestic courts,' *European Journal of International Law* 21:4 (2010), pp. 815-852.

³⁴ African Union, Common African position on the UN Review of peace operations, para. 28

³⁵ United Nations, 'Joint United Nations-African Union framework for enhanced partnership in peace and security,' p .5

institutions matter in relation to understanding the AU agency in the global order (see the concluding segment below on what this means in policy terms).

Second, the Organization of African Unity (OAU) adopted the Constitutive Act of the AU in 2000. Article 4(h) establishes ‘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.’ The Constitutive Act became law in 2001, and scholars perceive article 4(h) as a substantial, distinct normative action for human rights protection.³⁶ The significance is that ‘the right to intervene’ is a subsidiary rule on the use of force in the global system that reinforces the AU’s claims to the primacy of African ideas. As the recommendation of the International Panel of Eminent Personalities that the OAU commissioned to study the failure to prevent the Rwandan genocide and propose means to avoiding future occurrences put it:

Since Africa recognizes its own primary responsibility to protect the lives of its citizens, we call on: a) the OAU to establish appropriate structures to enable it to respond effectively to enforce the peace in conflict situations; and b) the international community to assist such endeavours by the OAU through financial, logistic, and capacity.³⁷

Studies on the transformation of the AU have revealed that article 4(h) was the exceptional outcome of African negotiations³⁸ about empowering the Union with appropriate legal

³⁶ Corinne A.A. Packer, and Donald Rukare, ‘The new African Union and its constitutive act,’ *American Journal of International Law* 96:2, 2002, pp. 365-379; Ben Kioko, ‘The right of intervention under the African Union’s Constitutive Act: From non-interference to non-intervention,’ *International Review of the Red Cross* 85:852, 2003, pp. 807-826; Ademola Abass, and Mashood A. Baderin, ‘Towards effective collective security and human rights protection in Africa: An assessment of the Constitutive Act of the new African Union,’ *Netherlands International Law Review* 49:1, 2002, pp. 1-38.

³⁷ International Panel of Eminent Personalities, ‘Report on the 1994 genocide in Rwanda and surrounding events (Selected Sections),’ *International Legal Materials* 40:1, 2001, pp. 141–236, p. 229.

³⁸ Kioki, ‘The right of intervention under the African Union’s Constitutive Act’; Thomas Kwasi Tieku, ‘Explaining the clash and accommodation of interests of major actors in the creation of the African Union,’ *African Affairs* 103:411, 2004, pp. 249–67.

instruments grounding the legitimacy to use force for human rights protection, which is the subsidiary norm of the right to intervene.

Following the adoption of R2P by the UN General Assembly in 2005, some studies have suggested that article 4(h) localized or enshrined R2P.³⁹ These studies assume that the AU is a localizing agent in the global order represented in the UN system. Other studies, such as Thomas Weiss and Martin Welz, have underlined the distinction, noting that article 4(h) is ‘Africa’s home-grown version of the responsibility to protect.’⁴⁰ The parallel between the two ideas is striking as both norms seek to prevent atrocities, but the differences matter for understanding subsidiarity and African agency. The distinctions between R2P and article 4(h) are many, the most remarkable being that global actors are contesting the form, and while remaining essentially robust, the eventual outcome is yet to be determined.

Conversely, besides implementation challenges like the lack of capacity or will and clarifying the moment the Union’s right to intervene becomes operational,⁴¹ there is no contest over the normative character of article 4(h). From the norm subsidiarity viewpoint, one pertinent consideration is the potential role of the UN Security Council in implementing article 4(h). Indeed, Chapter VII of the UN Charter places no constraints on measures or rules the Security Council can adopt to sustain global peace, and the AU has offered the leeway. The AU policy compares article 4(h) to article 51 of the UN Charter, not R2P, as the only legitimate

³⁹ Williams, ‘From non-intervention to non-indifference’; Paul D. Williams, ‘The ‘responsibility to protect’, Norm localisation, and African international society.’ *Global Responsibility to Protect* 1:3, 2009, pp. 392–416; Tim Murithi, ‘The responsibility to protect, as enshrined in article 4 of the Constitutive Act of the African Union,’ *African Security Studies* 16:3, 2007, pp. 14-24; Dan Kuwali, and Frans Viljoen, eds., *Africa and the responsibility to protect: Article 4 (h) of the African Union Constitutive Act* (London: Routledge, 2013).

