

“Intervention in Africa? The Mbeki Presidency’s role in changing the OAU”

By Kathryn Sturman, Macquarie University

Introduction

“As independent states we have developed in the context of a largely unbridled respect for the notion of national sovereignty. We must therefore foresee somewhat of a struggle to ensure that the approach adopted by the African Union ... wins the day... we have to agree that we cannot be ruled by a doctrine of absolute sovereignty. We should not allow the fact of the independence of each one of our countries to turn us into spectators when crimes against the people are being committed.”

– President Thabo Mbeki, 4 December 2003¹

The most significant difference between the African Union (AU) and its predecessor, the Organisation of African Unity (OAU), has been a shift from the principle of non-interference in the domestic affairs of member states, to a legal and institutional framework for intervention. The catch-phrase of AU officials is to establish a new principle of “non-indifference” to the suffering of African people – when their own governments prove unwilling, or just as often, unable, to protect them.

It would be misleading to say that the AU’s plan to develop a regional peacekeeping force is an entirely new idea, though. The aspiration for African-led peace was part of the Pan-Africanist vision of the OAU from its inception. Kenyan scholar, Ali Mazrui, wrote about “Pax Africana” in 1967, “peace in Africa must be assured by the exertions of Africans themselves.”² This statement was as much a reflection of the anti-colonial struggles of the time as it was in resistance to superpower interference at the height of the Cold War. The end of that era allowed the organisation to re-examine its approach to conflict prevention, and a gradual reworking of OAU principles and procedures is evident throughout the 1990s.

The wave of democratisation in Africa and elsewhere in the early 1990s was certainly a factor for reform of the OAU. At the other extreme, so too were the civil wars, of which the Rwandan genocide provoked the strongest moral response. Yet these are not sufficient explanations for the rapid transformation into the AU in the past five years. This paper argues that the emergence of post-apartheid South Africa as a “middle power” or “regional hegemon” in Africa has acted as a catalyst for change of the regional organisation. In particular, it considers the extent to which the Mbeki presidency has influenced the AU’s shift from holding sovereignty as sacrosanct, to building mechanisms for intervention.

It will be argued that the new approach to intervention has been oriented towards military intervention, while other strategies of diplomatic pressure, sanctions and

¹ T Mbeki, “Africa will emerge as the hope of all humanity”, lecture delivered at the Nigerian Institute of International Affairs, Lagos, 6 December 2004, <<http://www.waado.org/NigerDelta/Essays/Guardian-Mbeki.html>> accessed 16/10/2004.

² A Mazrui, *Towards a Pax Africana: A study of Ideology and Ambition*. London: Weidenfeld and Nicolson, 1967.

criminal prosecution, have been under-emphasised. This would suggest that beneath the rhetoric of a human rights-driven foreign policy, the Mbeki government has pursued a more realist approach to regional diplomacy.

Defining intervention

The International Commission on Intervention and State Sovereignty (ICISS) defines intervention as “the use of coercive means to secure humanitarian objectives”³. It clarifies the concept further with a negative definition, that: “intervention means various forms of non-consensual action that are often thought to directly challenge the principle of state sovereignty”⁴. This is in essence what President Mbeki refers to in his speech, quoted above, that the principle of sovereignty should not turn African leaders into “spectators when crimes against the people are being committed”. Protecting the human rights of people across borders is central to this notion of intervention.

The extensive bibliography published as a supplementary volume to the ICISS Report notes that the literature on intervention tends to focus on military intervention, but that non-military forms of intervention are just as important. If we take as our point of departure the question: “what can leaders do to protect the human rights of people in neighbouring countries?” and thereby avoid being “spectators” to injustice, three forms of intervention may be identified:

- Military (peace operations);
- Political (diplomatic or economic sanctions); and
- Legal (criminal prosecution before international or regional courts or tribunals).⁵

The ICISS Report notes the precedent set by regional organisations such as the British Commonwealth, the European Union and the Organization of American States in using sanctions as a means of “intervening in aid of democracy”. It also mentions that the Economic Community of West African States (ECOWAS) put up an “economic blockade” against the military junta in Sierra Leone in 1997.⁶ Ad hoc war crimes tribunals set up for the former Yugoslavia in 1993 and Rwanda in 1994, as well as the arrest and trial in Senegal of the former president of Chad, Hissène Habré, are listed as examples of the third form of intervention.⁷

The new legal framework of the African Union makes provision for all three forms of intervention. First, article 4(h) of the Constitutive Act of the AU establishes the right of the Union to intervene, without consent, in a member state to “restore peace and stability”, “to prevent war crimes, genocide and crimes against humanity”; and in response to “a serious threat to legitimate order”.⁸

³ ICISS, *The Responsibility to Protect: Research, Bibliography, Background, Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty*, IDRC, 2001, p 3.

