Sovereignty and the African Union

by

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Abstract

This paper discusses way the principle of sovereignty influenced the ideological framework of the Organization of African Unity (OAU) and its successor, the African Union (AU). While both the OAU and the AU represent the institutionalization of Pan-Africanism, this paper argues that by entrenching the notion of popular sovereignty in its constitution and peace and security institutions, the AU has a greater capacity to achieve the ideals of Pan-Africanism.

Introduction

In his book, *Africa Must Unite*, Kwame Nkrumah argued that complete political and economic independence in Africa was threatened by neocolonialism and only through solidarity could freedom be achieved. Nkrumah recognized that African development depended on cooperation and unity among the newly independent states. Though Nkrumah's vision of a united Africa has not been realized, the argument for a political union has not been forgotten. Muammar Gaddafi, the leader of Libya and the Chairperson of the African Union throughout 2009, has taken on Nkrumah's position. Gaddafi claimed that Africa must "unite or die" and without a political union, the forces of globalization would continue to exploit Africa. The debate for a politically united Africa, however, is still unresolved and there is much opposition to this idea mainly because the contentious principle of sovereignty is at the center of this debate. As such, it is the focus of this paper.

This paper examines way the principle of sovereignty influenced the ideological framework of the Organization of African Unity (OAU) and its successor, the African Union (AU). When tracing the principle of sovereignty from the OAU to the AU it is evident that there has been a significant shift in the manner in which African leaders view this principle. This change is demonstrated by the way sovereignty is entrenched in the AU's Charter and the ideology behind its peace and security institutions. It will be argued that the institutionalization of sovereignty provides the AU with the capacity to address the ideals of Pan-Africanism.

First, this paper provides a definition of sovereignty, which has been drawn from the work of Samuel M. Makinda and F. Wafula Okumu. Sovereignty is not a static term and in their book, *The African Union: Challenges of Globalization, Security and Governance*, Makinda and Okumu recognize the complex and constantly changing nature of this principle.

Next, a definition of Pan-Africanism is provided and a discussion examining the way this term has impacted the structure of the AU follows. The next section provides an overview of the ideological differences between the Casablanca group and the Monrovia group. By focusing on sovereignty as a dividing point, this section discusses how the debate between these groups shaped the ideology of the OAU and the AU. Using the Charter of the AU, the next section discusses the ideological framework of the AU. Lastly, this paper discusses the role of the AU role in Darfur and how this case illustrates the normative shift in the AU's views on sovereignty.

Shifting Definitions of Sovereignty

Although the principle of sovereignty emerged from Western political thought, it has been adopted by states all over the world as a means of identifying political jurisdiction. The Treaty of Westphalia defined a sovereign state as one with clear borders, having the right to rule over its people and expecting its territorial integrity to be respected while respecting that of other states. [1] This definition has however, evolved. Since the late 1990's the concept of human security has come to challenge this state centric view of sovereignty. As such, sovereignty is no longer viewed as an intrinsic right of states but rather that, this right is derived from the people. This means that a state maintains its right to rule as long as it respects the basic human rights of its citizenship. Makinda and Okumu discuss the complicated nature of sovereignty by separating it into three definitions. The first type of sovereignty they describe is "juridical sovereignty" and it is obtained by states through recognition in the international society.[2] This is a relatively liberal definition as its underlying assumption is that if the international society can confer sovereignty, it can also decide when to withdraw it. For the scope of this paper juridical sovereignty is important in so far as this was the type of sovereignty African states established during the era of decolonization.

