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SOUTH AFRICA, THE AFRICAN UNION AND INTERNATIONAL INTERVENTION IN LIBYA: A CRITICAL APPRAISAL[1]

Abstract

For many human rights activists the implementation of UN Security Council Resolution 1973 in favour of a no-fly zone in Libya was an indication that *The Responsibility to Protect* as a project was coming closer to being solidified as an 'actionable norm'. From such a point of view, the swift and decisive action by the UN and NATO demonstrated the international community's prioritisation of the protection of civilians and an honouring of the international community's commitment to the principles agreed to in 2005 with regard to *The Responsibility to Protect*. However, the South African government soon after the initial stage of implementing Resolution 1973 in March 2011 made an appeal to international role-players to respect the unity and territorial integrity of Libya as well as its rejection of any foreign military intervention in Libya. Likewise, the African Union stated that the organisation also strongly opposed any foreign military intervention in Libya and that the country's sovereignty should be respected by the international community and especially Western countries. This paper aims at critically examining and exploring the official South African stand and the AU's continental role shortly after the first aerial attacks were launched on targets in Libya until the killing of Gaddafi by Libyan rebels in October 2011.

Introduction

Political protests in Libya demanding an end to the four-decade long rule of former Libyan leader, Colonel Muammar Gaddafi, began to gain momentum on 15 February 2011 across the North African state, ultimately ending in a civil war. The Libyan government's response was to deploy its national army against the protesters or rebels with a view to crushing the unrest. The uprising turned into one of the bloodiest against a long-term ruler in the Middle East and resulted in a humanitarian crisis[2] when Gaddafi marshalled his land, sea and air forces, and even contingencies of mercenaries, behind him in his efforts to retain power. Given the Libyan leader's brutal single-mindedness of purpose, much of the international community's sympathy rested with the opposing rebel forces.

When Gaddafi's forces bombarded Libya's third largest city with artillery and advanced on the rebel stronghold of Benghazi towards the middle of March 2011, multinational diplomatic steps

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[2] International Coalition for the Responsibility to Protect, "The Crisis in Libya," 2011, www.responsibilitytoprotect.org/index.php/crisis/crisis-in-libya (accessed 24 October 2011).

to prevent the Libyan forces started to gain momentum.[3] Insisting on an immediate ceasefire in Libya, including an ending of attacks on civilians, which it said might constitute crimes against humanity, the United Nations Security Council (UNSC) adopted Resolution 1973 (2011) on 17 March 2011, thereby imposing a ban on all flights in the Libyan airspace – a no-fly zone – and tightened sanctions on the regime of Gaddafi. Importantly, the resolution committed member states to "take all necessary measures, to protect civilians and civilian populated areas under threat of attack".[4] This paved the way for continued multinational military attacks on Libyan forces and installations on an almost daily basis.

Soon after the North Atlantic Treaty Organisation (NATO) started its military campaign in Libya it became more and more evident that a serious rift has developed between the United Nations (UN) on the one hand and the African Union (AU) on the other. Former South African president Thabo Mbeki even accused the UN of destabilising the political process in Libya. He also called on African leaders to resist "interference" by the West in Libya and stated that Africans had lost confidence in the world governing body.[5] Similarly, South African president, Jacob Zuma, also lashed out at the NATO-led military intervention in Libya, asserting that it undermined the AU and its facilitating role in the Libyan crisis.[6]

The question is: where does the latest developments leave the AU as a continental body and important political and security actor on the African continent? More specifically, what was the AU position since UNSC Resolution 1973 was adopted; and what was the AU stand on the Libyan crisis until the killing of Gaddafi by Libyan rebels in October 2011? Furthermore, what role did the South African government play as a chief AU facilitator in the Libyan conflict? This paper aims at critically exploring these issues. In order to contextualise these questions and especially the official South African view, the views and perspectives of some of the most prominent South African commentators on the Libyan issue and the AU's role in this regard will be examined.

Background
On 24 March 2001, the Human Rights Council reported that security forces loyal to Gaddafi captured and took hundreds of Libyans to undisclosed locations where they were apparently submitted to torture or other cruel, inhuman or degrading treatments, or even executed. Later it was reported that over 650 000 people had fled to neighbouring countries and that close to 250 000 people were internally displaced.[7]

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[3] Mohammed Abbas, " 'Already too Late' for a No-Fly Zone in Libya," *Business Day*, 17 March 2011, www.businessday.co.za/Articles/Content.aspx?id=137461 (accessed 27 March 2011).

[4] UN Security Council, *Security Council Approves 'No-fly Zone' over Libya, Authorising 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions*, SC10200, 17 March 2011, New York: UN Department of Public Information, www.un.org/News/Press/docs/2011/sc10200.doc.htm (accessed 25 October 2011).

[5] Sunday Times Staff Reporter, "AU is not Being Taken Seriously," *Sunday Times*, 10 July 2011, p.4.

[6] Sunday Times Staff Reporter, 4.

[7] International Coalition for the Responsibility to Protect, 2011.