⁴ *Ibid.* p 15.

⁵ J Cilliers and K Sturman, “The Right Intervention: Enforcement Challenges for the AU”, *African Security Review* 11(3), 2002, p 5.

⁶ *Ibid.* p 20.

⁷ *Ibid.* p 22.

⁸ African Union, *Constitutive Act*, 2000; and African Union, *Amendment to the Constitutive Act*, 2003.

Second, article 23(2) states: "any Member State that fails to comply with the decisions and policies of the Union may be subjected to... sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly."

Third, the Protocol establishing the African Court on Human and Peoples Rights, 1998, entered into force in January 2004, paving the way for human rights cases against member states of the AU to be prosecuted in a permanent supra-national court situated on African soil. The Protocol establishing the African Court of Justice, with jurisdiction over cases relating to the AU Constitutive Act, was adopted by the Assembly in Maputo, Mozambique in July 2003.

We now turn to the influence South Africa has had in the design of this new legal framework for the AU, and in the task of converting principles into practise.

The Mandela Years

South Africa was the last member to join the OAU, two months after the inauguration of President Nelson Mandela in 1994. It was seen as the last piece of the jigsaw puzzle to fall into place and complete the map of independent Africa.⁹ While the symbolic victory of South Africa's transition to democracy was greeted with jubilation, the moral authority of the new political heavyweight on the scene was accepted more grudgingly. President Mandela did not mince his words when presenting a new foreign policy based on the promotion of human rights and democracy. He urged that: "...each one of us as nations... should begin to define the national interest to include the genuine happiness of others, however distant in time and space their domicile might be."¹⁰

Coupled with South Africa's economic power, accounting for almost a third of Africa's total GDP¹¹, the political message of democratisation was met with suspicion, described by South African academic, Chris Landsberg, as a "regional backlash". Landsberg argues that the ANC-led government of President Mandela, "found that its moralistic foreign-policy doctrine not only was tough to implement in practise but could actually undermine its own 'vital interests'"¹².

This lesson had important consequences for later relations with Zimbabwe, which will be dealt with below. But during the Mandela Presidency, Zimbabwe President Robert Mugabe rallied the Angolan and Namibian governments in a bid to isolate the new power in the Southern African Development Community (SADC). President Mandela opposed the military intervention of these three countries into the complex war in the Democratic Republic of Congo, and threatened to resign from SADC over the issue. The dispute had also to do with the political direction of SADC, as South Africa sought to reform the Zimbabwe-led Organ on Politics, Defence and Security to place greater emphasis on democracy and human rights in the region. SADC was paralysed as a result

⁹ Strictly speaking, one country remains off the map, namely Morocco, having withdrawn its membership of the OAU in 1985 over the recognition of the occupied territory of Western Sahara as the Saharawi Republic.

¹⁰ N Mandela, Address to United States Congress, 16 October 1994, quoted in C Landsberg, "Promoting Democracy: The Mandela-Mbeki Doctrine", *Journal of Democracy*, 11(3), July 2000, p 108.

¹¹ *Ibid.* p 115.

¹² *Ibid.* p 108.

and has made little substantial progress on political and security issues since 1996, which in part explains President Mbeki's shifting attention to the OAU.

Nigeria, the other hegemonic contender in Africa by weight of numbers and oil wealth, had been under military dictatorship since the July 1993 election results were annulled and frontrunner Chief Abiola jailed. President Mandela attempted to intervene personally when General Olesegun Obasanjo and 39 others were convicted of treason, to no avail. After the execution of Ogoni activist Ken Saro-Wiwa, South Africa's call for an international boycott against the regime of General Sani Abacha was rejected by the OAU.¹³ Such was the nature of the OAU that it deferred to the incumbant leaders of its most powerful member states – legitimate or illegitimate. After Abacha's death in 1998, President Obasanjo took his place as a key player in the OAU, this time on the side of democracy.