The second type of sovereignty described by Makinda and Okumu is "empirical sovereignty and it is "based on the understanding that states have the right and ability to control the people, resources and all activities within their borders."[3] Such a Westphalian perception of sovereignty reflects the way state leaders understood this principles during the 1960's. The third and final type of sovereignty described by Makinda and Okumu is "popular sovereignty," based on the normative claim that all human beings ought to receive the same basic rights and a state's authority is earned through respecting and protecting these rights.[4] This definition challenges the notion that sovereignty is a natural right of states, but rather that it is an ongoing responsibility an understanding of sovereignty which is drawn largely from the report conducted by the International Commission on Intervention and State Sovereignty (ICISS) in 2001. This report first articulated "the responsibility to protect," and ties the notion of human security to a state's right to authority.[5]

Makinda and Okumu's third definition is important for several reasons: first that the ICISS report came on the trail of the atrocious human right's violations in the Yugoslavian and Rwandan conflict in which the respective governments not only failed but in fact, perpetuated violence against certain groups of people. Second, the release of the report coincided with the inauguration of the African Union, demonstrating that shifts in both African and global thinking influenced the way sovereignty was entrenched in the Charter and the institutions of the AU.

Institutionalizing Pan-Africanism

While the principle of sovereignty drove the debate between the Casablanca and the Monrovia groups, each group claimed it was their ideology that was best suited to meet the goals of Pan-Africanism. Timothy Murithi, in his book *The African Union: Pan-Africanism, Peacebuilding and Development*, defines Pan-Africanism as "the struggle for social and political equality and the freedom from economic exploitation and racial discrimination."[6] Equally important to understanding the concept of Pan-Africanism is the notion that these aims will only be achieved through unity and cooperation.[7] Pan-Africanism emerged within the Diaspora, after the abolition of slavery, when the idea of an independent African people was first conceived of by descendents of Africa who rose to become the educated elite.[8] Edward Wilmot Blyden, for example, was a central thinker within the Pan-Africanism discourse, articulated the notion of a free African with "Africans in control of their resources and destiny."[9] Also, George Padmore, W.E.B. DuBois and Marcus Garvey were other important figures in the history of Pan-Africanism, called for "the dignity, respect and emancipation of the peoples of Africa."[10] This paper uses a definition of Pan-Africanism that is based on an increased in quality of life for Africans achieved through unity.

Whether it is an ideology, a movement or both, Pan-Africanism was institutionalized several times before the founding of the OAU. During the late 1800's and the early 1900's, the Pan-African Congress and the African Association was founded.[11] In addition, several conferences were held and the purpose of all these organizations was to bring people together to discuss the need for political independence, equality and an improved quality of life for Africans and the Diaspora.[12] Although Pan-Africanism remained influential after decolonization, as is demonstrated in the Charters of the OAU and the AU, in which its ideals are found and while it articulates the importance of African cooperation and unity, its shortcoming is that is does not specify the way in which these aims ought to be achieved. [13] During the era of decolonization, many African states achieved the goal of independence, but could not agree on how best to institutionalize African cooperation. The debate between the Casablanca and Monrovia groups illustrate this issue.

Conflicting Notions of Sovereignty: The Casablanca and Monrovia Groups

This section enumerates the constituent states and the axiology of each group and how the debate between the two groups influenced the structure of the OAU. The Casablanca group consisted of: the Algerian provisional government, Egypt, Ghana, Guinea, Libya, Mali and Morocco.[14] These states believed that political unity was the most effective way to protect the newly independent continent's economic, political and social interests.[15]

One of the most important figures in this group was Kwame Nkrumah, the former president of Ghana. He believed that in order for development to succeed, Africa had to unite, both politically and economically, or it would risk being exploited and corrupted by the international forces of neocolonialism.[16] Nkrumah argued that "colonial powers do not willingly retire from political control over any given land," resulting in the exploitation of Africa's resources and people.[17] He discussed how the arbitrary colonial and the lack of necessary resources hindered development. According to Nkrumah, neocolonialism threatened to fragment Africa by creating artificial divides between the African people as a way to "create schisms and rivalries which they hope to exploit after they have gone."[18] While Nkrumah recognized differences in race, language and culture, he argued that being African took precedence before any of these aspects of identity and therefore the collective security of Africa ought to come before that of individual states.[19]

The Casablanca group was defined by Nkrumah's beliefs and therefore this group upheld the notion that political unity was the most important issue to be considered for the development of an independent Africa.[20] It called for the formation of a "The United States of Africa" under which sovereignty would be pooled.[21] Within this federation, jurisdiction over economic planning, defense and military planning and foreign policy would fall under a centralized government.[22] By placing the demand for a political union first, this group was not concerned with guarding individual sovereignty; instead viewed solidarity as the most effective way to develop and achieve the goals of Pan-Africanism.