⁴⁰ Thomas G. Weiss, and Martin Welz, ‘The UN and the African Union in Mali and beyond: a shotgun wedding?’ *International Affairs* 90:4, 2014, pp. 889-905, p. 891.

⁴¹ Jakkie Cilliers, and Kathryn Sturman, ‘The right intervention: Enforcement challenges for the African Union,’ *African Security Studies* 11:3, 2002, pp. 28-39; Dan Kuwali, ‘The conundrum of conditions for intervention under article 4 (h) of the African Union Act,’ *African Security Studies* 17:4, 2008, pp. 89-111.

basis for the use of force in international affairs – the former dealing with the protection of human rights and the latter with self-defence, thus:

With regard to the use of force, it is important to comply scrupulously with the provisions of Article 51 of the UN Charter, which authorise the use of force only in cases of legitimate self-defence. In addition, the Constitutive Act of the African Union, in its Article 4 (h), authorises intervention in grave circumstances such as genocide, war crimes and crimes against humanity. Consequently, any recourse to force outside the framework of Article 51 of the UN Charter and Article 4 (h) of the AU Constitutive Act, should be prohibited.⁴²

In addition, the AU policy links R2P to sovereignty, noting that ‘It is important to reiterate the obligation of states to protect their citizens, but this should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of states.’⁴³ This policy viewpoint indicates norm rejection, not localization.

The early R2P debate and the eventual framing by the International Commission on Intervention and State Sovereignty further demonstrate norm subsidiarity. The R2P construction emerged after concerns over the ‘continuing fears about a “right to intervene” being formally acknowledged’ in the international system;⁴⁴ article 4(h) formally recognized and subsidiarized the ‘right to intervene.’ The purpose is to create a firmer legitimate ground for the AU’s priority claim relating to using force for human rights protection. Still, article 4(h) can serve the Security Council’s objectives by underpinning the legitimacy of international

⁴² African Union, ‘The common African position on the proposed reform of the United Nations: “The Ezulwini Consensus”’, Ext/EX.CL/2 (VII), 7-8 March 2005, p. 6. The Assembly has repeatedly endorsed the Ezulwini Consensus since 2006, including recently, see African Union, Assembly Decision, Assembly/AU/Dec.766 (XXXIII), 09-10 February 2020, para. 7.

⁴³ African Union, The Ezulwini Consensus, p. 6.

⁴⁴ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), p. 11.

action. In this sense, African ideas matter for understanding the importance of AU agency in the international order.

The RECs as Localizing Agents

This subsection examines the application of the subsidiarity principle in the AU-RECs relations. It shows that the RECs are localizing African norm-setting instruments and norm-implementing institutions. It uses two subregional organizations as examples: The Intergovernmental Authority on Development (IGAD) and the Economic Community of West African States (ECOWAS). More importantly, the analysis shows ECOWAS' inclination to localize R2P to conform with the organization's human security priorities, suggesting the willingness to accept or modify global norms. Essentially, ECOWAS engages in norm contestation and localization.

The AU and the RECs have embraced the principle of subsidiarity with the former's primacy and apply the division of labour as the guiding principle. For instance, Article IV of the Memorandum of Understanding on cooperation recognizes 'the primary responsibility of the [African] Union' in maintaining and promoting 'peace, security, and stability' underlining 'the principles of subsidiarity, complementarity, and comparative advantage.' Also, the APSA assessment study emphasizes subsidiarity and 'division of labour.' Equally, the APSA Roadmap embraces subsidiarity, acknowledging that the lack of a shared understanding of its implications requires clarification. In that regard, the Assembly adopted Paul Kagame's recommendations on institutional reforms of AU, which highlighted that 'There should be a clear division of labour in line with the principle of subsidiarity.' Finally, article 3 of the

Protocol on Relations provides that the objective is to ‘promote cooperation in all fields and sectors in line with the principle of subsidiarity and complementarity.’⁴⁵

Paul Kagame’s recommendations on institutional reforms of the AU as adopted by the Assembly provided insights into the current thinking about subsidiarity and division of labour in the AU-RECs relations. Pertinently, the Assembly decided that the ‘African Union should focus on a fewer number of priority areas, which are by nature continental in scope, such as political affairs, peace and security, economic integration (including the Continental Free Trade Area), and Africa’s global representation and voice.’ The implication is that the AU will formulate peace and security policies and coordinate RECs’ programs to align with such policies. Article 8 of the Protocol on Relations provides that the Coordination Committee, including the Assembly Bureau, the AU Commission Chairperson, and the RECs’ CEOs, is ‘responsible for coordinating and harmonising the policies to enhance integration in the economic, social, cultural and political areas, as well as in the field of peace and security.’⁴⁶

