MORE OR LESS SOVEREIGN

SOVEREIGNTY, LEGITIMACY, AND UN PEACEKEEPING IN INTERNATIONAL LAW AND POLITICS

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ABSTRACT

Sovereignty is central to UN peace operations’ definition of “sustainable peace” – which they are mandated to create, restore, or ensure. To study the effectiveness and the effect of peace operations thus requires attention to the definition and creation of sovereignty. This thesis examine the close theoretical link between sovereignty and legitimacy, wherein the attributes of sovereignty correspond to sources of legitimacy, wherein UN peacekeepers’ operational activities take the form of a trilateral negotiation between international organisations, states, and non-state actors, with the potential to redefine the norm of sovereignty in international law and politics. This analysis suggests that the exit strategy of a mission can be evaluated in terms of its effect on the sources and manifestations of sovereignty/legitimacy; an assessment that is demonstrated with reference to the UN/AU Hybrid Mission in Darfur (UNAMID).
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1. INTRODUCTION: THE CHALLENGE OF STUDYING SOVEREIGNTY

Peacekeeping operations, as conducted by United Nations, are inherently linked to the concept of sovereignty. The deployment of a peacekeeping operation to a given state appears, *prima facie*, to derogate from the sovereignty of that state. Presumably, such derogation is permissible when it seeks to further the purposes of the UN itself¹, and is mitigated by the consent of the state in question. Peacekeeping thus raises questions about the relationship between sovereignty, statehood, and consent, prompting the question at the heart of this thesis: what is the effect of peace operations on state sovereignty?

A related question, perhaps of greater interest to the more practically-minded, is: when and how is a peace operation considered “effective”? There is broad consensus that peace operations should lead to a situation wherein the state in question is able to maintain peace in its territory without the continued assistance of the peace operation: a self-obsolescing intervention. The recent High Level Independent Panel on Peace Operations summarizes peace operations’ mandates as: “*prevent conflict, achieve durable political settlements, protect civilians and sustain peace.*”²

The desired end-state, which peace operations are conceptually intended to ensure (and hence against which both their effect and effectiveness may be assessed) is described in the HIPPO Report as “sustainable peace”. A peace operation may be

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said to have successfully fulfilled its mandate – thereby rendering itself obsolete – "not when all conflicts are removed from society, but when the natural conflicts of society can be resolved peacefully through the exercise of state Sovereignty and generally, participatory governance."³ The creation or restoration of state sovereignty (and, generally, participatory governance) is thus the basis of UN peace operations’ exit strategy.

The theory of change implicit in this strategy is that conflicts arise when state sovereignty is weakened or compromised, and can be resolved when the state has the capacity and intent to manage them peacefully. The theory is plausible: threats to the sovereignty of a given state may indeed amount to threats to international peace and security, necessitating UN Security Council action (including deploying peace operations or authorising enforcement actions). Yet, the role of state sovereignty in ensuring durable political settlements, protection of civilians, and peaceful resolution to the natural conflicts of society is more ambivalent; the exercise of state sovereignty might also involve overriding political settlements, threatening civilians, and resorting to force to resolve domestic conflicts. An intervention that focuses on sovereignty alone may not be able to create or restore meaningful guarantees that sovereignty will not be exercised in manners detrimental to peace and human rights. Where sovereignty is exercised to perpetrate abuses with apparent impunity, it becomes a cause of conflict rather than the means for its resolution.⁴

This ambivalent role for sovereignty matters precisely because the post-Cold-War surge in peacekeeping has come in the context of a decline in inter-state conflict, while an increasing number of intra-state conflicts are recognised by the Security Council as threats to international peace. Only four of the smallest missions under the UN Department of Peacekeeping Operations (DPKO) today perform the traditional role of monitoring a ceasefire between two or more states; all of the missions mandated by the African Union (AU) – even when they conduct cross-border operations – are intervening in intra-state conflicts.

It is important to clarify, at the outset, that few of these conflicts can be honestly defined as “internal”. Both state and non-state parties to the conflict are connected, by dense and complex networks, to a range of multinational, regional, state, and non-state actors; some non-state actors may be proxies for (their own or other) states, and some regional or state actors may be able to contribute to resolving the conflict even when they are not implicated in supporting one of the parties. If anything, they might be described as “internationalised” – a category of armed conflict whose definition remains a controversial question in international law.

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It is not simply the role and configuration of actors that has changed in these “new wars”\(^9\), but rather the political economy of warfare itself: these conflicts reflect a shift (or perhaps a return\(^{10}\)) towards organised political violence as a system and model of governance. Political violence can serve many functions and interests\(^{11}\), including establishing the precedence of group claims to power, resources, or grievances\(^{12}\). The logic of conflict itself shifts, from achieving specific military objectives to establishing or maintaining conditions that obscure or impede political objectives; these wars are fought not on defined battlefields, but rather “among the people”\(^{13}\). The nature of what may be seen as a threat to security – domestic or international – also undergoes a corresponding shift, e.g. socio-economic development (or the lack thereof)\(^{14}\).

Post-Cold-War peacekeeping has thus had to adapt to very new political and security dynamics, not only at the international but also at the intra-state level. It has done so by evolving new doctrines and instruments, which reconceptualise the role of the UN and of peacekeepers in relation to conflict prevention, conflict resolution, and post-conflict reconstruction (which is itself a form of prevention as well)\(^{15}\). A recognition of the humanitarian imperatives inherent in conflict response, as well as

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\(^{10}\) Tilly, C. “War Making and State Making as Organized Crime”, in *Bringing the State Back In*, Evans, Rueschemeyer, and Skocpol (Eds.) Cambridge University Press, 1985.


the link between the violation of human rights and sustained conflict, led to an increased focus on protection of civilians, upholding the rule of law and human rights, and promotion of good governance and accountability.

The focus on sovereignty was neither lost nor diluted in this process of doctrinal evolution and adaptation. Indeed, the most comprehensive statement of the UN “Capstone Doctrine” for peacekeeping specifically states that “…the core functions of a multi-dimensional United Nations peacekeeping operation are to:

- Create a secure and stable environment while strengthening the State’s ability to provide security, with full respect for the rule of law and human rights;
- Facilitate the political process by promoting dialogue and reconciliation and supporting the establishment of legitimate and effective institutions of governance;
- Provide a framework for ensuring that all United Nations and other international actors pursue their activities at the country-level in a coherent and coordinated manner.”

This is a paradigm of peacekeeping that Bellamy and Williams describe as “Post-Westphalian”. It is, by definition, antithetical to a traditional (Westphalian) definition of the sovereign state, holding instead that state sovereignty is contingent on the provision of security and rule of law by the state to its citizens.

18 Bellamy and Williams, Understanding Peacekeeping.
This might be seen as a more specified version of the sovereignty-focused theory of change for peacekeeping: it is the failure of states to fulfil these responsibilities that contributes to the outbreak or maintenance of conflict. One implication – which remains highly controversial – is that where states abjectly or wilfully fail to perform these responsibilities, the international community as a whole then comes to bear a corresponding “responsibility to protect” the citizens of that state, extending even (in the last extreme) to (sovereignty-violating) humanitarian intervention\textsuperscript{20}.

Even short of that controversial threshold, though, the post-Westphalian paradigm has implications for the scope and responsibilities of peace operations. The doctrinal evolution of the past 25 years suggests that the UN has learnt that peace operations will have to move beyond facilitating a peace process, to assisting in creating a social, economic, and political landscape within which peace may be sustained without external assistance. This focus on “legitimate and effective institutions of governance” is reflected again in “No Exit without Strategy”, and in the reassertion of “the primacy of politics” in the HIPPO Report. Indeed, in calling for “the full spectrum of peace operations (to) be employed more flexibly” as part of a “continuum of response and… transitions”, the latter explicitly envisages an enduring UN presence that calibrates in response to state capacity and need\textsuperscript{21}.

\textsuperscript{20}International Commission on Intervention and State Sovereignty, Final Report, International Development and Research Centre, Ottawa: December 2001. ("The Responsibility to Protect")

To claim that prevention, peacemaking, peacekeeping, and peacebuilding are situated along one spectrum is not novel in peacekeeping doctrine, but to focus on sovereign state institutions as the guarantor of success is to further argue that peace operations must traverse the full spectrum to fulfil their mandates. A peacekeeping mandate which truly operationalised this belief would be indistinguishable from statebuilding.  

While many peace operations do not receive such maximalist mandates – if only because those mandates are negotiated in a process that takes into account multiple political and pragmatic constraints – but the theoretical definition of success (to the point of self-obsolescence) for these operations nonetheless corresponds closely with the outcome of a process of statebuilding.

In fact, the scale of the political project which modern peace operations are called upon to support has expanded to encompass almost every aspect of governance. Their mandates do amount to securing a state (i.e. a particular government) against threats from non-state armed groups, while also assisting this government with the performance of various functions of governance (such as security), which are traditionally seen as falling within “the domain of the state.” The state may indeed resume exclusive control of these functions at some point, but the very fact of significant external involvement in their performance suggests that state sovereignty was compromised – at least for a period of time.

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24 At least, to the exclusion of the international organisation from direct performance of these functions, and perhaps even to the exclusion of any external actors. Absolute concentration of control over all functions of governance in the state is – as we will see – an abstraction rarely if ever achieved in reality.
Quite apart from its practical and financial burdens, the conceptual complexity of such an approach is cause for concern. As Paris and Sisk note:

"It is difficult to imagine a more complex or demanding task than post-conflict peace-building, which combines three separate yet simultaneous transitions, each posing its own tremendous challenges: a social transition from internecine fighting to peace; a political transition from wartime government (or the absence of government) to post-war government; and an economic transition from war-warped accumulation and distribution to equitable, transparent post-war development (that in turn reinforces peace)."25

If the ultimate goal of a peace operation is to make itself obsolete by creating or restoring the institutional capacity of a sovereign state, then its progress towards this goal can only be measured by assessing the extent to which the state is able to assert and exercise sovereignty, relative to its position prior to the deployment of the peace operation. This is a particular challenge for the UN, which categorically declares the sovereign equality of its member-states26; operational definitions of dimensions of sovereignty, which enable one to compare and rank states, would contradict this key premise27. This political constraint on discussing peace operations with conceptual clarity – given that these are exercises in compromising sovereignty so as to restore and strengthen sovereignty – is exacerbated by the epistemological constraint of sovereignty being a highly contested and vaguely defined concept.

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25 Paris and Sisk, *The Dilemmas of Statebuilding*, at Pg. 1
2. SOVEREIGNTY: ASPECTS AND METRICS

Sovereignty is an essential concept in the field of international law, which is primarily concerned with regulating the conduct of states, and in international politics (or international relations), which seeks to explain how those states behave in various circumstances. These fields tend to follow similar paths in analysing the concept, especially among those theorists who propose that – in the context of an anarchic international system – international law is an emergent property of the behaviour of states, as further modified by the institutions that states have created to facilitate their relations with each other\textsuperscript{28}.