While the Monrovia group was equally concerned with the need for African cooperation, they were more concerned with the protection and preservation of sovereignty. The states which associated themselves with this group were: Benin, Burkina Faso, Cameroon, Central African Republic, The Congo, Cote d'Ivoire, Ethiopia, Nigeria, Senegal, Sierra Leone, Somalia, Togo and Tunisia.[23] Rather than combining sovereignty, this group believed "cooperation in practical matters comes first," such as strengthening economic ties and regional organizations.[24] The Monrovia group argued that forming a political union to encompass all African states did not make sense as there were still several states which had not been decolonized.[25] Members of the Monrovia group were also opposed to a political union because this was an era in which political independence had just been achieved by many states and African sovereignty was constantly being threatened by internal and external forces.

Although the Monrovia and Casablanca groups were committed to the values of Pan-Africanism, the principle of sovereignty kept them divided. This is ironic, for as Williams points out, "on some of the most important issues, their viewpoint is very much the same."[26] Both groups wanted to improve the economic situation of Africa and discussed various ways in which economic cooperation could be strengthened.[27] For instance, both groups believed in the creation of an African Development Bank, bettering trade agreements and establishing common agricultural policies.[28] However the issue of ceding sovereignty would not be considered by the Monrovia group and as such, this issue overshadowed the deliberations surrounding the creation of the OAU. When the OAU was inaugurated in 1963, the principles and norms of the Monrovia group prevailed.[29] Despite Nkrumah's warnings of the depth and threats of neocolonialism, the territorial integrity of each sovereign state was preserved by the OAU.

Sovereignty and the OAU

The structure and the ideological framework of the OAU reflected the politics of the continent at that time. The legacy of colonialism largely influenced the way many African leaders "were resolved to safeguard and consolidate their hard-won independence and territorial integrity."[30] This section discusses how the principle of empirical sovereignty influenced the structure and policies of the OAU. Article 2(1) of the Charter of the OAU describes the purposes of this organization, and its first two points focus on Pan-African values of unity and cooperation among states.[31] The third point in Article 2 is entirely state-centric, emphasizing that the purpose of the OAU is "to defend their sovereignty, their territorial integrity and independence."[32] Commitment to sovereignty is elaborated in Article 3 of the Charter, in which the principles of non-interference are stated as well as the respect for each state's "inalienable right to independent existence."[33] This shows that the Monrovia group's understanding of sovereignty was embedded in the OAU's Charter.

The OAU was meant to strengthen African cooperation and development in order to improve the quality of life for Africans. Although these norms were entrenched in its Charter, the way in which sovereignty was institutionalized prevented these aims from being achieved. The principle of non-intervention meant civil wars raged and violent leaders remained in power while massive human rights violations occurred.[34] This was perpetuated by the OAU's "self-imposed ban on peacekeeping."[35] The OAU believed it was the responsibility of the UN to act in protection of human rights, but the politics of the Cold War often prevented the Security Council from acting. As such, the international community did not intervene in several African civil wars and nor did the OAU.

The Cold War splintered the notion of African cooperation and instead of maintaining a policy of non-alignment, African states found themselves "involved in client states with ideological allegiances split between the dominant western and eastern hemispheres."[36] The ideological structure and the politics of the Cold War both hindered African unity and cooperation. By the late 1990's, with the glaring examples of the civil wars in Rwanda and Sierra Leone coupled with the failure of the international community to intervene, it was apparent the OAU's time was coming to an end.