The Assembly has noted the progress on outlining the division of labour on the ‘sectors of Trade, Political Affairs and Peace and Security.’ It expects the completed document ‘during the 35th Ordinary Session of the AU Assembly in February 2022 after due consideration by the 3rd Mid-Year Coordination Meeting to be held in July 2021 as well as the other relevant Policy Organs.’ The Coordination Committee postponed the meeting due to political conditions

⁴⁵ African Union, ‘Memorandum of Understanding’; African Union, *Moving Africa Forward: African Peace and Security Architecture 2010 Assessment Study* (Addis Ababa: African Union Commission 2010), p. 196; African Union, *African peace and security architecture: APSA roadmap 2016-2020* (Addis Ababa: African Union Commission, Peace and Security Department, 2015), pp. 54-55; African Union, Assembly Decision, Assembly/AU/Dec.635(XXVIII), annex, 30-31 January 2017, paras. 5, A; African Union, Draft revised protocol on relations between the African Union and the Regional Economic Communities, EX.CL/1221(XXXVI)iii, 06-07 February 2020, adopted by the Assembly Decision, Assembly/AU/Dec. 767(XXXIII), 09-10 February 2020, para. 5.

⁴⁶ African Union, Assembly Decision, Assembly/AU/Dec.635(XXVIII), annex, 30-31 January 2017, para. A; African Union, Draft Revised Protocol on Relations between the African Union and the Regional Economic Communities, EX.CL/1221(XXXVI)iii, 06-07 February 2020.

in Chad, the venue of the conference.⁴⁷ The significance is that the AU and the RECs have accepted division of labour as the guiding principle for applying subsidiarity in peace and security interventions. The AU retains primacy at the continental scale and increasingly declares that the RECs ‘serve as its building blocks’ or as the AU Chairperson for 2020, Cyril Ramaphosa, put it, ‘It is imperative that we strengthen the RECs as building-blocks for Africa’s continental integration.’⁴⁸ As the basic units of integration and cooperation, the RECs localize Africa’s norm-setting instruments and norm-implementing institutions, as indicated in Table 2 with the examples of ECOWAS and IGAD.

The Assembly had urged ‘the RECs to promote African Shared Values, especially in democracy, governance and popular participation.’⁴⁹ Although both regional agencies are ‘mimicking’ African norm-setting instruments and norm-implementing institutions, they are not ‘wholesale’ localizing agents, as the ECOWAS’ behaviour toward the UN-led contested norm of R2P illustrates.

⁴⁷ African Union, Assembly Decision, Assembly/AU/Dec.801(XXXIV), 6-7 February 2021, para. 5; African Union, Communiqué of the Teleconference Meeting of the Bureau of the Assembly of African Union Heads of State and Government Held on 24 June 2021, Press Release, 8 July 2021, p. 4, <https://au.int/en/pressreleases/20210708/communique-bureau-assembly-held-24-june-2021>

⁴⁸ African Union, *African Union handbook: A guide for those working with and within the African Union* (Addis Ababa; Wellington: African Union Commission; New Zealand Ministry of Foreign Affairs and Trade/Manatū Aorere, 2021), p. 152; African Union, ‘African Union 2nd mid-year coordination meeting closes with a resolve to strengthen collaboration between the AU, RECs, RMs, the member states, and other continental institutions, in line with the principle of subsidiarity,’ Press Release, 22 October 2020, <https://au.int/en/pressreleases/20201022/african-union-2nd-mid-year-coordination-meeting-closes-resolve-strengthen>

⁴⁹ African Union, Assembly Declaration, Assembly/AU/Decl. 1(XVI), 30-31 January 2011, para. 10.