Avoiding a "great man" view of history, it should be pointed out that the new South Africa's first five years of foreign policy were not simply a reflection of the President's style of leadership. It was also a period when an inexperienced new government had to find its feet, working with a bureaucracy, including the Department of Foreign Affairs, that was undergoing major restructuring. The Mandela years were focused inwards on national reconciliation and reconstruction, on dismantling apartheid and building an entirely new polity. To illustrate, some 136 new laws were passed by the South African Parliament in 1998 alone – double the average number passed each year thereafter, with labour laws, education, health, policing, defence and a host of other public policy frameworks set in place.¹⁴ It was only when the dust had settled somewhat by 1999, that President Mbeki was able to turn attention to a more strategic foreign policy.

"Emerging middle power" status

Much of the literature on South Africa's foreign policy during this time refers to the country as an "emerging middle power".¹⁵ The qualification "emerging" usually applies to economic giants of the developing world, such as Brazil or India, who are grappling with problems of poverty and inequality at the same time as having strategic importance in global affairs.¹⁶ But in this case the term also implies South Africa's growing political influence within international institutions. A defining feature of middle powers in international relations theory is that they make up for their inability to act unilaterally by supporting multilateral organisations, where they are able to exert influence by building consensus with other states.¹⁷

By economic criteria, South Africa has always been considered a "middle power", throughout the Cold War era. Robert Cox and Harold Jacobson ranked states according

¹³ P Vale and S Maseko, "South Africa and the African Renaissance", *International Affairs* 74 (2), 1998, p 272.

¹⁴ The number of laws passed each year for the past ten years: 1994: 55; 1995: 89; 1996: 108; 1997: 108; 1998: 136; 1999: 60; 2000: 70; 2001: 69; 2002: 75; 2003: 61. <www.info.gov.za/acts/98index.html> date accessed: 16 November 2004.

¹⁵ See, for example, J van der Westhuizen, "South Africa's emergence as a middle power", *Third World Quarterly* 19(3), 1998; and M Schoeman, "South Africa as an Emerging Middle Power", *African Security Review* 9(3), 2000.

¹⁶ M Schoeman, *op cit*, p 3.

¹⁷ *Ibid.*, p 2.

to power in 1950, 1958 and 1967, including South Africa in 20th, 19th and 21st place in those years, next to countries like Mexico, the Netherlands, Argentina and Pakistan.¹⁸ The ranking was based on a composite index of GNP, GNP per capita, nuclear capability and "prestige". However, Cox and Jacobson made a distinction between "power" and "influence", with economic power not necessarily conferring political influence.¹⁹ Bernard Wood, writing in 1990, excluded South Africa and Iran from the category of middle powers on account of their lack of influence – in other words, their pariah status – in international affairs.²⁰

After 1994, South Africa was considered to have both the economic muscle and the political legitimacy to be an "emerging middle power". It was still "emerging", in part, because of a need to prove a commitment to multilateralism. Several authors note the expressed desire of South African diplomats to gain a permanent seat in a reformed United Nations Security Council (UNSC).²¹ In late 1998, Director-General of Foreign Affairs, Jackie Selebi said "we would want to become a permanent member of the Security Council", a policy statement echoed by then Foreign Minister, Alfred Nzo, in his 1999 budget address to parliament.²²

The problem with South Africa's intention to lobby for a seat on the UNSC, according to observers around this time, was that the ANC-government had little experience of regional peacekeeping, and under President Mandela, had demonstrated no inclination for it. The explanation for this may be found in the need to transform the apartheid security complex, exert civilian control over the new defence force, and demilitarise society after decades of authoritarian rule. South Africans were in no mood for increased military spending or engagement. Several other African states, most notably Nigeria, had deployed troops to both UN peacekeeping missions on the continent and under the auspices of the Economic Community of West African States (ECOWAS). Schoeman, writing in 2000, said:

"It is doubtful whether South Africa has shown sufficient proof of its willingness to shoulder regional and continental responsibilities in a bid to become a regional big power to the extent that permanent membership of the Security Council would imply... Whether true or not, the country is perceived to be able to play a bigger role, but that it is reluctant to do so."²³

In a scathing two-part paper titled "Partner or Hegemon? South Africa in Africa" (1998), Fred Ahwireng-Obeng and Patrick McGowan posed the question:

"Will South Africa use its influence and leadership to create public goods of benefit to the region, such as peace-keeping and a more liberal trade regime, or will it

¹⁸ R Cox and H Jacobson, *The Anatomy of Influence: Decision Making in International Organisations*, New Haven and London, Yale University Press, 1973, table A1.