A New Understanding: Sovereignty and the AU

This section discusses the inauguration of the AU and the continuation of the debate about the institutionalization of sovereignty in a Pan-African organization. Before the AU was formed, Gaddafi began advocating for a political union, arguing that Africa's survival depended on unity.[37] Thabo Mbeki, the president of South Africa, argued that regional economic communities were better suited to Africa's unique needs and would better achieve Pan-African ideals.[38] Both Gaddafi and Mbeki agreed that some "some form of *pax-africana* – an African peace established, enforced and consolidated by Africans themselves" was necessary.[39] While the formation of a Pan-African political union was again rejected, the way sovereignty has been institutionalized provides the AU with a greater capacity to achieve the goals of Pan-Africanism.

The decision to dismantle the OAU was made in September 1999 and by July 2000. the Constitutive Act, the legal document outlining the institutional design and purpose of the AU, had been signed by all interested states.[40] The AU was formally inaugurated in 2002 and while it shares some features of the OAU (such as the assembly of heads of state and government having final decision making powers), in many ways it looks quite different.[41] Among the new institutions of the AU are: the Peace and Security Council, the Pan-African Parliament, the Economic, Social and Cultural Council (ECOSOCC) and the Court of Justice.[42] The different institutional design of the AU demonstrates the ideological differences between the OAU and the AU.

While the ideals of Pan-Africanism were entrenched in the Charter of the OAU, its state-centric design left no space for the inclusion of ordinary Africans and moreover the OAU's commitment to the preservation of sovereignty blocked it from acting to alleviate intra state conflicts. The structure of the AU allows for greater participation from civil society and therefore citizens have greater opportunity to become engaged with the AU thus, demonstrating the AU's commitment to the norms expressed in the Constitutive Act, which mirror the OAU's desire to promote Pan-African cooperation and solidarity.[43]

Unlike the OAU, the AU adopted the notion that sovereignty is not a privilege that all states deserve, but rather it is a responsibility and when a government fails to meet these responsibilities, its right to sovereignty is lost. This is most clearly symbolized in the fourth section of the Act:

> *(h)* 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;[44]

This section of the Act clearly reveals how the AU has moved away from its previous belief that maintaining peace and security on the continent is the responsibility of the UN. Also, unlike its predecessor, the AU has much more of a focus on establishing sustainable development and peace upon the continent. In Kristiana Powell and Thomas Kwasi Tieku, in their paper "The African Union's new security agenda," argue that the right for the AU to intervene in a state's domestic affairs allows the AU to "bring Africa closer to a more inclusive peace."[45] Although the decade long history of the AU does not include an example of an intervention justified through article 4(h), the new peace and security institutions of the AU and their role in the case of Darfur demonstrates this new understanding of sovereignty.

The AU's Role in Darfur

This section identifies the peace and security institutions of the AU and how these institutions reacted to the crisis in Darfur. By examining the role played by the AU in Darfur, it is argued that this case makes evident how the principle of sovereignty has changed since the time of the OAU. The institutions designed to prevent and respond to conflict on the continent are: the Peace and Security Council, the African Standby Force, the Early Warning System, the Panel of the Wise and the Peace Fund.[46] The Peace and Security Council was formally institutionalized in 2004 and its fifteen members are elected by the AU Executive Council to equally represent each region on the continent.[47] The primary objective of this council is to first prevent conflict and if conflict does occur the council is responsible for resolving it with the least amount of violence and human suffering. Also, the Peace and Security Council has the authority to impose sanctions on states which undergo a change in government that violates their respective constitution and such sanctions have been carried out against Togo, Mauritania and Comoros.[48] This demonstrates how the AU has taken a more active role in committing itself to the values of Pan-Africanism.

The clearest indication of how the principle of sovereignty has changed in the AU is seen through its efforts in Darfur. On March 28th 2004 the AU sent an Armed Protection Force to Darfur, as a response to increasing levels of violence between government forces and rebel groups, which was causing civilian casualties and refugee flows.[49] The AU force consisted of about 300 Rwandans and Nigerians and their role was to assist refugees in returning to Darfur and to protect AU members who were monitoring the signing of a ceasefire.[50] On April 11th 2004, an agreement was reached and the Humanitarian Ceasefire Agreement was signed between the different groups under the surveillance of the AU.[51]

Nevertheless, terms and agreements of the ceasefire were violated by each of the warring groups and it became apparent that the Armed Protection Force would not be capable of stabilizing the region. Therefore, in December 2004 the AU initiated the African Union Peacekeeping Mission in Sudan (AMIS).[52] The objective of AMIS was to bring peace to the region according to the traditional peacekeeping principles of "impartiality, neutrality and consent."[53] The role of AMIS thus was to provide support for the people of Sudan and not perpetuate the conflict by engaging in violence with any of the groups.