The Libyan crisis and UNSC Resolution 1973 once again placed the focus on the critical and complex issue of "the responsibility to protect". In Libya, the international community – and the AU – was (again) faced with the hotly debated question about when, where and how nations should respond to populations threatened with the gravest international crises, which range from genocide, war crimes, crimes against humanity, and ethnic cleansing.[8]

It is commonly known that the case of understanding or thinking of sovereignty was qualified by the ever-increasing impact of human rights in international norm dynamics. While there has been no abandonment of the norm of non-intervention and furthermore no transfer or dilution of sovereignty, there has been a "re-characterisation" of sovereignty in the context of international norm dynamics. The International Coalition for the Responsibility to Protect (ICISS) describes this as a move *from sovereignty as control*, to *sovereignty as responsibility,* in both internal functions and external duties. What has emerged is a transition from a culture of sovereign impunity to a culture of national and international accountability. Therefore, current-day international organisations, such as the UN, as well as NGOs and human rights activists, use international human rights norms as points of reference against which to judge state conduct.[9]

As far as the AU is concerned, Powell points out that the norms underpinning the AU's peace and security architecture resonate closely with elements found in *The Responsibility to Protect*. The AU's Constitutive Act and the Protocol Relating to the Establishment of the Peace and Security Council, assign high priority to the sovereignty and territorial integrity of AU member states. At the same time, in accordance with *The Responsibility to Protect*, the AU Constitutive Act places important limitations on state sovereignty, based on the premise that sovereignty is conditional. It is defined in terms of a state's capacity and willingness to provide protection to its citizens. If a state fails to honour or exercise these commitments, the AU has the right to intervene through multilateral military force for human protection purposes. The AU Heads of State and Government later also added an amendment to Article 4(h) of the Constitutive Act that allows the organisation the right to intervene in situations that pose "a serious threat to legitimate order to restore peace and stability" in a member state upon recommendation of the AU Peace and Security Council. What is remarkable is that the AU's Constitutive Act stands as the first international treaty to identify a right to intervene militarily in a member state on humanitarian grounds in cases other than genocide. Clearly, the AU's peace and security commitments were intended to move away from the former Organisation of African Unity's (OAU) tradition of "non-intervention" or "non-interference" in the affairs of member states to a new institutional culture of "non-indifference" and better accomplishments in the field of peace and security on the African continent.[10]

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[8]   Brookings Institute, "Libya and the Responsibility to Protect," 24 October 2011, www.brookings.edu/events/2011/0616_libya_responsibility.aspx (accessed 24 October 2011).

[9] International Coalition for the Responsibility to Protect, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, December 2001, Ottawa: International Development Research Centre, p.14.

[10] Kristiana Powell, "The African Union and The Responsibility to Protect", in *The African Union's Emerging Peace and Security Regime: Opportunities and Challenges for Delivering on the Responsibility to Protect*, *ISS Monograph*, 119 (May 2005): 2. See also: Organisation of African Unity, *Constitutive Act of the African Union*, 28 February 2001.

Informed by the ICSS guidelines and the protection framework found in The *Responsibility to Protect*, and following advances by the Libyan armed forces against rebel-held positions in the eastern parts of the country, the UNSC approved the adoption of Resolution 1973 on 18 May 2011. In this context, six years since the UN took the abovementioned decision in 2005, the UNSC decided on action against Gaddafi. Demanding an immediate ceasefire in Libya, including a cessation of attacks on civilians, which according to the resolution might constitute "crimes against humanity", the UNSC established a no-fly zone in the country's airspace and tightened sanctions against the Gaddafi regime. The UNSC also recognised the important role of the Arab League in the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the UN Charter, the League was asked to cooperate with other UN member states in implementing the no-fly zone. It further demanded that the Libyan authorities comply with obligations under international law and take all measures to protect civilians and meet their basic needs.

Ten of the 15 member states of the UNSC voted in favour of Resolution 1973, namely the US, Britain, France (permanent members), Bosnia and Herzegovina, Colombia, Gabon, Lebanon, Nigeria, Portugal and South Africa (non-permanent members). Five others abstained, namely China, Russia (permanent members), Germany, Brazil, and India (non-permanent members).[11] Speaking after the vote, representatives who supported the resolution agreed that "strong action" was necessary since the Gaddafi regime had not heeded earlier calls to end attacks on civilians and was on the verge of even greater violence against civilians as the regime closed in on areas previously dominated by opposition rebels in the eastern parts of the country. It was stressed that the objective was solely to protect civilians from further harm.[12]

Since the US, France and the UK launched attacks on Libya's air defences and other targets, African voices have become more vocal on the Libyan issue. This will be explored in the section below.

South African voices and the position of the AU
Although the AU on 10 March 2011 denounced the violence in Libya, stating that it posed "a serious threat to peace and security in the country and the region as a whole, as well as to the safety and dignity of Libyans and African migrant workers living in Libya",[13] the AU was conspicuously reticent to make a firm stand on the Libyan issue when UNSC Resolution 1973 was tabled. This sparked Lihle Z. Mtshali[14], a South African journalist currently based in Washington, to argue that "Africans have taken quiet diplomacy too far". Although critical and sceptical of the true motivations behind especially US involvement in Libya, namely concerns over oil supplies, Mtshali lambasted the AU for not taking action on the crisis in Libya. She