The modal unit of analysis in both fields is the individual state, with all states being academically stylised as equal and comparable\textsuperscript{29}. As noted, the Charter of the United Nations elevates this equivalence to a defining feature of the international system; strictly speaking, the Charter's provision of “sovereign equality” applies only to members of the organisation, but very few states remain non-members of the UN today (and that circumstance tends to complicate their recognition as states)\textsuperscript{30}. The unit of analysis has thus shifted, for all intents and purposes, to the sovereign state; sovereign equality has become concomitant with statehood, such that it is theoretically impossible within this framework to speak of a non-sovereign state.

\textsuperscript{29} A tradition dating at least as far back as Emmerich De Vattel’s classic \textit{On the Law of Nations, or, the Principles of Natural Law applied to the Conduct and to the Affairs Of Nations and of Sovereigns}.
Given its centrality to international relations, international law, and the conceptual underpinnings of the United Nations, any alterations to the norm of sovereignty would have significant ramifications for the international system as a whole. In particular, any shift in its interpretation may well prompt a reordering of hierarchies of power\textsuperscript{31} both within and between states, as sovereignty is frequently invoked to establish that a specific use (or imbalance) of power is legitimate.

In that sense, Stephen Krasner does truly revolutionary work in identifying three senses in which the term “sovereignty” tends to be used, namely international legal sovereignty, Westphalian sovereignty, and domestic sovereignty\textsuperscript{32}. Krasner’s typology is valuable because it leads us to understand three important features of sovereignty. First, even at the level of theory, the three aspects of sovereignty need not co-vary in a given state, i.e. there is no reason to believe that a state which appears sovereign in relation to one aspect is also sovereign in relation to the other two aspects. Second, each of these aspects is an ideal type – a theoretical abstraction intended to illustrate a concept for further study, rather than an empirical description of reality; neither sovereignty \textit{ex se ipso} nor any of its aspects are ever fully realised or manifest in reality.

Third, Krasner provides a theoretical framework for understanding the relationship between sovereignty and legitimacy. He identifies legitimacy as one of


\textsuperscript{32} Krasner, S. \textit{Sovereignty}. Princeton University Press, 1999. Krasner also identifies a fourth concept, Interdependent sovereignty, relating to control over borders. This aspect may be treated as subsumed in the notion of domestic sovereignty for the purposes of the current analysis.
two metrics which may be used to assess (or ascribe) sovereignty, the other being control. While control pertains to the ability of the authority to influence the actions of subjects, legitimacy relates to a subjective perception on the part of those subject to a given form of authority that such authority is appropriate. The key insight from Krasner’s work is that, of these two metrics, legitimacy is by far more important than control. Legitimacy is always necessary to ascribe any aspect of sovereignty to a given state, and sufficient in itself to ascribe both international legal and Westphalian sovereignty; control is a necessary (but not sufficient) condition only for domestic sovereignty.

The difficulty in measuring or comparing sovereignty, across states or even for the same state over a period of time, is partly a result of legitimacy’s subjective nature: the extent of control enjoyed by an actor in relation to a particular territory, group of citizens, or thematic area might be evaluated in a plausibly rigorous (if not precisely objective) manner, but it is only one determinant of the perceived legitimacy of that actor among those who are subject to its control. Similarly, the potential for sovereignty to be fungible across aspects is a result of its relationship with legitimacy: if the necessary condition for sovereignty in each aspect is state legitimacy, then it becomes possible for state actors that acquire any measure of legitimacy – from whatever source – to attempt to generalise that legitimation to every aspect of state authority or sovereignty.

33 Ibid
The nature of legitimacy is studied in a variety of fields, including political science\(^{35}\), ethics\(^{36}\), jurisprudence\(^{37}\), and psychology\(^{38}\). The relationship between formal status, service delivery in fact, and legitimacy is seen as a key variable in post-conflict reconstruction or development efforts\(^{39}\). Across disciplines, scholars conceive legitimacy as arising from three sources, or as a result of three processes:

- the performance of a given actor, i.e. what tangible and/or intangible outcomes that actor delivers when it exercises control (“output legitimacy”);
- the procedural basis or origin of a given actor’s claim to legitimacy, i.e. how that actor came to exercise control, or how it maintains authority (“input legitimacy”);
- the relationship between a given actor and some other actor, wherein the latter’s authority or exercise of control extends to legitimation (“associative legitimacy”).

As a result of the terms of the UN Charter, as well as the particular historical outcomes of UN involvement with conflicts and peace processes, the legitimacy of actors in the international system is largely the result of a process of association; the primary actor with the ability to confer associative legitimacy being the UN itself. In terms of Krasner’s typology, both international legal and Westphalian sovereignty are products solely of associative legitimacy (primarily by way of UN membership), while domestic sovereignty requires both input legitimacy and output legitimacy.

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Domestic Sovereignty: Conceptualising Limited Statehood

Domestic sovereignty is a function of both control and legitimacy: it requires that the authority structures of the state be able to exercise authority across all policy arenas within the territory of the state, and that such authority is both acquired and exercised through means, processes, procedures, and/or institutions which are recognised as appropriate by those who are subject to the state’s authority. The operational manifestations of these metrics thus amount to elements of sovereignty.

In theory, the exercise of state authority is legitimated by citizens of the state as part of the proverbial social contract. The *quid pro quo* in this social contract may be described as governance, broadly understood as the delivery of essential services, including security, the rule of law, and public infrastructure (a non-exhaustive list of which might include health, education, transport, communications, and trade). While governance relates to output legitimacy, the modes through which social contracts are expressed, modified, renewed, or transferred – the political processes of managing power and control within the state – relate to its input legitimacy.

Note again that the theoretical maximum for each of these elements is an ideal type; the practice is more vague. A state that exercises sufficient control, acquired through reasonably legitimate means, to be able to deliver such levels of governance as match the expectations of a sufficient number of citizens, at most points in time and in most of its territory, may be assessed as having domestic sovereignty; it will also tend to be seen as more stable (or unlikely to face violent internal conflict).
The elements of domestic sovereignty – control (e.g. monopoly of force), norm compliance (input legitimacy), and governance (output legitimacy) – are closely inter-related\(^\text{40}\), and typically they are all embodied in the same state institution. (E.g. a law enforcement officer embodies the state’s monopoly over the use of force, which is recognised by citizens as legitimate, provided it abides by the norms laid down for exercise of police authority, thus ensuring security and public order.\(^\text{41}\)) These elements are also seen in the political science and conflict resolution literature as playing important roles in the origin, maintenance, resolution, and transformation of conflict\(^\text{42}\). As such, they may be defined with significantly more precision than the broad concept of sovereignty itself. Indeed, this is precisely the subject that social contract theory has discussed at some length\(^\text{43}\).

A central element of state control over a territory is the monopoly of force. Monopoly over the use of armed force may be measured in terms of access to weaponry and human resources, particularly those skilled in the use of violence.\(^\text{44}\) Only certain uses of force by certain institutions are recognised as legitimate, with this legitimacy extending out from the use of force to the use of any other forms of authority (which notionally rely on the state’s ability to enforce their execution).

\(^{44}\) Tilly, The Politics of Collective Violence.
In modern states, the exercise of such legitimacy is particularly embodied in the legislative function, which dictates the norms by which authority is deployed and enforced, and the judicial function, which alone can examine those norms, and offer redress for their violation. In adopting the Universal Declaration of Human Rights and subsequent covenants and conventions, states have progressively expanded the range and sources of norms to which they are ostensibly committed (and by which they are ostensibly constrained). In doing so, states have also undertaken to provide a growing range of opportunities, facilities, and services to their citizens. The creation of the public infrastructure necessary to sustain the provision of such services has become an essential part – and one of the most visible markers – of the exercise of control by a state.

The extent to which each element is ascribed to a state may be more or less stable, but the extent to which it is actually embodied or practiced by a given regime or government can vary considerably, both within and between states, and across various periods of time. The actions of a government can thus make a state “more” or “less” sovereign than it was before, not least because each of these components (as well as the overarching assessment of sovereignty) is also associated with the level of risk of internal or external conflict.

45 Weber, Bureaucracy.
46 The International Covenant on Economic, Social, and Cultural Rights (ICESCR); The International Covenant on Civil and Political Rights (ICCPR) with its optional protocols; Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); Convention on the Rights of the Child (CRC), etc.
Krasner and Risse\textsuperscript{48} note that states seldom meet these ideals of “full” domestic sovereignty, and propose the concept of “limited statehood” to describe the reality that prevails instead: a situation where the domestic sovereignty of a state is constrained, either in relation to some part of the territory of the state, or in relation to a specific policy area. Risse and Lehmkuhl further argue that areas of limited statehood are typically subject to “multi-level governance”\textsuperscript{49}, involving a mix of public and private actors, at local, national, regional, and global levels, engaged in a continuous renegotiation of their roles, obligations, privileges, power, and positions in the hierarchy of statehood relative to each other.

What does such “limited statehood” involve? In terms of the elements of domestic sovereignty, it may manifest as a lack of monopoly over the use of armed force (as evidenced, for instance, by the presence of non-state armed groups); it may manifest as a loss of input legitimacy, wherein a state that does retain authority is seen as having forfeited the right to use it (as evidenced, for instance, in protests against a particular government); it may manifest as a failure to provide governance (as evidenced, for instance, in the absence of key governance functions – such as security, adjudication, enforcement of contracts, education, or health – and/or of their provision by actors unaffiliated with and potentially hostile to the state).

Michael Lawrence notes a tendency among state actors, which follows directly from the presumption of exclusive legal claim to sovereignty awarded by the international community to incumbent governments, to attempt to delegitimise non-state providers of governance (and especially of security)\textsuperscript{50}. He points out that a lack of state capacity seldom corresponds to an absence of governance in fact; so-called “ungoverned spaces” will develop their own methods of governance, the details of those mechanisms being poorly studied or understood, perhaps because state actors fear that even such inquiry will amount to acknowledging the (actual or potential) legitimacy of these mechanisms. The labels used for such institutions – hybrid regimes, shadow governments, and so on – are intended to suggest that they are an aberration from the norm, instead of a historically common phenomenon.

As Lawrence argues, these mechanisms are in fact alternate power structures, which may or may not be viable as self-contained entities. Similarly, they may or may not be in opposition to the state. Lawrence critiques uninformed attempts to impose state control in areas under alternate governance as taking on the needless “double burden” of dismantling these pre-existing structures, then attempting to replace them with state-based mechanisms. In terms of peacekeeping mandates, the label of “restoration of state authority” ignores the fact that organised state presence may be unprecedented (and potentially unviable) in that area. The legitimacy of state authority might be difficult to ensure in such areas – first, because it is an

\textsuperscript{50}Lawrence, M.\textit{ Towards a Non-State Security Sector Reform Strategy}. CIGI SSR Issue Papers No. 8, 2012.
imposition that displaces an existing system of governance (low input legitimacy), and second because it may not be able to provide governance in any effective manner there (low output legitimacy). An intervention which trades legitimacy for state control over a given part of its territory does not contribute to state sovereignty.