¹⁹ *Ibid.* pp 3-4.

²⁰ B Wood, "Towards North-South Middle Power Coalitions" in *Middle Power Internationalism: The North-South Dimension*, Kingston and Montreal, McGill-Queen's University Press, 1990, p 78.

²¹ *Ibid.*, p 7; see also P Schraeder, "South Africa's Foreign Policy: From International Pariah to Leader of the African Renaissance", *The Round Table* 359, 2001, p 235; and P Vale and S Maseko, *op cit.*, p 278.

²² Interview with J Selebi, *Global Dialogue* 3(3), December 1998, quoted in M Schoeman, *op cit.*, p 7.

²³ M Schoeman, *op cit.*, p 7.

use its power selfishly to promote its own national interests by, for example, protecting its markets from SADC products?"²⁴

They note that "South Africa has shown great reluctance to take a leadership role in the areas of regional security and peace-keeping" and conclude that "...there has been no visible post-apartheid peace dividend" for the rest of Africa.²⁵

While the trade imbalance between South Africa and the region was set to grow further in coming years, the apparent lack of political commitment to multilateralism, peace and security in the region was about to change.

Launching the African Renaissance

The elections in 1999 of President Thabo Mbeki in South Africa and President Olusegun Obasanjo in Nigeria, began the race for regional influence between these two powerful countries in earnest. At the same time, Colonel Muammar Ghaddafi of Libya, finding himself under UN sanctions after the Lockerbie bombing and spurned by the Arab League, turned his diplomatic (some would say "undiplomatic") energy towards Africa. It was this combination that "triggered the AU process".²⁶

President Mbeki delivered his speech titled: "I am an African" to the opening of parliament in 1999, introducing the signature tune of his presidency: the African Renaissance. The concept was meant to place Africa at the centre of South African foreign policy, present South Africa's economic power and political success as a shining example of the continent's potential, and highlight the country's leading role in promoting Africa's cause to the rest of the world.²⁷ Vale and Maseko see a primary objective of the African Renaissance as being, "to maximise South Africa's foreign policy options in Africa – including continental support for the country's search for a seat on the United Nations Security Council."²⁸

President Mbeki attended his first OAU Assembly in Algiers, Algeria from 12-14 July 1999. It was here during a debate on collective security and conflicts in Africa that Col. Ghaddafi proposed an extraordinary session of the OAU Assembly, to be convened in Sirte, Libya from 6-9 September 1999. The purpose of the summit was to "discuss ways and means of making the OAU effective".²⁹ It is thought that presidents Mbeki and Obasanjo welcomed the extraordinary session as a chance to present their plans to reform the OAU, while encouraging Col. Ghaddafi to pick up the bill for the meeting.³⁰ They were apparently taken by surprise when Ghaddafi's opening address in September 1999 announced a blueprint for a "United States of Africa", with a single African army,

²⁴ F Ahwireng-Obeng and P McGowan, "Partner or Hegemon? South Africa in Africa, part 1", *Journal of Contemporary African Studies* 16(1), 1998, p 13.

²⁵ F Ahwireng-Obeng and P McGowan, "Partner or Hegemon? South Africa in Africa, part 2", *Journal of Contemporary African Studies* 16(2), 1998, pp 189-190.

²⁶ T Tiekou, "Explaining the Clash and Accommodation of Interests of Major Actors in the Creation of the African Union", *African Affairs* 103, 2004, p 251.

²⁷ P Schraeder, *op cit*, p 233.

²⁸ P Vale and S Maseko, *op cit*, p 278.

²⁹ AHG/Dec.140(XXXV), available online at

http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/oau/hog/9HoGAssembly1999.pdf accessed 8 November 2004.