Table 2. Localization of African Norm-setting Instruments and Norm-implementing Institutions

Institutions/Instruments	ECOWAS	IGAD
Panel of the Wise	Council of Elders or the Wise	Roster of Experienced Diplomats and Respected Public Figures
Peace and Security Council	Mediation and Security Council	Council of Ministers
Continental Early Warning System	Regional Peace and Security Observation System or Early Warning System	Conflict Early Warning and Response Mechanism
Peace Fund	Peace Fund, replaced the Community Levy	Special Drought Fund/Rapid Response Fund/ Mediation Fund
African Standby Force	ECOWAS Standby Force	Eastern African Standby Force
Norm-setting Instruments	Protocol on Democracy and Good Governance, supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security	Protocol on Democracy, Governance and Election

Although the AU represents Africa's voice and external relations, the RECs can conduct foreign relations with non-African organizations, including the UN, under Chapter VIII of the UN Charter. Article 25 of the Protocol on the AU-RECs cooperation deals with the RECs' 'external relations' and provides that

a regional economic community may enter into co-operation agreements with other international organizations or with third countries provided that such agreements do not conflict with the objectives of the Constitutive Act, the Abuja Treaty and the treaties.⁵⁰

⁵⁰ African Union, Draft revised protocol on relations between the African Union and the Regional Economic Communities.

The RECs import and modify external rules to fit their objectives and align with continental norms as localizing agents. In this regard, Article 40 of the ECOWAS Conflict Prevention Framework (ECPF) notes that ‘The three bodies [the United Nations, the African Union, and ECOWAS] cooperate on the issues of peace and security on the principles of subsidiarity and complementarity in accordance with the provisions of Chapter VIII of the UN Charter.’⁵¹ Pertinently, Article 41 demonstrates ECOWAS’ willingness to localize global norms, particularly relating to R2P. It stipulates that,

ECOWAS is imbued with the necessary supranational powers (acting on-behalf of and in conjunction with Member States, AU and UN), as well as the legitimacy to intervene to protect human security in three distinct ways, namely: a. the responsibility to prevent; b. the responsibility to react; and c. the responsibility to rebuild.

The language ‘legitimacy to intervene to protect human security’ shows ECOWAS’ agency, as it navigates through the AU’s ‘right to intervene’ and the UN’s ‘responsibility to protect,’ falling short of entirely adopting article 4(h) and R2P, as outlined in the General Assembly resolution.⁵² The framing underlines the importance ECOWAS places on the legitimacy of interventions for human protection, the subject of equal significance in the AU’s subsidiary norm of right to intervene. At the same time, ECOWAS’s policy behaviour shows the readiness to accept and modify global and regional rules to fit its human security or people-centred security governance objectives.⁵³ It demonstrates norm localization. In other words, ECOWAS is a localizing agent in the global order, inclined to serve the UN and the AU.

⁵¹ ECOWAS, The conflict prevention framework, Regulation MSC/REG.1/01/08, 16 January 2008.

⁵² See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, chaps. 3-5; United Nations, World Summit Outcome, General Assembly Resolution, A/RES/60/1, 24 October 2005, paras. 138-40.

⁵³ Article 4 of the ECPF notes that as “the new ECOWAS Strategic Vision to transform the region from an ‘ECOWAS of States’ into an ‘ECOWAS of the Peoples’, the tensions between sovereignty and supranationality, and between regime security and human security, shall be progressively resolved in favor of supranationality and human security respectively.” For some interesting dimensions of ECOWAS’ norm-driven focus on West African

Conclusion

African agency is critical in managing today's international peace and security threats – from fighting terrorism to protecting human rights and promoting democracy. African norms are a crucial part of African agency and, therefore, matter. As the correlation between regional capacities and peacemaking initiatives and missions becomes more tangible, African ideas will grow in importance, leading to frequent quarrels between the UN Security Council and the AU over whose norms matter. However, disagreements over norm priority are not inevitable. A better understanding of the African agency will inform a more productive strategic and pragmatic dialogue about applying the principle of subsidiarity in peace and security affairs in Africa. The knowledge that the AU is not a localizing agent, as the framers of and some scholarship on Chapter VIII of the UN Charter anticipated, enlightens the conversation. Now, the challenge facing the Security Council is persuading the AU to become a double agent, that is, to implement global rules, so Africa can better serve on occasions favourable to the UN principles.

The notion of a double agency may seem difficult for a subsidiary agent whose ideas are embedded in retaining autonomy and fears of external control. Still, the AU has demonstrated a remarkable degree of normative flexibility that makes exploring double agency rational. The AU's ongoing effort to modify the rules governing unconstitutional changes to government, which had been one of the few near sacrosanct African norms, is demonstrative. The Lomé Declaration for an OAU Response to Unconstitutional Changes to Government and the African Charter on Democracy, Elections, and Governance prohibit coup d'états and ban perpetrators from participating in subsequent government or elections. Following the widespread protests in North Africa between 2010 and 2011 that led to the resignation and the

people, see Aarie Glas and Emmanuel Balogun, 'Norms in practice: People-centric governance in ASEAN and ECOWAS,' *International Affairs* 96:4, 2020, pp. 1015-1032.

military removal of a few Heads of State and Government, the AU has altered the norm to accommodate the people's aspirations for freedom, security, human rights, and good governance.