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[11] ISS Africa Conflict Prevention Programme, "North Africa: Libya: UN Passes No Fly Zone Resolution as South Africa Fails to Align with the BRIC Group," *ACPP Daily Briefings*, 18 March 2011, p.1.
[12] UN Security Council.
[13] International Coalition for the Responsibility to Protect, 2011.
[14] Lihle Mtshali, "Africans are Taking Quiet Diplomacy Too Far," *Sunday Times (Review)*, 27 March 2011, p.5.

argued that the enforcement of a no-fly zone was aimed at preventing a humanitarian disaster in Libya where opposition fighters were armed with toy guns against Gaddafi's armed forces and that the UNSC therefore rightly and justifiably authorised all necessary military action to impose the no-fly zone. In strong words, she described Gaddafi as a senile old man who would sooner kill every single Libyan than let go of power. In Mtshali's own words:

> I can't imagine, for the life of me, why the AU does not do anything about all the tyrants running around our continent. Oh wait, I forgot, most of them are dictators as well. As long as that is the lay of our land, we do not have any right to criticise NATO for taking matters into their own hands when it sees a deranged dictator killing his people... I would like to see more action by the AU on African dictators, and less yadda yadda.

Another heavyweight South African commentator, former *Sunday Times* editor, Mondli Makhanya, likewise criticised African role-players for not acting swiftly on the Libyan crisis. Makhanya holds that powerful nations will always be guided by national interest when they intervene in conflicts abroad, and that Africans should be asking themselves how the continent's instruments and tools available to the AU can be used effectively and quickly to prevent states from killing their own people. As far as Western-led interventions are concerned, the question is: "should others (Western nations) sit idly by and watch Africans get slaughtered while our leaders deliberate on African solutions?" Only when this question has been answered and relevant role-players have acted on the answer will Africans "earn the right to tell others to butt out of our affairs".[15]

Likewise, another authoritative South African political commentator, Prof. Adam Habib, stated that he too, would have preferred intervention by the AU. However, all that the AU was capable of doing was to send a high-level, fact-finding mission to Libya (the AU High-Level Ad Hoc Committee on Libya) when Gaddafi's forces closed in on Bengazi and Misurata and fears of a massacre became imminent. Habib premised his view on the argument that, the dilemma posed by the crisis in Libya was in essence no different from that which the international community have often been confronted with elsewhere. For Habib, the question relating to norm dynamics was how and under what conditions should intervention occur to protect citizens from their own governments?

In Habib's view, the enforcement of a no-fly zone should have been aimed at saving lives and not imply any form of regime change:[16]

> If we dither and delay, and wring our hands when action should be taken, we have Rwanda. If we become sanguine about intervention, are driven by avarice and greed, and allow regime change because of what political ideologies elsewhere in the world want, we get Iraq. The no-fly zone in Libya must avoid both outcomes if it is to have legitimacy and if we are to learn the lessons of our recent past.

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[15] Mondli Makhanya, "We Don't Take Charge in Africa, but Get Very Prickly about Those Who Do," *Sunday Times (Review)*, 10 April 2011a, p.4.

[16] Adam Habib, "Fly or No-Fly is the Question; For: Adam Habib," *Sunday Times (Review)*, 27 March 2011, p.5.

Habib also provided his arguments with a moral grounding: "I ask: what would you have done as children, women, and men in Benghazi and other opposition-held cities confronted by the potential of slaughter by an autocrat?" In his opinion regime change was not the "explicit aim", although by supporting the opposition, it was hoped that democratic forces could resurface and challenge the autocracy. The purpose of the no-fly zone was to prevent a massacre in Benghazi and other opposition strongholds and to "level the playing field". Moreover, there was an explicit condition that the loss of civilian life should be minimised by the choice of targets and the conduct of operations.[17]

Yet, most observers and commentators were sceptical towards the UNSC decision. Although non-intervention has been discredited internationally owing to its association with human rights violations,[18] in South Africa, norm dynamics on the no-fly zone and NATO's military campaign pointed towards diffusion. For authoritative political commentator, Xolela Mangcu the link between intervention in Iraq and enforcing a no-fly zone in Libya was simply too evident and problematic:[19]

> Karl Marx once said, 'History repeats itself, first as a tragedy, second as a farce'... the coalition forces seem intent on exceeding the mandate of UN resolution 1973, which is aimed only at protecting civilians from aerial bombardment by Gaddafi's forces. But the language of the coalition leaders increasingly smacks of regime change... It seems to me that, short of a new UN resolution specifically aimed at Gaddafi's removal, regime change would be no different from the US invasion of Iraq under George Bush... Gaddafi would probably meet the fate of Saddam Hussein and face the hangman.

According to Mangcu, intervention in Libya meant that the international community was placed in the unenviable position of having to choose between types of international legality: the coalition (intervening) forces going beyond the UN mandate in initiating regime change on the one hand and Gaddafi's atrocities against his own people on the other. Although he admitted the humanitarian dilemma of Gaddafi's brutal actions against Libyan citizens, he could not support "[c]owboy justice that goes beyond the UN mandate" as this would not be the desirable way of achieving a stable transition. He also specifically raised concerns over arguments by those supporting air strikes that the protection of civilians would not be possible without toppling Gaddafi – something that would overstep the bounds of legality of the UN mandate.[20]

In defence of his views, Habib turned to arguments that military intervention by non-African forces would derail the desire to have African solutions for African problems. According to Habib, this is a desire to be shared by Africans, because Africans are aware of how people of the

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[17] Habib, 5.