Alternate or multi-level governance arrangements can be expected to increase where state authority or capacity recedes. This phenomenon is particularly evident in Africa, as chronicled in Morton Jerven’s ground-breaking work on the history of measurement of national income and development\textsuperscript{51}, which illustrates the sharp decline in governance capacity in almost every African state between 1970 and 1990. A combination of economic collapse and neo-liberal economic policy prescriptions led to drastic reductions in state delivery of services; following Krasner, Risse, and Lawrence, one might anticipate a corresponding increase in alternative or multi-level governance, even in the midst of predation and state collapse.

As Jerven further demonstrates, economic policy has been misdiagnosed and mismanaged even after African states began to recover from this slump. Especially in the post-2001 War on Terror period, this has meant that international and domestic attention has focused on security and counter-terrorism, which brings both a neglect of other forms of governance and a new range of tools for regimes to deny legitimacy to these alternate structures.

\textsuperscript{51} Jerven, M. *Poor Numbers: How we are Misled by African Development Statistics, and What to Do about It.* Cornell University Press, 2013.
Robert Bates characterises this period of collapse as a time when the key variables factored into the risk/reward calculus of state elites fell below the critical value necessary for political order within the state\textsuperscript{52}. Governance was thus replaced by predation and accumulation; conflict management in the course of this enterprise was typically achieved by a process of accommodation of elites from peripheral and disadvantaged regions in roles up to and including the head of state. The machinery of the state came to be seen as an engine for self-enrichment, and for simply maintaining power – regime survival – as the monopoly of force fell apart. In a state where elites prioritise predation over governance, the government is likely to lose legitimacy among citizens. This creates a negative spiral, wherein the erosion of state monopoly over force and capacity for governance create ever-increasing potential for conflict at multiple levels. Even the pattern of rotational power-sharing – a circulation of elites – is merely a periodic appeasement of a select few among the many who are otherwise targeted for exploitation.

Even where conflict does break out, the patterns of collusion among elites that are established in times of “peace” can remain uninterrupted in times of “war” – a pattern identified, among others, by David Keen in Sierra Leone\textsuperscript{53} and Stephen Ellis in Liberia\textsuperscript{54}. Internal conflict\textsuperscript{55} is a clear breakdown of domestic sovereignty – most visibly of the monopoly over force, but inevitably of governance and legitimacy as
well. While such conflict is always a contest for power, it can also provide cover for parties to the conflict to pursue self-enrichment strategies, including through behaviours too egregiously appropriative or aggressive to be viable in the absence of such disruption. When disorder is seen as more rewarding than stability, the default condition of the state is one of transition, not only between regimes, but also between levels of domestic sovereignty.

The “domain of the state” under conditions of limited statehood – which would correspond, in this particular analysis, to the domestic sovereignty of many African states – is thus subject to the operation of what Alex de Waal describes as the “political marketplace”\(^{56}\). Lacking true monopoly over the use of force, regimes dispense patronage to specialists in violence, either in the form of direct payments (which requires a generous political budget) or by licensing loot and corruption (as in Zairean dictator Mobutu’s remark to his army and government employees: “Vous êtes chez vous, débrouillez-vous.”).

The negotiation that underpins multi-level governance is an auction of loyalties, in which violence serves as a form of currency, albeit one whose value is determined only in exchange. To quote Mobutu again: “Everything is for sale, everything can be bought… [and] the slightest access to power constitutes a veritable instrument of exchange.”\(^{57}\) Patterns of violence in the political marketplace tend to be fractal; a rule of “as above, so below” obtains. Conflict and plunder come to be

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entrenched in the livelihood strategies of various actors\textsuperscript{58}. State and non-state actors may be impossible to tell apart, as demonstrated by the term “sobels” (an abbreviated label for fighters who enrich themselves by being “soldier by day, rebel by night”) used to describe the opportunism of rebels and state military alike in Sierra Leone.

“War”, classically understood, is a form of political contestation between sovereign actors; under conditions of low domestic sovereignty, however, violence may supplant political order as a maladaptive form of governance. The most striking feature of such conflicts is the sheer continuity of violence between times of “war” and “peace”, with each easily transforming to the other. What prevails instead is a time of “nor war nor peace”\textsuperscript{59}, an “interwar” defined by calculation of political and economic exigencies, where “war is not fought because there are enemies… there are enemies because war is fought”\textsuperscript{60}.

To summarise: domestic sovereignty is a product of both control and legitimacy, or – to use language more common in the conflict resolution literature – of the elements of monopoly of force, procedural legitimacy, and governance. While these elements are never vested exclusively in the state, their decline is by definition a “loss” of domestic sovereignty; such decline may also lead to internal or internationalised conflict, potentially prompting deployment of a peace operation.

\textsuperscript{58} Keen, D. \textit{The Economic Functions of Violence.}
\textsuperscript{60} Debois, M. “Living by the Gun in Chad: Armed Violence as a Practical Occupation”, \textit{Journal of Modern African Studies} 49, No. 03 (2011): 409-428
A peace operation deployed under such circumstances represents an intervention by international actors into a situation of limited statehood, wherein it will of necessity participate in the prevailing systems of multi-level governance. The mandates of such peace operations, however, are doctrinally unable to recognise the fragmented and less-than-sovereign reality in which they must operate, which may well be subject to its own alternate norms, such as the patrimonial and short-term logics of the political marketplace.

To operate within such a state, international organisations seek to maintain the fiction that the government in power is vested with and enjoys an exclusive claim to legitimacy among citizens of that state. To the extent that they apply a sovereignty-focused theory of change in executing good-faith conflict prevention, resolution, and management efforts within that state, they will seek to convert that fiction into reality: to create or restore a monopoly (or strong competitive advantage) over the use of force, procedural legitimacy, and capacity to provide governance to the regime. The contradiction inherent in such efforts, however, is precisely that even where they succeed, the fact of their being undertaken itself undermines the sovereignty of that state; this legal fiction, dictated by the international norms of sovereignty thus frequently diverges (perhaps irreconcilably) from the reality of compromised domestic sovereignty – which is attested to by both the existence and the activities of the peace operation61.

International Sovereignty: Extraversion and Instrumentalisation

Krasner proposes that the basis for assessing International Legal sovereignty and Westphalian sovereignty is legitimacy alone; further, this is primarily (and perhaps exclusively) in the form of associative legitimacy, since it is only the perception of other states (typically in the form of UN membership) that is relevant. International Legal sovereignty arises from the reciprocal recognition by states of each other’s sovereignty; such “recognition as a state” (and hence the conferral of legitimacy) is an act of sheer legal fiction, which does not demand of any external evidence: the very ascription of recognition itself makes reality of what is recognised.

Recognition is a reciprocal and irrevocable act. Being an act of which only sovereigns are capable, the very act itself affirms the status of each actor as a sovereign; again, under the UN Charter, as only states can be sovereign, recognition as a UN member-state thus extends the fiction to hold each state to be equal qua statehood and sovereignty alike. Westphalian sovereignty then flows from this recognition-amounting-to-reality: since each state is equally sovereign, irrespective of actual control exercised, the sole legitimate source of control over that state’s territory must be the state itself. The assessment of this level of control is, however, again a subjective ascription by other states of exclusive legitimacy to each other. States will violate the prohibition on intervention in each other’s internal affairs whenever it suits their interest, yet deem that the norm of Westphalian sovereignty upheld – a system Krasner pithily names “organised hypocrisy”.

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The effect of recognition (as creating its own, irrevocable legal fact) is that a loss of domestic sovereignty does not affect international legal sovereignty as such: states can continue to extend reciprocal recognition, notwithstanding any lack of control over domestic affairs on the part of one or both. This situation is exemplified in the diplomatic recognition accorded in various times and places to Taiwan (which was recognised even when the Chinese Communist Party controlled the mainland), Palestine (which has been recognised by some states, but not others, despite varying degrees of physical control over its territory at various times), or Somaliland (which remains an “unrecognised state” despite actually exercising domestic control).

A lack of domestic sovereignty similarly cannot compromise the ascribed legal fiction of Westphalian sovereignty; to the extent that external actors become part of the multi-level governance that replaces it, however, it does amount to a loss of Westphalian sovereignty in fact. On the other hand, while international legal sovereignty (and even Westphalian sovereignty) may be insulated from the reality of compromised domestic sovereignty, international recognition enables regimes to conflate associative legitimacy with input (or, more rarely, output) legitimacy at the domestic level. States have thus relied freely on the fact of international recognition in making claims to domestic sovereignty; the very fact of this exercise itself undermines the procedural basis (i.e. input) legitimacy of the state, while providing an avenue to bypass that requirement – at least as it pertains to legal recognition.

62 The transnational nature of conflict and politics in many African states would suggest that this external role is highly likely. Krasner’s fourth concept – interdependence sovereignty – is also of relevance here.
Jean-François Bayart, having studied this phenomenon among African states, famously proposed that the history of Africa is a record of “extraversion”\textsuperscript{63}: a deliberate strategy whereby rulers have compensated for limited autonomy or domestic control by mobilising their privileged access to resources and systems outside the state, with most regimes channelling these external resources (profits from trade, bilateral or multilateral assistance, or benefits from international pacts) primarily to the task of maintaining internal control.

The logic of extraversion dictates that the external environment itself is treated as a resource, not only by the regime in power in a given state, but also by those who seek to claim the state in its place. Elites have repeatedly bartered Westphalian sovereignty in fact for international legitimacy, which they are adept at using as leverage in the day-to-day negotiation of multi-level governance. Jeffrey Herbst locates this instrumentalisation of recognition in the history of African states\textsuperscript{64}, especially in the determination of boundaries at the time of decolonisation: areas were recognised as parts of the territory of a given state based on colonial administration, and independent states continued to use this “certification” by outside powers as a means to extend or preserve power. In many cases, the newly independent state also depended on the former colonial power for access to the world economy, thus remaining in a less-than (Westphalian) sovereign position.

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Pierre Englebert provides empirical evidence that legitimacy is fungible across forms, noting that weak and dysfunctional states rely on international legal sovereignty to bolster their claims to power precisely in the areas where statehood is limited or subject to challenge. Recognition as a state enables the regimes overseeing weak states to gloss over their *de facto* shortcomings, precisely because it comes with the presumptive attribution of Westphalian and domestic sovereignty.65 Certainly, regimes, non-state actors, and citizens do have a shared understanding of what functions properly belong within “the domain of the state”; even coercion and extortion have historically been institutionalised in and regulated by the state.66 This shared understanding forms the basis for negotiating the roles of the various actors, each of which can be seen as vying for its share of “statehood” in a given territory or sector, while remaining within the overarching fabric of the state. As a result of this dynamic, Englebert argues, even non-state actors who challenge state authority in practice might still behave as custodians of “the domain of the state”.

In summary, of the three components of domestic sovereignty, legitimacy is most susceptible to being substituted by international recognition; this process is all the more likely where a regime has lost its monopoly on force and/or failed to provide governance, thereby compromising its domestic credentials. This trade-off remains feasible because International Legal sovereignty is inexhaustible – it is ascribed even to states that have *de facto* lost Westphalian sovereignty.