³⁰ T Tiekou, *op cit.*, p 260.

a common currency, and a continental leader with presidential powers. The Heads of State agreed to replace the OAU with a new regional institution, but tasked the Council of Ministers to draft a constitution for the organisation, rather than accept the pie-in-the-sky plan before them.³¹

A legal team from the South African Department of Foreign Affairs was instrumental in drafting the Constitutive Act of the African Union at an expert's meeting held in Libya after the September summit.³² As a result, the draft that was adopted in Lomé, Togo in June 2000 was a far cry from the Libyan model, with a strong emphasis on democracy, human rights and condemnation of unconstitutional changes of government.³³

At the same time, President Mbeki and his aides were drafting their own grand vision for Africa, which was to become the New Partnership for Africa's Development (NEPAD). South Africa used the opportunity of chairing the Non-Aligned Movement in 2000 to persuade Nigeria, as host of the G77 and Algeria, which was chairing the OAU, to put their weight behind the Millennium Partnership for Africa's Recovery Programme (MAP). Recently elected President Abdoulaye Wade of Senegal was later brought on board when his OMEGA Plan (which focused primarily on infrastructural and educational projects) was merged with MAP in May 2001, along with the United Nations Economic Commission for Africa (UNECA) Compact for African Recovery.³⁴

The composite document, which retained President Mbeki's style and vision of African Renaissance, was presented as the New African Initiative to the OAU Assembly held in Lusaka in July 2001. The summit mandated an implementation committee to oversee the initiative, consisting of 15 heads of state – three from each of the OAU's five regions of North, South, East, West and Central Africa. The committee met in October 2001 to rename the document NEPAD, and set up the NEPAD secretariat in Midrand, South Africa.³⁵

The establishment of an entirely separate bureaucracy for NEPAD from the OAU Secretariat in Addis Ababa, Ethiopia, sparked a level of tension between the South African-based and -driven initiative and the secretariat – where South Africa had little bureaucratic influence as a latecomer to the organisation. The OAU had a quota system for employing nationals from the various member states. Like any intergovernmental organisation, the OAU/AU has officials who may be leaned upon by their own governments to promote their national interests behind the scenes. There were no South Africans stationed at the OAU before 2002, so South Africa lacked this often unacknowledged form of influence.

As NEPAD gained momentum from the G8 summits and intense donor interest in funding the programme, OAU officials felt the pressure to get the AU act together, before the new institution was overtaken by a more credible initiative. This competition was healthy, as it encouraged the rapid transition of the OAU Secretariat into the expanded AU Commission and the development of new AU structures like the Peace

³¹ Ibid., p 261.

³² Interview with DFA official, Addis Ababa, 2002.

³³ Constitutive Act of the African Union, 2000, Article 4(p).

³⁴ A De Waal, "What's new in the 'New Partnership for Africa's Development'?", *International Affairs* 78(3), 2002, p 467.

³⁵ Ibid.

and Security Council (PSC) and the Pan-African Parliament (PAP). It is through NEPAD then, that South Africa could be said to have had the greatest influence on the reform of the OAU.

It is likely that the prestige President Mbeki gained from driving this NEPAD contributed his success in lobbying for South Africa to host the launch of the AU in Durban in July 2002. This was a bitter disappointment to Col. Ghaddafi, who had to be placated by a state visit to Libya by President Mbeki and half a dozen members of his cabinet prior to the AU launch to ensure his attendance.³⁶

South Africa's year of chairing the AU

The ceremonial launch of the African Union took place in South Africa with due fanfare in July 2002. New rules of procedure and statutes were adopted for the core institutions: the Assembly, the Executive Council (formerly the Council of Ministers), the Permanent Representatives' Council (ambassadors meeting in Addis Ababa) and the Commission (formerly the Secretariat). The most innovative decision made by the Heads of State at this inaugural meeting was the adoption of a Protocol establishing the Peace and Security Council, 2002.

The PSC was to be a fifteen-member council elected by the Assembly to take decisions relating to conflict prevention, resolution and peacekeeping, including military intervention to operationalise Article 4(h) of the Constitutive Act. It formalised and extended the powers and functions of the existing OAU Central Organ for Conflict Prevention, Management and Resolution, including the early warning and conflict mediation functions. Later plans for an African Standby Force (adopted in Addis Ababa in 2004) gave the PSC the potential to develop an African peacekeeping capacity that would be the foundation of the AU's new relevance and authority.

South Africa made the ratification of the PSC Protocol a priority for President Mbeki's year chairing the organisation. The Department of Foreign Affairs set to work lobbying other member states to ratify the protocol, as 27 needed to do so for the protocol to enter into force. This number was achieved in November 2003, by which time Mozambique had taken over as chair, but was largely due to South Africa's diplomatic efforts.