In a rare meeting to address the implications of 'popular uprisings in Africa,' the Peace and Security Council held an open session with African civil society groups. They 'expressed understanding' for irregular changes to government 'In circumstances where governments fail to fulfill their responsibilities, are oppressive and systematically abuse human rights or commit other grave acts and citizens are denied lawful options.' They called for a 'review of existing normative frameworks' involving

appropriate refinement of the definition of unconstitutional changes of government, in light of the evolving challenges facing the continent, notably those related to popular uprisings against oppressive systems, taking into account all relevant parameters.⁵⁴

The Assembly and Peace and Security Council adopted the recommendations of the AU High-Level Panel for Egypt that studied the question of popular uprisings and specified conditions under which the AU should accept unconstitutional changes to government, which involves:

(a) the descent of the government into total authoritarianism to the point of forfeiting its legitimacy; (b) the absence or total ineffectiveness of constitutional processes for effecting change of government; (c) popularity of the uprisings in the sense of attracting significant portion of the population and involving people from all walks of life and ideological persuasions; (d) the absence of involvement of the military in removing the government; (e) peacefulness of the popular protests.⁵⁵

⁵⁴ African Union, 'Unconstitutional changes of governments and popular uprisings in Africa – challenges and lessons learnt,' Press Statement, PSC/PR/BR. (CDXXXII), 29 April 2014, pp. 2, 3-4.

⁵⁵ African Union, Assembly Decision, Assembly/AU/Dec.536 (XXIII), 26-27 June 2014, para. 8; African Union, Peace and Security Communiqué, PSC/PR/COMM.2 (CDXLII), 17 June 2014, para. 7; African Union, Final Report of the African Union High-Level Panel for Egypt, PSC/AHG/4. (CDXVI), 17 June 2014, para. 83.

The evolving norm is the new African idea that the people can change their government through unconstitutional methods if the government acts irresponsibly. Although the Peace and Security Council noted that the lifting of sanctions in the case of Egypt ‘does not constitute a precedent in terms of adherence to norms ‘which stipulate that perpetrators of unconstitutional changes of Governments cannot participate in the elections held to restore constitutional order,’⁵⁶ it reacted cautiously to similar events in Zimbabwe, Mali, Sudan, and Guinea. The case of Egypt is no longer an exception; it is becoming the norm. This normative adaptability to popular demands shows that the AU can change or modify seemingly firmly held ideas and rules.

The AU’s normative flexibility implies that the Assembly and Peace and Security Council will revise the immunity norm for serving Heads of State and Government and other senior government officials under the right circumstances. African peoples involving civil society groups convinced the AU to change a norm that previously favoured regime security or stability. Triggers and catalysts for such norm-altering events and conditions may have external beginnings through strategic dialogue and engagement with the Assembly and the Peace and Security Council. Specifically, the UN Security Council could explore its role under Article 4(h), so approving members may turn to African ideas when the P5 deadlocks around the R2P principle. The ICC Prosecutor may undertake similar exchanges with the Peace and Security Council and the African Court Prosecutor regarding the Malabo Protocol and the Rome Statute.

This study’s significance for future talks between the UN and African regional organizations is appreciating that the problem of utilizing the principle of subsidiarity is essentially about the contest over the primacy of African subsidiary norms, which, we now

⁵⁶ African Union, Peace and Security Council Communiqué, PSC/PR/COMM.2 (CDXLII), 17 June 2014, para. 8.

know, are extremely accommodating in appropriate circumstances. This article has shown that the AU is not the localizing agent as Chapter VIII prescribed. Instead, the AU is a subsidiary agent in the current global order, so expectations and conversations about how the AU implements international norms need to take a more persuasive turn. The African people convinced the AU to change a significant norm on regime security and stability. In that case, the international community can do the same, but it requires the Security Council to become more influential and compelling with global ideas. Ultimately, an unambiguous division of labour between the Security Council and the AU will promote better sequencing of African and external norms in peacemaking.