While AMIS "made some significant contributions maintaining stability in Darfur" the African peacekeepers did not remain the sole force in Darfur.[54] The AU lacked the financial and material resources to maintain an effective presence and for some time there was talk of the UN taking over the efforts of the AU peacekeepers.[55] But the government of Sudan refused to cooperate with peacekeepers only from the UN and after much negotiation it was decided the UN and the AU would form a hybrid mission.[56] The peacekeeping mission was renamed the African Union – United Nations Peacekeeping Mission in Darfur (UNAMID) in December 2007.[57] While the majority of funding for this mission is provided from donors external to Africa, the AU has "presided over the seven rounds of Inter-Sudanese peace talks" and is viewed as embodying a significant diplomatic role.[58] This demonstrates the importance of the AU's role in peacekeeping in Darfur.

Conclusion

Thus far this paper has addressed how the institutionalization of sovereignty has changed since the time of the OAU through to the formation of the AU. This section discusses the relevance of this normative shift. One of the critiques of the AU is that its ideological framework is not significantly different from the OAU's. For instance, Francis K. Makoa argues the AU's state-centric structure will hinder it from addressing Pan-African social and economic issues.[59] While the principle of sovereignty has been enshrined in the AU's Charter, it reflects an understanding of popular sovereignty. Furthermore, the peacekeeping mission in Darfur was authorized by the Executive Council of the AU, which is composed of the heads of states, proving that the AU possesses the political will to play an active role in African issues.

When the AU was being formed many African leaders articulated their commitment to cooperation and unity.[60] During the formation of the OAU, leaders had expressed the same views. As an ideology, Pan-Africanism clearly states the need for African solidarity. This ideology, however, does not indicate the best way to achieve solidarity. Thus, the debate between the Monrovia and Casablanca groups emerged, with the principle of sovereignty driving them apart.

The OAU became a protector of empirical sovereignty and coupled with the politics of the Cold War, African unity was not realized. In the 1990's the international understanding of sovereignty shifted from an empirical to a popular one and it was the latter that was institutionalized in the AU. This paper has argued that the AU's view of sovereignty is very different from the OAU's and this view enables it to commit to the values of Pan-Africanism. The decision to peacekeeping in Darfur was initiated and implemented by African leaders. While the mission is now a hybrid, the AU maintains a central political role in peace talks and negotiations. In conclusion, the approach the principle of sovereignty as it is entrenched in the AU provides it with the ability to reach the ideals of Pan-Africanism.

Endnotes

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[5] Kristiana Powell and Thomas Kwasi Tieku, "The African Union's new security agenda," *International Journal* 60:4 (Autumn 2005), 938.
[6] Murithi, *The African Union*, 11.
[7] Ibid., 7.
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[9] Ibid., 575.
[10] Makinda and Okumu, *The African Union*, 19.
[11] Muruthi, *The African Union*, 23.
[12] Ibid., 23.
[13] T.O. Elias, "The Charter of the Organization of African Unity," *The American Journal of International Law* 59:2 (April 1965), 246 and "Article 1 – Definitions," *The Constitutive Act: The African Union*, < http://www.africa-union.org/root/au/AboutAu/Constitutive_Act_en.htm#Article3> (accessed May 27, 2010).

[14] Makinda and Okumu, *The African Union*, 21.
[15] Blake, "An African Nationalist Ideology Framed in Diaspora and the Development Quagmire," 579.
[16] Nkrumah, *Africa Must Unite*, xvi.
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[21]Makinda and Okumu, *The African Union*, 22.
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[41] Powell and Tieku, "The African Union's new security agenda,"942.
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