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Shared Sovereignty: Modern Peace Operations as Multi-Level Governance

If peace operations represent a derogation from sovereignty (ostensibly to restore and improve sovereignty), then in which (or what kind) of states is such intervention legally and politically feasible? Applying Krasner’s typology, I propose that states may be sorted into four categories, based on their levels of domestic sovereignty (i.e. monopoly, procedural legitimacy, and governance, as seen in control over state territory\textsuperscript{67} uncontested by force), and whether or not they possess International Legal sovereignty (i.e. recognition as a state by other states, ideally in the form of UN membership).

The assumption, in speaking of states, is that we are referring to an internationally recognised entity with high domestic control – a “normal” state – as opposed to a state that is internationally recognised but lacks domestic control – a “fragile” state. An entity which functions as a state, with a high level of domestic control, but lacks international standing is an “unrecognised” (or quasi-)state. Finally, there may be domains of international interaction where neither \textit{de facto} nor \textit{de jure} control by any state has been established – “ungoverned spaces” – which currently lie beyond the domain of the state. While these might once have referred to territorial regions, the term is now perhaps more applicable to areas of law and policy where the normative basis for state control is yet to be determined.

\textsuperscript{67} As a simplifying assumption, we may treat Westphalian sovereignty as corresponding to high domestic control; where the state’s domestic authority is compromised, it may be assumed to have lost Westphalian sovereignty as well.
TABLE 1: Categorisation of States by Aspect of Sovereignty

<table>
<thead>
<tr>
<th>International Legal Sovereignty (Recognition)</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Sovereignty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>High</td>
<td>“Normal” State</td>
<td>“Unrecognised” State</td>
</tr>
<tr>
<td>Low</td>
<td>“Fragile” / “Failing” State</td>
<td>Ungoverned Spaces?</td>
</tr>
</tbody>
</table>

Traditional peacekeeping missions were deployed to monitor ceasefires agreed to by two “normal” states. The broader political process which the mission was intended to support was a peace negotiation between those two states; the mission’s primary contribution was to serve as a verification measure, given the lack of trust between those states.

Traditional principles of peacekeeping – consent, impartiality, and non-use of force except in self-defence – were relevant and feasible to apply in such a context:

- Both parties to the conflict (and ceasefire) were Westphalian sovereigns; hence any form of intervention required their consent.
- Both parties, as UN member-states, were sovereign equals; hence the intervention (and, more broadly, the UN) had to maintain impartiality.
- Both parties, as domestic sovereigns, exercised sufficient control over their forces and sufficient monopoly of force as compared to other actors; hence, the intervention would not normally have occasion to use force.
Conversely, modern peace operations are most likely to be deployed to “fragile” states. Some sources also label these “failed” or “failing” states\(^68\), but – as noted above – the reality of these states is not so much failure or power vacuum as some form of multi-level governance\(^69\). The broader political process the mission was intended to support was unclear; as we have seen, the evolving peacekeeping doctrine of “sustainable peace” suggests that it may be a reorganisation of the actors in that multi-level governance structure into something more closely resembling a “normal” state.

Under these circumstances, the application of the traditional principles becomes challenging:

- The identity, interests, and relative standing of actors is unclear, as are the implications for the political process of engaging with each actor; hence consent is difficult to define, establish, or maintain.
- In deploying to a UN member-state, the peace operation is obliged to formally respect its sovereignty; hence it cannot take an impartial stance in an intra-state conflict where one of the parties is the state.
- Given the state’s weak domestic control, the monopoly over the use of force is broken, and a variety of actors may use force against the mission or to impede its mandate; hence the mission may need to use force beyond self-defence.

\(^{68}\) In 2014, Fund For Peace renamed its “Failed States Index”, which it has published since 2003, the “Fragile States Index”. See also Krasner, Sharing Sovereignty.

\(^{69}\) Risse and Lehmkuhl, Governance in Areas of Limited Statehood.
Such peace operations are typically initiated when a peace agreement is signed between the government and some or all of the parties in conflict with it; the agreement may call for the UN to guarantee, support, and monitor its provisions, or the state may invite the UN to do so. In as much as the agreement incorporated a role for the UN, the signatory parties may be considered to consent to the peace operation, but the only party whose consent will be formally sought (in the form of a Memorandum of Understanding or Status of Mission Agreement) is the government.

Given that the mission is mandated by the UN, which recognises only the incumbent regime as representing the state, any claim it may have to impartiality is also compromised from the outset. (The mission might be able to claim, instead of impartiality, commitment to ensure the implementation of the peace agreement in good faith.) The more expansive the provisions of that peace agreement, the greater the potential scale and scope of international involvement; where the parties reach a transformational deal with far-reaching political, security, economic, and social consequences – a “Comprehensive Peace Agreement” – a multidimensional peace operation is required to oversee it.

Multidimensional mandates and robust mandates are conceptually distinct\textsuperscript{70}; the latter involves an authorisation to use force for purposes beyond self-defence. In practice, almost all current mandates place the security of individual citizens at the core of the mission’s goals and operations (as shown by the increase in the number

\textsuperscript{70} Bellamy and Williams, Thinking Anew.
of missions with “Protection of Civilians” mandates\(^\text{71}\). The Security Council adopted its first free-standing resolution on Protection of Civilians as a thematic issue in 1999\(^\text{72}\); the following year, the United Nations Mission in Sierra Leone (UNAMSIL) became the first peace operation to be explicitly mandated to “take necessary action” to protect civilians facing imminent threat of physical violence\(^\text{73}\). Subsequently, with a growing focus on protection of human rights and compliance with humanitarian law as a core function of UN intervention,\(^\text{74}\) as well as a broader acceptance of the imperative of preventing mass atrocities,\(^\text{75}\) this mandate has come to be far more common – even presumed – for peace operations.

Every peacekeeping mission currently deployed in areas of ongoing conflict is authorised to use “all necessary means” – in UNSC-speak, an authorisation to use force\(^\text{76}\) – to protect civilians from attack or threat of attack, at least in their areas of operation and to the extent that their capacities permit. These mandates also reiterate the primary responsibility of the government of the state to provide such protection. (Where state armed forces stand accused of attacks on civilians\(^\text{77}\), it remains to be seen whether a UN mission could use force against them while protecting such civilians from such an attack.)


\(^{76}\) Strictly speaking, such a mandate should be assigned under Chapter VII of the UN Charter. This has not been the case each time a peace operation is authorised to use “all necessary means”, but the effect of the phrase has still been interpreted as an authorisation to use force.

\(^{77}\) United Nations (OHCHR), *Report on Human Rights, Accountability, Reconciliation, and Capacity in South Sudan*, A/HRC/31/49, 10 March 2016. The attacks in this case may amount to war crimes or crimes against humanity – precisely the atrocities a mission with a Protection of Civilians mandate is to prevent.
Clearly, the reality of “fragile” states is that the government has limited capacity to provide direct physical protection, let alone security or law and order as a form of governance; depending on the specifics of the conflict and the identity of the civilians facing threats, the government may not even desire to protect them. Peace operations that deploying in such situations must thus determine how to interact with a range of state and non-state actors, each of which has its own levels of interest in and fidelity to the peace agreement whose implementation the mission is mandated to support.

A peace operation that pursues its mandate in this context is, of necessity, participating in the process of multi-level governance that characterises such states; whatever the normative pressure to maintain that the state remains fully sovereign, the reality is that the presence and operation of a multidimensional and robust peace operation is itself a form of shared sovereignty. This applies most particularly to missions that are given “extension of state authority” mandates: state sovereignty remains ascribed to the state (and confers associative legitimacy on the incumbent regime), but the peace operation must assist in improving the state’s domestic control, which it can only do in a sustainable and peaceful manner if it enhances the state’s input and/or output legitimacy. Such mandates thus include tasks that reflect on both output legitimacy and input legitimacy of the state (service delivery, legislative reform, elections), even as the robust posture – the willingness to use force – changes the extent of domestic control exercised by the state.
Non-state actors may not be inimical to the government, or may not resort to violence even when they are; these actors may play a role in current or future governance arrangements and configurations of power within the state. The line between peacekeeping and peacebuilding is blurred when the peace operation seeks to incorporate these actors into political processes that are designed to manage conflict in the short term, and increase institutional capacity for conflict management in the long term.

In updating *Agenda for Peace*, Brahimi had expanded the concept of peacebuilding (drawing on the work of Johan Galtung) – to encompass “activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war.” Such peacebuilding is of necessity “a multidimensional and highly intrusive undertaking… involving a reconstruction of politics, economics, culture and society…” and of the entire system of state. To create sustainable peace in “fragile” states, the mission must “facilitate the political process by promoting dialogue and reconciliation and supporting the establishment of legitimate and effective institutions of governance.”

78 Galtung, J. “Three Realistic Approaches to Peace: Peacekeeping, Peacemaking, Peacebuilding.” *Impact of Science on Society*, 26, no. 1-2 (1976): 103-115. Galtung defines peacebuilding as “the practical implementation of social change through socio-economic reconstruction and development.” He was the first to draw the distinction between “negative peace”, defined as the absence of active violence, and “positive peace”, where the root causes of conflict are resolved by addressing underlying structural and cultural violence. This approach sees peacebuilding as a process of societal transformation.

79 Brahimi Report.


81 Capstone Doctrine.
The goal of such an intervention is to create “...an institutional framework where a peaceful settlement process can be engaged and future disputes can be addressed.”82 As Hutton notes, the ultimate goal is to restore a set of state institutions that can “...mediate pressures from the external and internal environment and act as the mediator, interlocutor and regulator, while still being a primary area of contestation.” 83

This is a vast task even in “normal”, stable states; as De Waal notes, in many post-colonial states, it is all the more complex because such institutions are “subordinate to social affinities and political networks, and are likely to remain so for the foreseeable future.”84 Local conceptions of legitimacy (and hence expectations for the role and conduct of institutions) can differ from the ideas of international actors, and the logic of the patrimonial marketplace of patronage can so constrain the state as to render the authority of an incumbent government all but illusory.

A mission that attempts, in good faith, to truly create effective, legitimate, and accountable state institutions in such a context is taking on a task even more difficult than regime change: it is seeking to create regime type change – to so alter the normative basis of state-society relations as to constrain the range of choices available to any actor that gains control of the state. Whether any peace operation can achieve such change is beside the point; the process itself will involve a sharing and reconfiguration of state sovereignty and multi-level governance.

82 No Exit Without Strategy.
3. Assigning Sovereignty: International Organisations as Agents

Even peace operations that compromise every component of domestic sovereignty can be deployed only with the host state’s consent, which formally reaffirms the state’s international legal and Westphalian sovereignty. In international law\(^{85}\), that sovereignty is inherent in the state, and not susceptible to dilution; it can be assigned by the state, but any obligation so created can still be dishonoured by reasserting the state’s prerogative. Assignment can be a function of law (as when states accept new norms that create constraints or obligations, thereby altering the norm of sovereignty itself\(^{86}\)), or a function of delegation (whether under a contract or some form of multi-lateral treaty, which may further create a deliberative or bureaucratic mechanism). Such assignment may be tacit or inferred, as when a state accepts the operation of some other actor in ways that contravene its sovereignty.