Commitment to Peace and Security

The year was also used to demonstrate South Africa's heightened commitment to regional peace operations. The African Mission in Burundi (AMIB), mandated in April 2003, was both the most ambitious military intervention in the OAU/AU's history and South Africa's biggest foray into peacekeeping on the continent to date. It was regarded as a 'pilot project' for the role the AU would play in African-led peace missions.

³⁶ The state visit to Libya took place from 12-14 June 2004 and included Foreign Minister Nkosazana Dlamini-Zuma, Minister for Trade and Industry Alec Erwin, Minister of Transport Dullah Omar, Minister of Public Enterprises Jeff Radebe, Thoko Didiza, Lindiwe Sisulu and several other high-ranking officials.

South Africa played a central part in drafting the mandate for the mission.³⁷ The peacekeeping force was to be made up of contingents from South Africa, Ethiopia and Mozambique, with South Africa as the lead nation, providing the Force Commander, Major General Siphon Binda.³⁸ AMIB had a one-year mandate, which was extended twice before the UN took over from the AU in July 2004. In practice, this meant the South African and other troops were 'blue helmeted' and given reinforcements and, critically, financial support from the UN Department of Peacekeeping Operations (DPKO). Unlike a UN mission, in which poor countries (like Bangladesh, Pakistan and Ghana) are keen to participate for the compensation of good training and equipment for their troops, the cost of AU military interventions have to be carried for the most part by the contributing member states.

In early 2003, South Africa also agreed to provide 1268 soldiers (in addition to the technical personnel already deployed) to the UN Mission in the DRC (MONUC).³⁹ This stretched the capacity of the South African National Defence Force almost to breaking point, but it paid off for the government in political kudos. Kent and Malan comment that:

“South Africa’s recent engagements in UN and regional peace missions have undoubtedly enhanced the country’s image in the eyes of the international community... This role will also provide more weight to South Africa’s opinions and views on the continent as well as in the international realm.”⁴⁰

Promoting democracy and human rights

During South Africa’s year of chairing the African Union, the government also chose to focus on the Protocol establishing the Pan-African Parliament (PAP). Speaker to the South African Parliament Frene Ginwala lobbied the governments of Africa to ratify the protocol for the PAP to be established. South Africa made a bid to host the Parliament, which was seen as a challenge to Libya’s offer. The fact that Libya does not have a national parliament, or even the trappings of democracy, meant the latter proposal could never be a serious consideration, and the decision was taken in 2004 to establish the parliament in Midrand near Johannesburg – near the NEPAD secretariat.

South Africa hosted the second meeting of the PAP in September 2004⁴¹, amid colourful celebrations and rhetoric about bringing ‘the people’s voice’ into the AU. Yet the parliament at this stage offers little more than symbolism, as the representatives from each member state are appointed by their national legislatures (not directly elected like in the European Parliament), and they do not have legislative powers. Although the Protocol stipulates that the five chosen MPs from each country “must reflect the

³⁷ V Kent and M Malan, “Decisions, decisions: South Africa’s foray into regional peace operations”, Occasional paper 72, Institute for Security Studies, April 2003, p 4.

³⁸ Communiqué of the Ninety First Ordinary Session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at the Ambassadorial Level, Addis Ababa, 2 April 2003.

³⁹ V Kent and M Malan, op cit, pp 5-6.

⁴⁰ Ibid, p 10.

⁴¹ The inaugural meeting took place in Addis Ababa in March 2004, before the decision on a host country had been made.

diversity of political opinions in each National Parliament or other deliberative body”⁴², the reality is that very few opposition parties are represented. Even in South Africa, the African National Congress used its overwhelming majority in the National Assembly to ensure that a candidate from the official opposition was excluded from the PAP.⁴³ The most that can be expected of the institution for the next five years is that it will offer a forum for comparing the different experiences of parliamentary democracy (or the lack thereof) across the region. Compared to the African Court on Human and Peoples Rights, it is a soft option for protecting the ‘will of the people’.

The Protocol establishing the African Court on Human and Peoples Rights, 1998, was drafted by an OAU experts’ meeting held in Cape Town, South Africa in 1995. Given its origins, one could have expected the South African government to champion and offer to host the court, rather than the parliament. Without a champion, the protocol has taken six long years to be ratified by just 15 member states.