[18] Amitav Acharya, "Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism, and Rule-Making in the Third World," *International Studies Quarterly*, 55:1 (March, 2011): 118.

[19] Xolela Mangcu, "Fly or No-Fly is the Question; Against: Xolela Mangcu," *Sunday Times (Review)*, 27 March 2011, p.5.

[20] Mangcu, 5.

continent have been plagued by the consequences of the greed and avarice not only of the continent's leaders, but also of the political and economic elite of other parts of the world. In Habib's opinion, the important question is whether the AU could have intervened with its current poor state of military preparedness. According to him, the AU could only send a high-level fact-finding and mediation mission to Libya when bloodshed was feared by the international community. Moreover, he questioned any argument that the Arab League should have acted or taken on the leadership in the Libyan crisis. In view of the above, Habib concluded as follows: [21]

> ... my support for the slogan and strategic orientation of "African solutions for African problems" is not absolute. If my government and the inter-governmental structures on my continent do not come to the defence of civilians, then I am prepared to appeal for the humanitarian intervention of those in other parts of the world... (Given the deficiencies of the Arab League and the AU) I therefore looked to the "imperial world" with some trepidation in the hope that it would intervene within limits.

Further afield, criticism on the non-active role or absence of the AU in the Libyan crisis came from the Kenyan political analyst, Onyango Oloo: "I am not surprised by the AU but disappointed". Yet, Oloo stated that the air strikes were killing and maiming innocent civilians and that Africans should be unequivocal in their condemnation of what could be described as an oil-driven invasion. Similarly, Dr. Michael J. Bokor, writing for the online newspaper, *Modern Ghana*, also questioned the UN-endorsed action and stated that the international military operation did not respect Africa's voice or stance on the Libyan crisis – although he admitted that the AU's voice on the matter was not heard.[22]

Against this background, many South African (and African) critics were wary – even distrustful – of any possibility or approach towards regime change. Greg Mills and Terence McNamee[23], two authoritative foreign policy commentators attached to the Johannesburg-based Brenthurst Foundation, specifically argued that US President Barack Obama did not use the words of regime chance because his approach is more tacit and less direct than that of his predecessor, George W. Bush. Yet, they predicted that the NATO position was untenable and that sooner, rather than later, they would have to commit to the rebel aims fully. Hence, the US-European forces would have to accept the consequences that the rebel aims entail, or disengage, save to prevent mass atrocities and humanitarian disaster. They also predicted that the NATO-led mission would result in more intensive bombing of strategic targets in Tripoli like electric stations, which ended Slobodan Milosevic's reign in Serbia in 1999, or providing arms to Gaddafi's enemies.

What was especially alarming to some African observers were statements made by US decision-makers that rebels in Libya could be supported or armed by Western military forces. This, for instance, pertains to indications by the US Ambassador to the UN, Susan Rice, that the US

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[21] Habib, 5.

[22] Thandi Winston, "AU at Loss over Libya," *Free State Times*, 25-31 March 2011, p.9.

[23] Greg Mills and Terence McNamee, "Hedging their Bets in the Libyan War," *Sunday Times (Review)*, 3 April 2011, p.5.

would maintain financial and diplomatic pressure until the departure of Gaddafi and even hinted that the Libyan rebels could be armed.[24] In this context, Mills and McNanee,[25] like other African commentators and observers, drew a connection between Western interventions in Iraq and Afghanistan and that of Libya "where the West is again leading from the front in a contentious military intervention". Although not nearly as critical as some other South African observers, they asserted that the Afghan campaign has been handicapped by the West's inability to grasp regional realities. This argument holds that lessons from Iraq and Afghanistan once again showed that there should never be an expectation that once you boot out a tyranny, good leaders would fill the void to build a better society. Practically, where leaders like Muammar Gaddafi gets the boot, a highly uncertain process of political reform usually follows. In this regard, they reiterated the point made by British Prime Minister, David Cameron, that you cannot "drop democracy from 40 000 feet". Like other commentators, they also warned against the post-conflict challenges of regime change with specific reference to peace building and reconstruction.

Thus, regime change has also been raised as a major concern by African observers and critics. This will be further explored in the section below.

The AU getting more vocal – but also getting criticised
The launching of air attacks by the US, France, and the UK on targets in Libya immediately sparked reaction from the AU, who was silent on the issue until 20 March 2011, a day after international military action began. In a rather late-than-never response, an AU High-Level Ad Hoc Committee on Libya stated that it opposed any foreign military intervention in Libya and that Libya's sovereignty should be respected. The panel was formed at the last meeting of the AU's Peace and Security Council on 10 March 2011 in Addis Ababa. The countries involved were Mauritania, Mali, Congo, Uganda and, importantly, South Africa.[26]

The thrust of the AU position on the Libyan issue soon became clear: Africa does not need any external influence or intervention on matters pertaining to the African continent. In a media briefing to a mainly Western audience in Geneva, the AU Chair and President of Equatorial Guinea, Teodoro Obiang Nguema, stated that Africa must manage its own affairs and that UN action was not only unwanted in the Ivory Coast (Côte d'Ivoire), but it was also undermining AU efforts at mediation in Libya. The problems in Libya should have been dealt with by the AU and not by means of external intervention that appears to resemble a humanitarian intervention.[27] In this context, the AU on 25 March met with a delegation of the Libyan government where a

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[24] David Morgan, "US May Still Arm Libyan Rebels," *Business Day*, 30 April 2010, www.businessday.co.za/articles?Content.aspx?id=138643 (accessed 30 March 2011).