In terms of Krasner’s framework, the decision of a state to accede to an international organisation is an un-coerced violation of Westphalian sovereignty. This organisation – even if it is an external actor created by the state in concert with like-minded others – may then exercise influence over aspects of domestic policy. Once conceded, this invitation can turn into an ongoing – and potentially increasing – restriction of the domain of the state, as the international organisation may then impose a growing range of norms, obligations, and constraints on state behaviour.

\(^{85}\) Montevideo Convention on the Rights and Duties of States, 165 LNTS 19; 49 Stat 3097, entered into force 26th December, 1934.

As a result of such accession, the state may find itself bound to multiple international organisations, each of which may seek to impose varying interpretations on a given aspect of its sovereignty (or a potential alteration thereof). Until 1945, no provision of international law existed to address this situation, or to constrain a state to adopt the interpretation favoured by one international organisation over another; indeed, the state could assert its prerogative to ignore all of those impositions, and the only sanctions that might ensue would be political.

The UN Charter, however, created a new hierarchy of obligations: under Art. 103, “in the event of a conflict between the obligations of Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” This is a normative assignment of sovereignty in its purest form: it constrains into perpetuity the range of functions that a state may delegate to only those that are in congruence with the UN Charter.

Again, since the Charter has the sovereign equality of member-states as its core, the effect is that – in theory – a state may choose to assign some sovereign function under a treaty, but refuse to honour that commitment on the grounds that it runs contrary to an obligation (to maintain the sovereign equality of states) under the UN Charter. In effect, only such undertakings as are binding on all states could not be avoided in this way; the corollary is that no undertaking is truly binding, but that a state is complying with it of its own will, in a continuing and deliberate exercise of its sovereignty.
That situation remains purely theoretical. Despite its unprecedented nature, this assignment cannot prompt much change in the international system while the UN operates primarily as the extension of the will of its member-states. To be sure, the UN has long been subject to criticism for being a tool of the most powerful states, particularly the P5. There is some truth to those accusations, if only because of their veto power – yet even the veto has limited utility. It is undeniably effective in blocking actions which one of the permanent members oppose, but it cannot guarantee that any action they propose will be approved. There is also no veto in the General Assembly, or in the vast (and growing) number of UN funds, agencies, and affiliate bodies; once these are created, the extent of control a country can wield within them might correspond more to budgetary allocations, expertise, or human resources than any realist conception of power. While power continues to play a role, the course of action chosen by the UN in any given instance reflects an accommodation of multiple sets of interests.

In relation to peacekeeping in particular, Barnett and Zürcher identify the key process as one of negotiating between the interests of the peacekeepers themselves (who want to achieve sustained stability, then leave – although this traditional view may be complicated when the troop contributing countries include neighbouring states, regional organisations, or others seeking to project power in that area), the existing central elites in the government (who want to conserve their own power), and peripheral elites (who may be part of government, private citizens, or active as
non-state actors, but all want to preserve and/or expand their own power, including by gaining access to central power at the expense of current core elites). The premise is that UN presence and involvement might – to draw on Bates – shift the calculus of elites sufficiently for political order to re-emerge.

Three Roles of the UN

That recalculation, in turn, takes place in the institutional context of the UN itself as a multi-functional organisation, which serves at least three fairly distinct functions: a forum for member-states to meet and debate, an instrument of the expressed will of those member-states, and an actor in its own right with an agenda and agency of its own. The role as a forum is perhaps the most visible, with major debates being hosted on a range of topics in the General Assembly, Economic and Social Council, and Security Council. When, at the conclusion of such debates, a course of action is chosen by the member-states, the relevant UN departments, funds, and agencies can be mobilised to achieve it; at that point, the UN’s role as an instrument becomes more prominent.

Throughout the process of negotiating and implementing such decisions, however, the UN also retains agency in and of itself. The Charter itself recognises that the UN secretariat (embodied in the person of the Secretary-General) has such agency; Art. 100 requires member-states to desist from seeking to influence UN staff

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87 Barnett and Zurcher, The Peacebuilder’s Contract.
in the performance of their duties. Drawing on a functionalist understanding of their role, UN Secretaries-General have asserted their right to create mechanisms – such as special rapporteurs and commissions of inquiry – neither envisaged in the original Charter, nor demanded by any member-state.

Peacekeeping is similarly an innovation that builds upon what was envisaged in the UN Charter; in particular, it is an invention made necessary by the failure of member-states to reach the arrangements necessary to call upon designated standing forces. In place of these arrangements, peacekeeping missions are staffed by voluntary contributions from Troop Contributing Countries (TCCs), which sign separate agreements with the UN for each mission. More importantly, the UN also signs a Status of Mission Agreement (SoMA) with the member-state to which the mission is being deployed. This state has already delegated a portion of its sovereignty to the UN when it signed the UN Charter; it also grants specific consent for the deployment of the peace operation.

Through both these channels, the peace operation remains – technically – an agent of the state in which it is deployed. Through the UN, however, it is an indirect agent, and it serves multiple principals. The host state, in turn, is also technically bound to abide by the mandate given to the mission by the Security Council – first by Art. 25 of the UN Charter, and second by its specific consent to the mandate.

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89 Art. 43, which provides for these arrangements, remains in the Charter unimplemented - a dead letter.
90 In fact, the situation is even more complex. Contingents on a peace operation will report to the mission Force Commander, but likely also to their own capitals, adding an extra layer of indirect principals.
In addition, the more fragile or lacking in capacity the state, the greater the extent to which power over the mission is exercised more assertively by the Security Council, the UN Secretariat, or by such other states as may wield influence over the mandate, composition, and/or local reception of the mission. This is of particular concern in cases where the government of a state grants its consent under duress or coercion, as for instance when facing imminent military defeat by the proxies of a regional or global power, or in periods of interregnum (Somalia after Siad Barre’s fall, Libya after Muammar Gaddafi’s execution) when multiple actors may be able to claim to represent the state, and the UN or other external actors may be able to determine based on their own interests which of these claimants to identify as a desirable beneficiary of associative legitimacy.

In a sense, then, each peace operation differs in the configuration of the multiple agency relationships it embodies; its primary principal remains the UN, which in turn has member-states as its principals, but the nature and configuration of interests and power between those states is dynamic as well. On the one hand, this complicates the task of the peace operation’s senior leadership, since their ability to be effective (as well as their own professional future) depends in part on their fulfilling this role as agent-to-many-principals. On the other hand, it creates multiple opportunities for leverage; those who can discern this complex network of agency ties can attempt to influence the actions and effect of the peace operation through a variety of channels.
Continuums of Agency and Interest

In negotiations theory, it is widely recognised that every agent must choose which set of interests they will pursue in any given negotiation: their own, or those of the principal – the eponymous “Principal-Agent Problem”. Specifically, these choices fall along two continuums\(^{91}\): a “Principal-Agent continuum”, which considers the extent to which the interests of the agent diverge from those of the principal, as well as a “Temporal Continuum”, which ranges from interests as stated at a given time to what the agent foresees as being in the principal’s interest in the future. The argument is not so much that the interests of the agent and principal will necessarily diverge at all times, but rather that the agent is regularly faced with decisions as to which interests to prioritise.

In making that choice, an agent may take up one of three broad positions on the principal-agent continuum, which may be stylised as pure agent, partner, or substituted principal. Similarly, on the temporal continuum, the three possible positions are: robot, champion, or visionary. In most instances, the agent’s role does not lie at either extreme. Particularly in the areas of diplomacy, peace-making, and political processes, the agent aims to facilitate a sustainable balance between the current and future interests of the parties. This is as true of the UN – and any peace operation mandated by the UN – as it is of any individual negotiator.

In balancing between their own interests and those of the principal, the agent can choose to wholly subsume themselves to the latter – acting as nearly identically to the principal as they can gauge in a given context. Alternately, they can “go rogue”, subordinating the interests of the principal to their own in that context. The vast majority, however, will take the more practical position of negotiating partners: they will seek to achieve the principal’s interests (e.g. a particular deal) while also furthering their own (e.g. a reputation or relationship). A typical method for such balancing may well be shifting positions on the temporal continuum: while a “robotic” agent would simply privilege the principal’s stated interests in all circumstances, the visionary will try to transform the principal’s perception of interests towards being more future-oriented. Again, most agents will operate as champions, advocating a judicious selection of stated interests while trying to transform the principal’s perception of others.

This is particularly true for the UN, where the range of principals and interests that it must accommodate and balance are far wider than the member-state in which the peace operation is deployed. Just as with the “true” sovereign state, the “pure robotic” agent or “rogue transformative” agent is a stylised ideal seen nowhere in practice, certainly not in the practice of UN peace operations. As a negotiator and agent, the UN pursues a combination of the principals’ stated interests, the interests of the organisation itself, and its best estimate of what will serve the shared interests of humanity for peace and security in the future.
4. The Trilateral Negotiation of Sovereignty

The process of managing a peace operation in the implementation of its mandate can be schematically represented as a trilateral negotiation between the UN (as represented by the peace operation), the state (as represented by the incumbent government), and various non-state elements (which include both non-state armed groups as well as civil society actors). More broadly, every instance where:

- an international organisation intervenes in a given state,
- with the consent of that state, and in so doing
- becomes part of the system of multi-level governance within that state,
- thereby interacting with a range of sub-state or non-state actors –
- can be conceived as a trilateral negotiation between international, state, and sub-state (including non-state) actors.

The triangle schema is a simplification, created by focusing on a certain set of actors, and one subset of the negotiations they undertake. Further negotiations take place at each of the vertices of this triangle; a negotiations theorist would recognise these as “two-level games”\(^92\). Actors situated in the sphere of influence at one vertex are also likely to reach “across” and seek to influence or participate in the “internal” negotiations taking place at the other vertices; indeed, given enough influence, an actor may be able to establish itself as a pole in its own right.

Negotiating Consent

Modern peace operations are mandated to perform a wide range of tasks: a non-exhaustive list would include monitoring ceasefires; reporting human rights violations; protecting civilians from imminent threats; preventing sexual and gender-based violence; reforming security sectors; disarming, demobilising, and reintegrating former combatants; assisting refugees and displaced persons; improving law and order; providing humanitarian relief; conducting demining operations; supporting peace processes, building administrative capacity – and in some cases even fighting non-state armed groups. Why should this great variety of roles be subsumed into the category of “negotiation”? What are peace operations negotiating, and with whom they negotiate these matters?

Ian Johnstone provides a succinct answer: peace operations negotiate consent from a range of state and non-state actors. Irrespective of the specific aspect of the mandate to which a particular task may correspond, the process of undertaking it – and indeed the ability of the peace operation to deliver on any aspect of its mandate successfully – requires the management of consent. Central to this conception of peacekeeping as consent management is a view of political processes (including those that lead to the deployment of peacekeepers, and the ones they are mandated to support) as an ongoing and open-ended relationship: each of the parties knows it to be a relational – rather than transactional or one-time only – contract.