The Protocol states that the Court will complement the role of the existing African Commission on Human and Peoples’ Rights. But the original intention was that the Court would make up for the many shortcomings of the Commission. Situated in Banjul, The Gambia, the Commission is inaccessible and under-funded. It owes the little publicity it does receive to the active participation of human rights NGOs. The Commission does not make recommendations on the communications it hears. Rather, it submits reports to the Assembly of Heads of State, who act – or more often, don’t act – on these findings.⁴⁴

In contrast, the findings of the Human Rights Court will be binding and final. It will have the power to order compensation or reparations to victims of human rights violations. It has a wide jurisdiction over the interpretation and application of the African Charter on Human and Peoples’ Rights, and “any other relevant human rights instrument ratified by the States concerned” (Article 3).

As it stands, the OAU protocol establishing the Court allows only African governments and intergovernmental organisations, such as SADC or ECOWAS, as well as the African Commission on Human and Peoples’ Rights (ACHPR), to bring cases before the Court. The original draft – written in Cape Town – gave access to individual victims and enabled non-governmental organisations (NGOs) to represent them. This was watered down in the final version adopted by the OAU Heads of State in 1998. Article 34(6) provides for an additional declaration to be signed by a state party when it ratified the Protocol, “accepting the competence of the court to receive cases” from NGOs and individuals. So far, Burkina Faso is the only country to have made such a declaration. In South Africa, the parliamentary committee dealing with the ratification apparently decided against granting access to individuals and NGOs. If the prosecution of human

⁴² Protocol to the Treaty establishing the African Economic Commission relating to the Pan-African Parliament, 2000, Article 4(3).

⁴³ Veteran liberal MP and long-time colleague of Helen Suzman, Colin Eglin was nominated for the PAP by the Democratic Alliance, but was passed over by the ANC-dominated parliament in favour of the New National Party’s Boy Geldenhuys. This anomaly of ANC MPs choosing the party of Apartheid over the official opposition may be explained by the expedient alliance between the ANC and the NNP to gain control of the Western Cape province in the 2004 election.

⁴⁴ J Cilliers and K Sturman, “Challenges facing the AU’s Peace and Security Council”, *African Security Review* 13(1), 2004, pp 103-104.

rights cases is left up to African governments, the Court could expect a light workload. Of the 280 cases brought before the African Commission over the years, 279 were made by individuals and NGOs, and only one by a state party against another state party.⁴⁵

Senegal and Lesotho have offered to host the court, and the election of judges by the AU Executive Council was planned to take place in February 2005, according to a progress report tabled in June 2004 to the African Union.⁴⁶ But subsequent developments may have delayed this schedule.

Undermining human rights enforcement?

The AU's fragile human rights regime suffered two blows at the most recent summit held in Addis Ababa in June/July 2004. The first was that the Assembly accepted a Libyan proposal on the "seats of the African Union", that "the Organs of the Union should be located in different regions of Africa on the basis of the principle of geographical distribution" and furthermore, "that the African Court on Human and Peoples' Rights and the Court of Justice should be integrated into one Court".⁴⁷

The proposal was no doubt motivated by Col. Ghaddafi's annoyance at losing the bid to host the Pan-African Parliament to South Africa. With the African Commission for Human Rights based in The Gambia in West Africa, and the PAP in Southern Africa, it would be difficult for Senegal or Lesotho to host the court on the basis of "geographical distribution", while there could be no claim to a human rights court on the basis of Libya's human rights record. The proposal to integrate the African Court on Human and Peoples' Rights with the Court of Justice may also have been made with a mind to watering down the human rights function of this AU institution. It is alarming that the Heads of State went along with this proposal, apparently without any reference to the report tabled by the Chairperson on progress already made in setting up the Human Rights Court.⁴⁸ The danger is that...

The second blow to human rights at the AU summit allegedly involved South Africa directly. A report on human rights abuses during the 2000 and 2002 elections in Zimbabwe was tabled by the African Commission on Human and Peoples' Rights, in accordance with normal procedure for such reports. When it appeared on the agenda of the Executive Council, Zimbabwe Foreign Minister, Stan Mudenge demanded that it should not be taken to the Assembly before his government had seen or had a chance to respond to it. According to sources quoted in a South African newspaper, the South African Foreign Affairs Minister, Nkosazana Dhlamini-Zuma then "stepped up to the plate for Mudenge" and later told the newspaper that "it would not be correct to circulate the document" until all the states mentioned in the report had seen it.⁴⁹

⁴⁵ Ibid.