[25] Greg Mills and Terence McNamee, "Bombing Can Make Gaddafi a Freedom Fighter," *Business Day*, 29 March 2011, www.businessday.co.za/articles/Content.aspx?id=138497 (accessed 13 March 2011).

[26] Winston, 9.

[27] Scott Baldauf, "Ivory Coast, Libya Highlight Growing Rift between Africa and the West," *Christian Science Monitor* (14 April 2011), www.csmonitor.com/World/Africa/2011/0414/Ivory-Coast-Libya-highlight-growing-rift-between-Africa-and-the-West (accessed 23 October 2011).

Roadmap for a political solution to the crisis in Libya was adopted. This Roadmap boiled down to an appeal for the "adoption and implementation of political reforms necessary to meet the aspirations of the Libyan people", and "a political dialogue between Libyan parties in order to arrive at an agreement on the modalities for ending [the] crisis", as well as the "establishment and management of an inclusive transitional period".[28]

The response of the AU – specifically its rejection of external influence or intervention on matters pertaining to the African continent – did not come as a surprise. Amitav Acharya points out that since his appearance on the political landscape, Kwame Nkrumah of Ghana, led the formulation of subsidiarity norms in the Pan-African context by especially stressing non-intervention by outside powers in African affairs. Norm subsidiarity in the Pan-African framework also included the abstention of Africans in superpower-led alliances or defence pacts. After Nkrumah's departure from the political scene the African normative order continued to reject superpower intervention and espoused regional autonomy.[29]

In view of the above, the conceptual tool of what Acharya refers to as "norm subsidiarity" is a useful tool to explain the role of developing world countries in world politics. Norm subsidiarity is the process whereby local or regional actors develop rules or create norms with a view to "preserve their authority from dominance, neglect, violation, or abuse by more powerful actors".[30] This being said, there has been a tendency among developing world role-players to question existing international norms as a response to the "tyranny" of higher-level institutions in global governance. Specifically, role-players in the developing world resort to norm subsidiarity when confronted with what is perceived as great power hypocrisy. This is when they witness a violation of cherished global norms by higher-level institutions and powerful actors. Of much importance is when the principle of non-intervention in the affairs of states is violated.[31]

What should also be noted is that UN intervention in Libya was not helped by the fact that the history of foreign intervention in post-colonial Africa is negatively viewed throughout Africa. Such negative views feed on issues ranging from the killing of former Congolese president Patrice Lumumba in 1961 to the indifference or lack of action shown during the Rwandan genocide in 1994, to the UN force bombing the military in Abidjan in the Ivory Coast in 2010.[32]

From the South African side, President Jacob Zuma, who has always been a leading African voice in his capacity as a member of the AU High-Level Ad Hoc Committee on Libya, articulated the African position in no uncertain terms. He lashed out against NATO-led military intervention in Libya, arguing that it amounted to the undermining of the AU. He argued that the continental body and its member states had been reduced to mere spectators in the ensuing Libyan conflict

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[28] International Coalition for the Responsibility to Protect, 2011.
[29] Acharya, 115.
[30] Acharya, 96-97.
[31] Acharya, 100.
[32] Baldauf.

and that the AU should have played a much more prominent role. What should be noted is Zuma's insistence that both sides in the Libyan conflict – Gaddafi and the Transitional National Council (who took charge of Tripoli) – had to be accommodated at the negotiating table. On the question whether Gaddafi could be persuaded to step aside, Zuma stated that he was confident that the former Libyan leader would accept any solution that would bring about peace. "Knowing him I think we would be able to discuss some things that could perhaps help move towards resolving the problem".[33] Zuma also expressed his disappointment in a decision by the International Criminal Court to issue a warrant of arrest for Gaddafi and his son, Abdullah al-Senussi, for crimes against humanity.[34]

Former South African President Thabo Mbeki, who is still a vocal spokesperson for Africa in international affairs, even went a step further than Zuma by stating that Africans had lost confidence in the UN and accused the world body of being controlled by Western powers and installing leaders they preferred, to run the African continent. He claimed that if there was respect for the positions the AU had taken to resolving political issues in Libya whereby the Libyans get together and decide their future there would have been progress towards democratisation. Mbeki also drew a parallel between the role of the UN in Libya and the Ivory Coast. He argued that the role of the UN in the Ivory Coast was to maintain peace between the rebel-occupied northern parts and the government stronghold in the southern parts of the country. The UN had the task of making sure that peace was maintained and that a political solution was found, but according to Mbeki, opened the door for the rebels in the North to march into Abidjan and carry out operations there side-by-side with the UN forces. As such, the UN forces were not neutral peacekeepers but took sides. In Libya, Mbeki argued, the UN delegated its responsibilities to NATO for "some countries" which is neither accountable to the UN nor to Africans.