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Johnstone notes that “a contract is relational ‘to the extent that the parties are incapable of reducing important terms of the arrangement to well-defined obligations ... [either] because of the inability to identify uncertain future conditions or because of inability to characterize complex adaptations adequately even when the contingencies themselves can be identified’.”94 The analogy to peace agreements is apparent, and the parallel is even closer when we think of peacekeepers as agents; any form of agency-based relationship gravitates, by definition, towards the relational end of the spectrum.

In applying Relational Contract Theory to conceptualise the negotiation of conflicting interests by peacekeepers, as part of the process of managing consent in support of an ongoing peace process, it becomes necessary to examine consent along two dimensions: the identity of the parties consenting (consent by whom?), and the substance of the matter to which they have given consent (consent to what?)95. In terms of the former, peacekeeping doctrine distinguishes between tactical and strategic players, based on whether their consent is of essence to the performance of a specific function in a given area and at a given time (tactical), or whether it is of essence to the broader political process of peace-making and peacebuilding that the peace operation is designed to support (strategic)96 – albeit the two can be difficult to distinguish in a situation where strategic parties fight by way of tactical proxies97.

96 Capstone Doctrine.
97 Johnstone, Managing Consent.
In terms of the latter, a precise answer is inherently difficult to provide. What the parties believe they have consented to is a function of, *inter alia*, their own conception of the peace process (or whatever interaction they have with the peace operation); in particular, it matters whether the parties in question believe that they will need or desire to interact with the international organisation in the future. If they do foresee repeated interactions, the nature of the game changes, and their choice of strategy is also likely to shift accordingly: *ceteris paribus*, game theory suggests that most actors will gradually settle on a “tit for tat” strategy, trying to ingratiate themselves to the peacekeepers unless their interests are threatened, violently opposing peacekeepers whose actions do threaten such interests, and indicating a willingness to return to cooperation if peacekeepers back away in the face of such opposition or the threat thereof.

Such actors are also likely to see the exact contents of the peace agreement as important, but ultimately a product of a certain set of circumstances, and malleable (or unwise, or even infeasible) in the event of changes in the circumstances that form the parameters for the agreement. Broadly speaking, both of these prospects approach certainty for the host state; at a more granular level, they are more assured for the current central elites – who are also more likely to be strategic actors – than for peripheral or aspiring elites, whose only leverage might be tactical.

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99 De Waal, Mission without End?
Extending the analysis of consent management to the model of peacekeeping as trilateral negotiation requires studying the peace operation itself as a party. As Barnett and Zürcher note, peacekeepers are broadly interested in achieving their mandate (at a strategic level), and in ensuring the safe return of all members of their staff or contingents (at a tactical level). Peacekeepers are aware that they face an obsolescing bargain – as well as an obsolescing welcome from various actors – in the sense that their leverage to achieve these goals is at its highest at the moment of their deployment, and tends to decline thereafter. Within those broad outlines, the internal consent management process of the peace operation plays out: contingents from different countries must be incorporated into the force command and control structure, with the political priorities of troop-contributing countries being taken into account. Similarly, the prospect of collusion, corruption, or indiscipline by peacekeeping forces at a tactical level can turn elements of the peace operation itself into a spoiler to the peace process. For instance, where a significant proportion of the contingent is contributed by a neighbouring state or regional power, that state becomes (if it was not already) a strategic actor, whose consent to any proposed political settlement is similarly key to its successful adoption and implementation.

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100 Barnett and Zurcher, The Peacebuilder's Contract.
101 Johnstone, Managing Consent.
The key lesson to emphasize from the consent management framework of peacekeeping is simply the sheer necessity of these negotiations: when the mandate of the peace operation requires the implementation of such ambitious tasks as the reform (which is to say, transformation) of the state’s political, security, economic, and social institutions, and this task is undertaken over an undefined period of time with uncertain levels of political support from the peace operation’s principals, then it is only by securing and maintaining the consent of an entire constellation of actors at all three vertices of the triangle that the peace operation can be effective.

At an operational level, these negotiations are concerned with mundane aspects of implementing the peace operation’s mandate: access and dialogue, the strengthening of institutional capacity and legitimacy, the provision of security, the delivery of various services and humanitarian assistance. At a deeper level, however, a large number of those actions touch upon one or more of the components of the host state’s domestic sovereignty – monopoly, legitimacy, and governance. Peacekeepers may temporarily provide governance or monopoly over force instead of the government, or they may engage – politically or militarily – with non-state actors who are substituting for the state, all while trying to restore (or create) the institutional capacity of the state to act for itself in these matters; the very fact of this external support may improve or damage the legitimacy of specific elements of the regime among different constituencies. In each such case, the underlying subject matter of this negotiation is no less than the locus of sovereignty in that state.
For the state, peacekeeping represents a trade-off between Westphalian and domestic sovereignty. The peace operation is, by definition, an external actor – and while its presence in the host state may notionally be as an agent of that state, it is simultaneously also an agent of various other principles, including both other member-states and the UN as an actor in itself. Consent to the deployment of a peace operation is an invitation to an external actor to participate in the multi-level governance of domestic territory, clearly compromising Westphalian sovereignty. The closer the mandate of the peace operation to statebuilding per se, the greater the extent of this qualification – a process taken to its logical conclusion in East Timor and Kosovo – but the greater the success of the peace operation in such statebuilding endeavours, the greater the gain in domestic solidarity in fact accruing to the state. At the end of the day, Westphalian sovereignty – as a norm, rather than fact – is a function of ascription; as long as the host state remains a recognised member-state of the UN, it will be deemed to be a full Westphalian sovereign. The legal fiction that makes Westphalian sovereignty an all-or-nothing attribution frames this trade-off for the state: the aspect it is called upon to compromise is one of which it enjoys a seemingly endless supply. States may reasonably believe that they still have something to gain from any such peace operation; conversely, to refuse consent to such an operation is to risk facing unilateral intervention, which would be a loss of Westphalian sovereignty with no compensating gain in state capacity.

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(Re)Negotiating Sovereignty

As we have seen, modern peace operations are mostly deployed to regions of multi-level governance. To successfully implement their mandates given the reality of limited state control, they must engage in a process of consent management – a trilateral negotiation between peacekeepers, state authorities, and non-state actors. Especially among peace operations that are given multidimensional mandates, the outcome of the negotiation affects the nature and extent of control, procedural (input) legitimacy, and governance-based (output) legitimacy enjoyed by the state. The substance of that negotiation is thus, in effect, the domestic sovereignty of the host state.

In the process, by continuously interpreting and giving substance to the norm of sovereignty – which remains an inchoate norm in international law – peace operations are also re-negotiating the norm of sovereignty in international law itself. This argument draws on the work of Ian Johnstone, who analyses how the operational activities of international organisations can refract back, through the prism of elaboration and practice, into international law.

Specifically, when an organisation tasked with implementing a certain mandate invokes soft law norms to justify the particular interpretation of that mandate which it espouses, it brings about a level of deliberation and negotiation of that norm among states, international organisations, and other members of the discursive community; this deliberation leads to a certain interpretation of the
otherwise inchoate norm to gain greater acceptance. This form of law-making is an incidental result of the delegation of sovereignty and the provision of norm-based mandates by states to the organisation\textsuperscript{106}.

Johnstone describes the role of international organisations in contributing to the hardening of soft law as analogous to the role of state practice in the formation of customary international law. The process requires the existence of a soft law norm – one that lacks formal binding authority, but which tends to be followed to the extent that states can determine how to comply with it. International organisations, like states, also seek to comply with norms in the course of the work they carry out in fulfilment of their mandate. These activities are likely to be undertaken “\textit{in a regular manner and in the conviction that even if not responding to positive requirements of international law they are at least authorized by and in conformity with such law.”}\textsuperscript{107}

The key elements necessary for this process to take place are, first, a legal norm that is inchoate, or ill-defined, but whose existence or authority itself is not particularly contested; second, an international organisation whose mandate in some way touches upon or requires interpretation of the norm; third, the occurrence of debate or deliberation between states and other actors resulting from the adoption of a particular interpretation of that norm by the international organisation; and fourth, the evolution of some form of consensus resulting from that deliberation.


The resulting interpretation is also supported by a growing stock of conduct – by states and international organisations – evidencing both its content and its perceived importance. Johnstone describes this as the “hardening of soft law”, yet it can also be conceived as a process of norm transformation: the previously unclear or poorly articulated norm is deemed, by virtue of its continuing application in a certain form by, *inter alia*, an international organisation, to be equivalent to the new and somewhat different norm which corresponds most closely to the articulation applied by that organisation in its efforts to comply with the initial norm. The essence of this process is the perceived identity between its origin and endpoint, with the legitimacy attached to the former transferring to the latter, potentially increased by the evidence of practice it has accumulated along the way.

Seen a process of law-making, this process is incidental, rather than intentional, and deliberative rather than adjudicative. As a result, a powerful actor may be able to resist a particular norm or interpretation thereof, but it is the frequency of the practice and the shared understanding of its obligatory nature, rather than the relative power of its practitioners, which leads to the transformation of the norm. In this respect, international organisations have an inherent advantage: states exercise their sovereign prerogative to delegate a portion of their sovereign authority to such organisations, which becomes their agent in the implementation of a particular mandate. In assigning it such a mandate, states have empowered that organisation to apply such norms as may be relevant to that mandate.
To the extent that the organisation’s actions in pursuit of that mandate are then anchored in a particular interpretation of a norm, it is guaranteed to become the most frequent implementer of that norm. In subsequent disputes, if the content of the norm is to be determined by reference to either frequency of practice or fervency of belief, the international organisation – as a construct specifically designed to practice and implement that norm – will by definition appear a greater authority than any single dissenting member-state (even a powerful one).

This process can apply to the norm of sovereignty as well, albeit the resulting transformation is somewhat more complicated to observe or decipher. Consider the elements: first, sovereignty certainly qualifies as an inchoate norm – its existence is established with absolute authority in the UN Charter, but its content remains vague. UN peace operations are specifically mandated to take actions that touch upon this norm. As a brief survey of reportage on peacekeeping or debates in the Security Council will indicate, the actions of the various peace operations regularly spark debates about various aspects of sovereignty. The fourth element is where the challenge arises, as this deliberation has not yet led to any more fully articulated consensus around the norm of sovereignty. When such a consensus might emerge is impossible to predict, precisely because sovereignty remains a central provision of the UN Charter. As the Charter enjoys a unique pre-eminence in international law, the norm of sovereignty – with all its ambiguity, constructive or otherwise – remains theoretically unassailable (short of an amendment of the UN Charter).
Recall, however, that the essence of this process of norm transformation is precisely that the norm is deemed to have changed only in interpretation, not substance. This is an important distinction in legal analysis: the nature of authority and procedure required to reinterpret a particular provision of law need not be the same as that required to actually alter or replace that provision. In general, the threshold for reinterpretation is lower than that for outright change.