In brief, the South African position on Libya was that NATO's action in Libya was a "manifestation of military means" aimed at "changing governments", which stood in contrast to the bringing of lasting peace and stability by intensifying continental conflict prevention mechanisms through the AU. For South Africa, it was important to re-assert the commitment to conflict resolution in the Middle East and North Africa.[35]

At the same time, Mbeki acknowledged the weakness of the AU in the context of the above. He pointed out that the AU Commission is unable to carry out its work properly because the member states are not making their financial contributions to provide the required funds for the AU to do its work properly. This resulted in a situation where the AU wants to carry out an

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[33] Sunday Times Staff Reporter, 4.

[34] Sapa, "Zuma Says Warrant Against Gaddafi Undermines the AU," *Mail&Guardian Online*, 27 June 2011, http://mg.co.za/article/2011-06-27-zuma-says-warrant-against-gaddafis-undermines-the-au (accessed 27 June 2011).

[35] Ebrahim I, Ebrahim, Draft Lecture by Deputy Minister of International Relations and Cooperation, Ebrahim I Ebrahim, on the Occasion of the Speakers Meeting at the South African Institute of International Affairs, 22 July 2011, p.7.

operation but has to appeal to the European Union for funds. This weakness on the part of the Commission is a reflection of the way in which AU member states have dealt with the AU.[36]

Nevertheless, the South African and AU positions on Gaddafi proved to be somewhat naive as the Transitional National Council rejected any deal that could see Gaddafi remaining in power. Unlike the Russian Federation that criticised the NATO operation, but joined Western nations in their call for Gaddafi to relinquish power,[37] the AU High-Level Ad Hoc Committee on Libya never called for Gaddafi's departure.

Until 27 September 2011, the AU also refused to recognise Libya's Transitional National Council as the official representative of the Libyan people.[38] In particular, it should be noted that the South African president Jacob Zuma, made it clear at a meeting of the AU's Peace and Security Council that the organisation should not recognise the Transitional National Council as long as the fighting in Libya continued: "If there is fighting, there is fighting. So we cannot stand here and say this is the legitimate government".[39] Only a month before Gaddafi's killing on 20 October 2011, the AU indicated that it was ready to recognise the Transitional National Council, which by then controlled most of the Libyan territory.[40] In this regard, the AU basically had no choice but to recognise the Transitional National Council as most European nations and the United States along with several prominent African governments, including Nigeria, Ethiopia, Senegal and Ivory Coast, had already done so.[41] In fact, some observers even contend that South Africa's stance on Libya angered allies on the African continent, and that South Africa further weakened its case by not voting for a UNSC Resolution calling for an end to the brutality and human rights violations in Syria. The Syrian leader, President Bashar Assad, was likewise facing major anti-government protests against his 30 years of autocratic rule.[42]

The South African position stood in stark contrast to that of the Nigerian government who, on 25 August 2011, stated through its Minister of State and Foreign Affairs, Prof. Viola Onwuliri, that the Libyan rebel-led Transitional National Council is the legitimate representative of the Libyan people. From Nigeria's side it was also felt that for too long, African leaders and

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[36] Ncana Nkululeko, "Mbeki: Africa has Lost Faith in the UN," *Sunday Times*, 31 July 2011, p.4

[37] Reuters, "Libya Dominates Russian Meetings with NATO, Zuma", 4 July 2011, www.reuters.com/article/2011/07/04/us-russia-nato-libya-idUSTRE76326J20110704 (accessed 21 October 2011).

[38] Scott Stearns, "AU's Slow Recognition of NTC Prompts Calls for Reform," *VOA News.com*, 21 September, www.voanews.com/english/news/africa/AUs-Slow-Recognition-of-NTC-Prompts-Calls-for-Reform-130264578.html (accessed 23 October 2011).

[39] Independent Pan African News Staff Reporter, "The African Union Refuses to Recognise Libya's Transitional Council," 27 August 2001, www://ipan.co.za/wp/?p=610 (accessed 23 October 2011).

[40] VOA News, African Union Recognises Libya's Transitional Council," *VOA News.com*, 20 September 2011, www.voanews.com/english/news/africa/African-Union-Recognizes-Libyas-Transitional-Govt-130215588.html (accessed 23 October 2011).

[41] Stearns.

[42] Mondli Makhanya, "Let's Not Become a Pontius Pilate Regarding the Atrocities in Syria," *Sunday Times (Review)*, 10 July 2011b, p.4.

countries have dithered when it came to defending the powerless, from bloodthirsty and oppressive dictators, the likes of Muammar Gaddafi, Robert Mugabe and others.[43]

According to South African foreign policy expert, Laurie Nathan, Pretoria's foreign policy stance of recent years should be understood in the light of an anti-imperialist paradigm, which was particularly evident in the foreign policy approach of the Thabo Mbeki administration. This anti-imperialist paradigm revolved around the following themes:[44]

- the iniquitous political and economic power imbalance between the North and the South, which is to the detriment of the poor;
- the need to reform the UN, the Bretton Woods institutions and other international organisations in order to address issues of imbalance and resultant inequities;
- the domineering and hypocritical approach of Western states that use the above-mentioned organisations to chide and bully developing countries;
- South-South co-operation and solidarity as a form of collective strength; and
- multilateralism and respect for international law as the only legitimate basis for interstate relations and the resolution of international crises.

In South Africa, several foreign policy commentators severely criticised the AU for its role in the Libyan conflict. Various points could be cited but for the sake of brevity two broad issues are of special relevance:

Firstly, the institutional weakness of the UN and lack of swift action in crises were highlighted. It was argued that the crisis in Libya presented an opportunity to successfully deliver an "African solution to an African problem". This, however, did not result in a feasible plan and exposed the weakness of the AU, especially as African states such as South Africa and Nigeria need to do more to enable the organisation to deliver on African solutions for African problems. Without political and material investment in the AU, the slogan, "African solutions for African problems", like the notion of the African Renaissance, "will be banished to a political dustbin filled with rotten linguistic promises".[45] The question that African leaders should be asking themselves is how the tools and instruments available to the AU and regional African organisations can be used effectively and quickly to stop leaders from killing their own citizens. Moreover, African leaders should ask whether other role-players should sit idly by and watch Africans get slaughtered by bad leaders while African leaders deliberate on African solutions.[46]

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[43] Edward Oparaoji, "Nigeria is Right to Recognise Libya's Transitional Council," *ELOMBAH.com: A Nigerian Perspective on World Affairs*, 25 August 2011, www.elombah.com/index.php?option=com_content&view=article&id=7912:nigeria-is-right-to-recognize-libyas-transitional-council&catid=25:politics&Itemid=92 (accessed 23 October 2011).

[44] Laurie Nathan, "Interests, Ideas and Ideology: South Africa's Policy on Darfur," *African Affairs*, 110:438 (January 2011): 63.

[45] Eusebius Mc Kaiser, "Diplomacy Debacle in Libya: SA Failed to Take Advantage of a Golden Opportunity," *Sunday Times*, 21 August 2011, p.5.

[46] Mondli Makhanya, 2011a, 4.

Secondly, a parallel was drawn between the lack of decisive action in both the crises in Ivory Coast and Libya. In this regard, it was argued that in the case of the Ivory Coast, the AU-led intervention failed miserably and that the AU should take much of the blame for the fact that renegade President Laurent Gbagbo plunged his country into civil war before the UN decided to request the French military forces to intervene, eventually leading to Gbagbo's capture early in 2011.[47] It was argued that Africa was initially firm on Gbagbo, but then the continent's leaders started to vacillate and attempted to find some accommodation between Gbagbo and the legitimate winner of the democratic elections, Alassane Quatarra. This vacillating response in dealing with the problems in Ivory Coast was mainly attributed to President Zuma and angered the Ivorian people. Moreover, it was left to the French to enter the crisis in Ivory Coast, which was followed by cries of imperialism and neo-colonialism. Similarly, it was argued that the African leaders (and South Africa) were lethargic in their approach to Gaddafi's slaughtering of Libyans. By not acting firmly on the Libyan crisis, the AU effectively opened the door for external role-players such as the UN and NATO to do the work for them. This view was strikingly articulated by Makhanya:[48]

> The same outcry (as the one that manifested in Ivory Coast) had greeted the Nato-co-ordinated air strikes over Libya. When Gaddafi went on state television calling ...[for]... protesters to be lynched and responded to the uprising with brutal force, African leaders issued statements encouraging peace and love, and decided to send a "fact-finding" mission to establish what everyone else already knew: there was death and destruction deluxe in Libya. Again, African inaction had opened the way for decisive action by Western countries.

Even Rwandan president, Paul Kagame, who is certainly familiar with the consequences of lethargy, bemoaned the "slow" response of the AU in an opinion piece and came out in support of external action taken on the Libyan crisis.[49] In this context, the AU's handling of matters in both Libya and the Ivory Coast has divided African opinion quite sharply.[50]

In the same context, the *Economist* perceptively observed that the South African government, who was a leading African (and AU) voice on both the crises in Ivory Coast and Libya, often appears to be pursuing two contradictory sets of values. In some instances, President Zuma is upholding the principles of national sovereignty and non-interference – principles that suit despots around the world. In other instances, he insists that his "primary objective" is to contribute to democracy, human rights, and justice in the international community. "The result is a mishmash of unpredictable responses to apparently similar situations in different countries". In this regard, observers were quick to point out that in the face of dreadful factional violence and impending civil war in Ivory Coast, South Africa's position was one of

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[47] Baldauf.

[48] Mondli Makhanya, 2011a, 4.

[49] Mondli Makhanya, 2011b, 4.

[50] Baldauf; Stearns.

sitting on the fence for months, refusing to endorse Alassane Ouattara's internationally recognised victory.[51]

Against this background, the AU has been criticised for letting the principle of non-interference take precedence over the values of democracy, social justice, clean government, ethnic inclusiveness, and peace on the African continent. What it comes down to is a situation where state security is viewed as being of greater importance than human security. This "wrong-headed" approach is at the centre of African peers' view of shielding despots from criticism rather than coming to the aid of desperate citizens. The problem is also that the current African leadership is "too discredited" and the rules for membership too lenient to be effective. Hence, African member states will have to bring new ideas and provide new energy to make regional and continental institutions work. Africa is faced with several new challenges, such as the rise of emerging powers, especially China, India, and Brazil, as well as the global financial crisis and the wave of rebellions in North Africa and the Middle East.[52]