What role (if any) the Charter envisages for the organisation of the UN in reinterpretation of the foundational norms it contains remains unclear. Yet, it is clear that the process of consent management at the heart of peace operations’ operational activities constantly interacts with and manipulates sovereignty in ways that the proclaimed absolute norm cannot endure. In other words, while the norm of sovereign equality may remain absolute and central in the UN Charter, the content of that norm – what all states enjoy when they assert “sovereignty” – may yet be changed by this process of continuous renegotiation. The operational activities of UN peace operations, particularly those with multidimensional and robust mandates which necessitate their participation in the processes of multi-level governance that characterise “fragile” states, are leading to a “softening of hard law” with respect to the norm of sovereignty.
Recognising this dynamic enables a preliminary answer to the question on the effect of peace operations on sovereignty. The deployment of a peace operation, by definition, adversely affects the Westphalian sovereignty of the host state. This conclusion is avoided, in international law and politics, by presenting the peace operation in the form of an agent of the host state itself; this attribution of agency is not so much untrue as overstated, given the considerable number of principals to whom the peace operation responds – including the UN as an actor in itself. Once deployed, the peace operation can make the host state “more” or “less” sovereign, in relation to its domestic sovereignty, depending on the extent to which it enables the consolidation of domestic control, procedural (“input”) legitimacy, and governance-based (“output”) legitimacy in or by state authorities.

On the other hand, to the extent that the operational activities of peace operations can be conceived as redefining the norm of sovereignty itself, peacekeeping is categorically making not only the host state but all states “less” sovereign. The range of circumstances which may lead to deployment of peace operations can be seen as promoting human-centric rather than state-centric conceptions of sovereignty; in representing a potential consequence that regimes may face if their actions violate human rights on a scale sufficient enough to prompt the Security Council to determine they pose a threat to international peace and security, peace operations can be seen as restricting the scope for exercise of sovereign power by state authorities.
5. Proof of Concept: Assessing UNAMID

This paper has proposed an inherent link between the operational activities of international organisations, specifically the trilateral negotiation of consent by peacekeeping missions, and the norm of sovereignty in international law. I have proposed disambiguating sovereignty by distinguishing between its international, Westphalian, and domestic aspects, then further examining three elements of domestic sovereignty – domestic control (including monopoly over force), procedural legitimacy, and legitimacy based on the provision of governance – and analysing the extent to which they are affected by the activities of peace operations.

I believe that such analysis enables a much clearer assessment of the effect and effectiveness of peace operations, even without taking into account the broader effect of the activities of peace operations on the norm of sovereignty in international law itself. In this penultimate section, I will attempt to apply this aspect-and-element-based analysis of sovereignty to the African Union – United Nations Hybrid Mission in Darfur (UNAMID). This section does not delve into sufficient detail to be considered a free-standing case study; rather, it may be treated as a proof of concept – a demonstration that the application of this framework is of value when seeking to answer the questions raised in the introduction: what is the effect of peace operations on sovereignty, and when and how is a peace operation to be considered effective?
Background

UNAMID was mandated in July 2007, with the adoption of UNSC Resolution 1769\(^{108}\), and began operating on December 31 of that year. The protection of civilians (“POC”) was a “core mandate” of the mission\(^{109}\): UNAMID was made responsible for “…the protection of civilian populations under imminent threat of physical violence and prevent attacks against civilians, within its capability and areas of deployment, without prejudice to the responsibility of the Government of the Sudan.”\(^{110}\)

As has been widely reported\(^{111}\), UNAMID has found it difficult to navigate the multiplicity of actors and conflicts of Darfur’s fragmented landscape. Hervé Ladsous, the UN Under-Secretary-General for Peacekeeping, openly acknowledged that consent management was an ongoing challenge for the mission: “…bad relations with any host government can make it impossible for a mission to operate – to move around the country, to have their equipment cleared by national customs, to deploy new personnel. So this is a legitimate conundrum with which mission leadership must wrestle in every context. With regard to UNAMID, it is no secret that the relationship with the Government has always been challenging from the inception of the Mission.”\(^{112}\)

\(^{111}\) Lynch, Colum. “A Mission that was set up to Fail”, Foreign Policy, April 8, 2014.
\(^{112}\) “Hervé Ladsous, UN Under-Secretary-General for Department of Peacekeeping Operations (DPKO), to Foreign Policy Magazine”, New York, April 7, 2014.
For UNAMID, pursuit of a human security agenda – as reflected in the Protection of Civilians mandate – is complicated by the reality of multi-level governance, the prevailing logic of the political marketplace, and the reality of tactical denial of consent. To manage external and internal power relations in Sudan’s turbulent politics requires a skill known in the Sudanese vernacular as tajiility (from Arabic tajiil, “delay”); the central elites in Khartoum have mastered this technique of managing expectations without committing to any concrete or timely deliverables. Over the years, the Government of Sudan (GoS) has elevated brinksmanship and tactical denial of consent to a fine art.

Applying the component-based analysis of sovereignty helps illustrate both the effect and the effectiveness (or lack thereof) of UNAMID. In short, the doctrinal inability of UNAMID to take into account the shifting landscape of sovereignty, legitimacy, and governance in Darfur has significantly constrained its ability to pursue its mandate, with the result that UN peacekeeping has become no more than another player in Sudan’s political marketplace.\(^\text{113}\) The concept of sovereignty is also made relevant by Khartoum’s consistent and strenuous opposition to any role for the international community in Darfur.

\(^{113}\text{De Waal, Mission without End?}\)
Domestic (and Westphalian) Sovereignty in Darfur

In relation to sovereignty, Sudan follows its own model, more complex than prevailing legal orthodoxy can accommodate. The traditional model of statehood envisions a sovereign with a monopoly over violence, with vassals providing rents (e.g. taxes) to the sovereign in return for protection (the provision of security). Sudan’s model is better described as a political marketplace, where the sovereign has rents, and the vassals are mercenaries, who hire themselves out to the sovereign.114 When they desire a higher wage, as it were, they threaten violence against the sovereign instead – a form of negotiation using violence as currency, which De Waal terms the rent-seeking rebellion.115

The fiction of monopoly control over violence simply does not hold in Sudan, or other states characterised by the political marketplace. For instance, the Security Council consistently demanded that the GoS “completely disarm the Janjaweed”.116 This is problematic at two levels. First, “the Janjaweed” were never a coherent political, military, or ethnic entity as a Non-State Armed Group (NSAG).117 Some of the tribes that term has come to be associated with have actually suffered considerably as a result.118 Second, the extent of control that the GoS exercised over elements of “the Janjaweed” has varied across place and time; arguably there was

114 De Waal, Real Politics.
some effective control over these forces – or at least sufficient commonality of purpose – for much of 2004, but the situation has changed significantly thereafter.

Subsequent relations between the GoS and different elements of “the Janjaweed” can be characterised, at best, as temporary alliances of convenience\(^{119}\), based either on payment (sometimes actual, often in the form of pillage, and more often promised than actually delivered) or an agreement on whom to target\(^{120}\). The modal case is one of “negligent support”, where the GoS had little say in the choice of targets, but might have taken action to prevent a given attack\(^{121}\). In still other instances, former Janjaweed militia have fought against government forces, or for groups they once targeted\(^{122}\). Still others have been absorbed into state paramilitary organisations, such as the Rapid Support Forces, which are commanded by the National Intelligence and Security Service (NISS)\(^{123}\).

More groups and factions participate in the multi-level governance of Darfur than any party can count or manage. The logic of the rent-seeking rebellion further dictates the continuous fragmentation of armed groups, with the same individuals involved with multiple “factions” at different times (or even at the same time), and some “factions” having little existence except as vehicles to command rents.


\(^{120}\) Polgreen, L, “*Over Tea, Sheik Denies Stirring Darfur’s Torment*”, The New York Times, June 12, 2006.


\(^{123}\) “*Constitutional Amendments demise of Sudan’s Bill of Rights: Opposition*”, Dabanga Sudan, Khartoum, January 8, 2015.
Even if we treat each faction as a distinct NSAG, they still differ in their capacities, in their track records, and in their ability to achieve domestic and international legitimacy. The GoS, of course, had little domestic legitimacy in Darfur, given the long history of economic exploitation and manipulation of land-rights issues by Khartoum to spark conflict – a classic divide-and-rule strategy\textsuperscript{124}. The various NSAGs also had only limited legitimacy, often organised around their ethnic affiliations\textsuperscript{125}. (These ethnic ties had far wider regional implications, especially in relation to Chad\textsuperscript{126}, but Chad was not unique in siding with one or the other faction – illustrating again that low domestic sovereignty prompts low Westphalian sovereignty in the course of multi-level governance).

The best illustration of the corrosive lack of domestic legitimacy is the thoroughly flawed Darfur Peace Agreement (DPA): it resulted from a mediation process that ignored the realities of the political marketplace\textsuperscript{127}, was pushed through only by unreasoning international pressure\textsuperscript{128}, and was instantly so unpopular that the parties that refused to sign it was seen as more legitimate, while the sole leader to sign – Minni Minawi – was promptly side-lined by Khartoum. While clearly unworkable without broader support, the agreement did have many detailed provisions, and was still the basis for the eventual deployment of UNAMID.

\textsuperscript{124} Tubiana, J. "Darfur: A War for Land?" in \textit{War in Darfur and the Search for Peace} (Alex De Waal, ed.) 2007: 35-57.
\textsuperscript{125} Flint, J. "Darfur’s Armed Movements" in \textit{War in Darfur and the Search for Peace} (Alex De Waal, ed.) 2007: 140-172.
Proxy warfare is a well-studied phenomenon, but Darfur provides examples even of proxy diplomacy – wherein non-state actors gain international legitimacy by capitalising on international hostility for the incumbent regime in the host state. Two-level games abounded, with these non-state actors also competing with each other for territory, resources, and legitimacy. The United States, for instance, came to support the splinter faction of the Sudanese Liberation Movement/Army (SLM/A) led by Minni Arko Minawi; Minawi also had the support of senior Chadian officials, who share his Zaghawa ethnicity. The original SLM/A, led by Abdel Wahid el Nur, enjoyed significant support from Ethiopia. The Justice and Equality Movement (JEM), the third major NSAG, grew so close to President Idriss Deby of Chad that it actually fought to protect him when N’djamena was overrun by Khartoum-backed proxies – but also had ideological loyalties to Libya’s Muammar Gadhafi. Darfur cannot be studied without reference, at a minimum, to Libya, Chad, Ethiopia, the USA, and – after 2011 – South Sudan.

Between the conflict and the preceding exploitation, it should come as no surprise that the organised provision of governance was seldom attempted by any of the parties discussed above. Where present, it was achieved at a lower tier of multi-level governance, mostly by local chiefs and traditional leaders. Security, rule of law, or public infrastructure was seldom seen beyond the local level in Darfur.

Was UNAMID Effective?

In practical terms, UNAMID had to manage consent from multiple actors – state, non-state, even regional – to acquire or maintain even the most basic capacity to fulfil its mandate in Darfur. While the Darfur Peace Agreement built on some successful negotiation of security agreements, notably in relation to community-led security arrangements in refugee camps, the relationship between the GoS and NSAGs remained in flux; UNAMID had to constantly navigate this uncertainty. Unsurprisingly, the mission has had more problems than success stories; a former spokesperson for UNAMID described the situation as one where “it is fair to say that UNAMID peacekeepers largely failed to protect Darfur civilians, and their presence didn’t deter either the government or the rebels from attacking the civilians…”

It is in this light that the statement by Hervé Ladsous, that bad relations with a host government make it impossible for a mission to operate, must be read. The Government of Sudan has become notorious for holding up visas and customs clearances for UNAMID personnel or equipment, and for its failure to guarantee safe passage or undamaged delivery of various items. UNAMID has also seen more attacks on peacekeepers than any other peace operation, and more deaths.