Finally, the AU's response and opposition to Western military intervention in Libya creates an impression that African states underestimated the prospect or political will on the part of (some) Western nations to intervene in the Libyan crisis. What should be known and noted are that vital Western interests were at stake in Libya and NATO's intervention did not really come as a surprise. From an EU point of view, the Libyan territory is viewed as "neighbourhood" to the whole of the Mediterranean basin, stretching from Turkey to Morocco. Interests particularly relate to trade routes, energy supply, and "manageable migration". Furthermore, in much of the European community it is believed that a distinctive actor such as the EU has a moral responsibility to protect citizens against violence. Besides, the EU "cannot afford a civil war on its borders".[53]

Evaluation and conclusion

For many activists the situation in Libya, which was based on gradual implementation of diplomatic, economic, humanitarian, and coercive means, was an indication that *The Responsibility to Protect* as a project was coming closer to being solidified as an "actionable norm". From such a point of view, the swift action and decisive action by the UN and NATO demonstrated the international community's prioritisation of the protection of civilians and an honouring of the commitment to the principles agreed to in 2005.[54]

Concerning the position of the AU, Bjorn Møller rightly argues that the continental organisation made a significant departure from the past by establishing the right of the organisation to intervene in the domestic affairs of member states in cases of "war crimes, genocide and crimes

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[51] *The Economist*, "South Africa's Foreign Policy: All Over the Place," 24 April 2011, www.economist.com/node/18447027?story_id=18447027 (accessed 28 April 2011).

[52] William Gumede, "Back to the Drawing Board for AU," *Sunday Times*, 3 July 2011, p.10.

[53] Sven Biscop, "A Long-Term Strategy for Libya and the Mediterranean: Over to the European Union", *EGMONT Royal Institute for International Affairs Security Policy Brief* (17 March 2011): 1.

[54] International Coalition for the Responsibility to Protect, 2011.

against humanity", based on a decision taken by the AU Assembly with a two-thirds majority. As pointed out earlier, the list of triggering events was expanded to include "serious threats to legitimate order", and in doing so, the AU put itself way ahead of the rest of the international community at a time when there has been considerable international debate on *The Responsibility to Protect*. However, one should not be too optimistic about organisational matters, since what really matters is the political will to do what is needed.[55] Of course, institutional capacity and sound decision-making are also of the utmost importance. This has once again been illustrated and underscored by the AU's attempt to deal with the crisis in Libya – or lack of swift action.

As much as one should concede the point that *The Responsibility to Protect* can easily be used as an excuse for regime change, and is often regarded as an unfinished work of art, the only defensible position that the AU could take was that the uprising in Libya and subsequent rebel action constituted a serious threat to political order in Libya. The AU, in recent years and for this very reason, had taken a firm stance against military coups or other attempts at overthrowing government. However, the Libyan government was never legitimate and what in Makhanya's view is indeed worrisome is that Africans often do not take charge in African affairs where a humanitarian crisis manifests itself, but become annoyed with external actors who do.[56]

As far as South Africa's position is concerned, the conceptual tool of norm subsidiarity is indeed a useful and important construct to study norm dynamics in South Africa's foreign relations, specifically in the African context. Clearly, the South African position coincides with the reference to norm subsidiarity as a critical response by role-players in the developing world to the rulemaking or norm-setting of higher-level institutions (most specifically the UNSC) in global governance. This is particularly true when actors from the developing world see or experience the violation of global norms. In fact, "hypocrisy is often a trigger for subsidiarity norms in the Third World".[57]

In the final analysis, the Libyan crisis and UNSC Resolution 1973 once again placed the focus on the critical and complex issue of "the responsibility to protect". In Libya, the international community – and the AU – was faced with the hotly debated question on when, where and how nations should respond to populations threatened with the gravest of international crises, which range from genocide, war crimes, crimes against humanity, and ethnic cleansing.

For many scholars and analysts outside Africa the crisis in Libya posed the question whether the phrase "African solutions to African problems" and the organisation's commitment to *The Responsibility to Protect* signal a genuine moral commitment. Or is it a rather empty policy

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[55] Bjorn Møller, "The African Union as Security Actor: African Solutions to African Problems?," *Crisis States Working Papers Series*, 2 (August 2009): 9.
[56] Makhanya, 2011a, 4.
[57] Acharaya, 96-97.
[57] Acharaya, 115.

position in terms of exercising a special responsibility to help in solving the problems on the continent? For Møller the AU needs at least one power – or hegemon – to take the lead in moving away from its dismal record with regard to conflicts.[58] Before and since the establishment of the AU, South Africa has been active in setting new norms and standards in the field of security-related issues on the African continent, but critically speaking, South Africa was not an effective role-player in terms of facilitating the enforcement of these norms and standards in Libya. Thus, as much as South Africa played a notable and significant role in the AU's departure from the former OAU's untenable and rigid stance on sovereignty and non-interference, South Africa – unlike Nigeria, for example – took a protective stance against Gaddafi. This has led to a gap between the AU's ambitions and plans to work towards an accomplishment of the ideals associated with *The Responsibility to Protect*. In this regard, Nathan indeed makes a solid point by stating that it is hard to fault South Africa's stand on inequitable global power relations, but it is equally hard to see any productive results from a strategy that blocks international action against dictatorial regimes.[59] Such a strategy does nothing to facilitate equitable power relations in the international community and yields no benefits to South Africa or the AU as a security actor on the African continent.

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[58] Møller, 1.
[59] Nathan, 74.

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