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134 Francis, D. “U.S., Allies Demand Accountability in UN Inquiry into Crimes in Darfur”, Foreign Policy, November 5, 2014.
135 Lynch, C. “They Just Stood Watching”, Foreign Policy, April 7, 2014.
136 The UNAMID website reports 218 deaths among its staff till date: 146 troops, 44 police, 1 military observer, 3 international civilians, 22 local civilians, and 2 others.
In addition, while reporting and debate on developments in Darfur followed events on the ground quite closely, the logistical, financial, and military resources UNAMID would need to respond as directed have often lagged behind. Again, the Security Council is driven by one set of political imperatives, to be seen as taking action – but unless adequate capacity is delivered, the action they have mandated cannot actually be executed.

In the event, being tasked to implement the DPA was a fatal flaw for UNAMID from its very inception. Between the SLA-AW and JEM refusing the sign the DPA, the subsequent splintering and reconfiguration of their forces (as also those of other armed groups, including some who might be identified as “Janjaweed’), and Khartoum’s bitter refusal to consent to the peace operation the UN originally wanted to deploy (under Resolution 1706), the so-called peace agreement served no purpose except to legitimate the deployment of a peacekeeping mission, whose presence and operation received little consent from the most powerful actors in the region.

That said, UNAMID could still make an effective contribution to conflict resolution / transformation / prevention, if it located, empowered, and supported actors interested in those outcomes. Instead, being constrained to maintain the fiction of Sudan’s Westphalian sovereignty, UNAMID was unable to influence the broader political situation in Darfur. This is not to say that the peace operation’s presence and activities had no positive ramifications; for the most part, however,
these were on the margins of the political process, or related to the actual providers of governance – on the lower tiers of the multi-level governance arrangement.

On political engagement, for instance, UNAMID was mandated to support the implementation of a provision of the DPA known as the Darfur-Darfur Dialogue and Consultations (DDDC), intended to facilitate local dialogue, conflict resolution, and localisation of the DPA’s provisions. Since the two parties to the DPA – the GoS and the SLM/A (MM) – had little domestic legitimacy, however, local support for any agreement between them vanished. The DDDC process might still have rallied support for the DPA if it had enabled groups left out of the initial peace process to renegotiate portions of the agreement so as to join it on terms they found acceptable. An “endorsement procedure” did get adopted as a means for non-signatory groups to show their support and commitment to the DPA, but the GoS refused to reopen the negotiations; Minawi also refused to contemplate any dilution of his gains, and the SLM/A (AW) and JEM had no interest in legitimising the DPA in this way. Lacking consent from any of the major players, the DDDC process failed.137 Meanwhile, the actual dynamics of conflict shifted vastly: Minawi renounced the DPA, the SLM/A merged into the Sudanese Revolutionary Front, and intra-Arab conflict currently accounts for most casualties in Darfur.138 No mechanism is available to address these changes, except to the extent that the Security Council can respond by altering UNAMID’s mandate.

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Most prominent of the local-level success stories is the arrangement for community policing within the internally displaced persons (IDP) camps in the region. Police trainees are nominated by the communities themselves (which, in practice, means they are NSAG members already active in the camps). UNAMID provides basic equipment, and training in policing methods and Sudanese law, and UNAMID police also conduct joint patrols with the camp police, as part of combined monitoring and on-job mentoring. The GoS authorises the police, specifies judicial authorities to whom they report crimes, and commits to absorb these personnel into the Sudanese Police Forces when the camps close down.

For Khartoum, this intervention was an extension of state authority to the IDP camps, where local hostility prevented regular police from entering. For IDPs and NSAGs, it provided a legitimate structure, a prospect for future regularisation, and a genuine reduction in crime and sexual violence against women in camp. While there has been some friction between traditional leaders and new (younger) leaders – so-called “camp sheikhs” – who have gained influence based on control over the police, this intervention does seem to have reduced prospects of conflict in the long term. That said, such improvements also contribute to making IDP camps into permanent fixtures, thus abetting a process of traumatic accelerated urbanisation and deprivation of land rights – a short-term success, but one whose long-term complicating effects cannot be resolved without resolving the larger conflict.

Compare the modest extent of this success to the true scale of the peace support undertaking in Darfur. To succeed, the peace operation must effect a change that is even harder than forceful regime change – it must succeed in \textit{regime type change}, in the face of a lack of consent for any change from the incumbent regime.\textsuperscript{140} Only through large-scale statebuilding can any actor actually dismantle the political marketplace of patronage which underlies conflict in Darfur, and indeed across Sudan and South Sudan. This implies the negotiation and institutionalisation of viable processes of conflict resolution, economic governance, and community interaction, which must simultaneously abide by international norms while achieving domestic legitimacy.\textsuperscript{141}

Having reached much the same conclusion, Khartoum seems poised to prevent the peace operation from even attempting such reforms. The GoS appears increasingly unwilling to accept any international presence – a stance which it can conveniently attribute to the refusal of the Security Council to act to dismiss the case against President al-Bashir in the International Criminal Court. Moving beyond intimidation and tactical denial of consent, in November 2014 the GoS “formally requested” UNAMID to “prepare an exit strategy”.\textsuperscript{142} This announcement followed reports of a mass rape in the village of Tabit, in North Darfur, and related allegations that GoS forces prevented UNAMID personnel from accessing the region, and

\begin{itemize}
  \item \textsuperscript{140} Sarbahi, A, “Insurgent-Population Ties and the Variation in the Trajectory of Peripheral Civil Wars”, \textit{Comparative Political Studies} (2014).
  \item \textsuperscript{141} Woodward, National versus International Legitimacy.
  \item \textsuperscript{142} “Sudan asks UN Mission in Darfur to Prepare to Leave”, Reuters, Khartoum, November 21, 2014.
\end{itemize}
intimidated both investigators and witnesses.\textsuperscript{143} When the UN called for unfettered access and investigation into the incident, the response was a pointed refusal on the grounds that such investigations are used to discredit Sudan – and a reminder that UNAMID was supposed to be preparing to leave in any case.

The demand may be no more than the latest round of brinksmanship, but it demonstrates the ongoing failure of UNAMID to manage consent – a failure that is attributable not so much to the mission’s flaws as to the inherent contradictions between the concept of sovereignty and the attempt to impose a peace operation. In even appearing to meet the demand to prepare an exit strategy, UNAMID finds itself under pressure to neither launch new initiatives nor attempt to expand or scale ongoing efforts. In fact, the announcement of such a strategy would enable any party that believes its interests would be adversely affected thereby to take steps to prevent or undermine its implementation; Khartoum is likely to hold UNAMID to whatever timeframe for withdrawal is proposed therein, whether or not the desired markers for transition are achieved. The imperative to respect Sudan’s sovereignty, without which an international presence itself would lack international legitimacy, continues to create a situation where UNAMID’s contribution to sustainable conflict resolution remains shallow and easily undermined. In other words, UNAMID has not had the effect of making Sudan “less” sovereign – and by failing to take steps that risk such dilution of sovereignty, largely failed to achieve its desired effect.

\textsuperscript{143} Lynch, C, "See No Evil, Speak No Evil: UN Covers up for Sudan in Darfur", Foreign Policy, November 21, 2014.
6. **CONCLUSION: TOWARDS PRINCIPLED SOVEREIGNTY?**

Having examined the concept of sovereignty, we find that it remains blurred – a blurring in which we read the contestation of power between and within states. Following Krasner, we have attempted to find greater clarity in disambiguating sovereignty into its aspects, seeing thereby that the reality of domestic sovereignty rarely corresponds to the legal fiction of Westphalian and international sovereignty. This contradiction arises from the different metrics – legitimacy and control – used to assess sovereignty, wherein the importance of the former by far exceeds the latter. Indeed, when we further examine the sources of legitimacy, we find that Westphalian and international legal sovereignty are a function of associative legitimacy alone, and that it is only in assessing domestic sovereignty that one must consider the metric of control, as also the other sources of legitimacy: “output” legitimacy, from the provision of governance (i.e. security, law and order, and public infrastructure), and “input” legitimacy, from the adoption of accepted procedures for the acquisition and exercise of authority.

In contrast to the deeming fiction of sovereign equality, which is central to the UN Charter, we see that the elements of domestic sovereignty – although they too exist nowhere in absolute form – do vary between states; we have also seen a relationship between these elements, the likelihood of conflict, and the type of peace operation that might be deployed in response to such conflict.
Where they are deployed, we have seen that peace operations – in seeking to carry out operational activities in pursuance of their mandate – engage in a process of consent management, which might be schematically represented as a trilateral negotiation between international, state, and non-state actors (albeit the schema is a considerable simplification of a much more fluid and contested arena). Finally, we have noted how those operational activities are inherently linked to the elements of domestic sovereignty, such that the trilateral negotiation amounts to renegotiating the norm of sovereignty in international law.

This discussion of the elements of sovereignty, and their interaction with the process of consent management by peace operations, may appeal to the student of political science, international relations theory or international organisations law. Does it, however, hold any relevance for the policy maker, especially given that most policies are themselves shaped and implemented within the traditional hierarchies of state authority? I believe it does, for at least two reasons.

First, the effect of this discussion is to illuminate the growing trend towards redefining both sovereignty and security with reference to human rights, such that the focus shifts from state or regime security to human security. To give genuine effect to a human security mandate requires not only the recognition that the aspects and components of sovereignty vary from state to state, but also a move past the hitherto unassailable assumption that these capacities can vest legitimately in no actor except the state authorities.
The quest for a specific and actionable definition of sovereignty might prove unending, with the ultimate prize elusive. Even so, to engage in the process is to envision a range of scenarios where multiple actors – state, non-state, and extra-state – can have both domestic and international legitimacy, and so negotiate the pursuit of their interests as to achieve both governance and human security objectives. To the extent that the doctrinal and political inability to conceive of shifts in sovereignty and legitimacy actively hampers efforts to create sustainable peace, the future success of a number of peace operations depends upon the creation of intellectual and policy space for this discussion. The process of negotiating peacekeeping mandates – both their content and implementation – might be characterised today as “too many principals, too few principles”; one hopes that a discussion of normative or value-based assessment of sovereignty will serve to correct this imbalance.

Second, in providing conceptual clarity on the effects of peacekeeping, this framework also provides metrics for assessing the effectiveness (or success) of a given peace operation, especially in meeting goals such as “sustainable conflict prevention” or “extension of state authority”. The case of UNAMID shows that such assessment offers useful insights, including into the extent to which this continuous negotiation of sovereignty between state, non-state, local, regional, and international actors is already reality, and the grave dangers to human lives, human rights, and human security of persisting with an outdated and deliberately simplistic understanding of sovereignty in the face of this complex reality.
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