⁴⁶ Progress report of the Chairperson on the operationalisation of the African Court on Human and Peoples' Rights, 15 June 2004.

⁴⁷ "Decision on the Seats of the African Union", Assembly/AU/Dec.45(III).

⁴⁸ "Integration/ merger of the African Court on Human and Peoples' Rights and the Court of Justice", Coalition for an Effective African Court on Human and Peoples' Rights, <www.interights.org> date accessed 10 November 2004.

⁴⁹ "How SA backed Zimbabwe lie", Mail & Guardian, 9 July 2004.

The Department of Foreign Affairs later issued a press statement denying that Minister Zuma had backed Minister Mudenge up in the council meeting.⁵⁰ But if the source is correct in the account that Nigeria's Foreign Minister, Oluyemi Adentji, who was chairing the meeting, chided Mudenge for his "threatening behaviour" and was reluctant to dismiss the report at Zimbabwe's behest, then the recommendation of the meeting – that the Assembly suspend publication of the report – is unlikely to have been passed without the intervention of another powerful member state, namely South Africa. It would not be the first time that South Africa had helped the Zimbabwe government to save face before a multilateral forum. For example, President Mbeki tried to dissuade the Commonwealth Heads of State from suspending Zimbabwe from the Commonwealth in 2002.⁵¹

Sanctions versus 'quiet diplomacy'

The mechanism of sanctions provided for by Article 23(2) of the AU Constitutive Act has not yet been used by the organisation, although at least three member states have been reprimanded for "unconstitutional changes of government" in the past three years, namely, Madagascar, Central African Republic and Sao Tomé and Príncipe. Coups d'état in the latter two countries in March and July 2003 respectively, triggered the response from the AU set out in Rule 37 of the Assembly Rules of Procedure regarding "Sanctions for Unconstitutional Changes of Government".

In the case of Madagascar, the AU took a more controversial decision in July 2002 to suspend the member state for what it deemed to be an unconstitutional change of government from incumbent for 30 years, Didier Ratsiraka, to popular leader, Marc Ravalomanana. It was the only organisation by that stage that was seen to be siding with the former president, as one commentator points out, "in the eyes of virtually every Malagasy and all the major foreign powers Ravalomanana was now president of Madagascar; only the OAU refused to accept his victory..."⁵²

The case for sanctions against the government of Zimbabwe, following the ACHPR's report of human rights violations relating to electoral intimidation, could be made in terms of Rule 36 of the Assembly Rules of Procedure on "Sanctions for non-compliance with decisions or policies of the AU". It would certainly demonstrate that the organisation was willing to intervene to protect human rights in a situation where a government was directly implicated in violations for political ends. It would also give teeth to the newly established Political Affairs Commission within the AU Commission, which has been tasked with monitoring and upholding the AU's code of conduct for free, fair elections.

Yet it is unlikely that the AU will intervene to stop intimidation and rigging of Zimbabwe's forthcoming elections in March 2005, without the approval of its powerful neighbour, South Africa. In 2000 the OAU Assembly in Lomé condemned sanctions against Zimbabwe by the United States as a "violation of state sovereignty", and it is

⁵⁰ "Statement on Allegations that South African supported Zimbabwe in suppressing a report to the AU structures", Department of Foreign Affairs, Republic of South Africa, 9 July 2004.

⁵¹ "Commonwealth split over Zim", Mail & Guardian, 19 September 2003.

⁵² R Marcus, "Political change in Madagascar: populist democracy or neopatrimonialism by another name?" Occasional Paper 89, Institute for Security Studies, August 2004, p 7.

unlikely that this position will change without a shift in President Mbeki's policy of "quiet diplomacy" towards President Mugabe.

Conclusion

Since 1999, the South African government has placed its involvement in the AU at the centre of foreign policy. This is confirmed by the remarks of Minister Zuma in the strategic planning document of the Department of Foreign Affairs, published in March 2004:

"Our membership of the AU has become the biggest single factor in our international relations... AU membership, aside from the intrinsic political, security and economic benefits it brings, enhances our ability to exert influence in a wider international arena."⁵³

This level of engagement by the emerging middle power on the continent has fundamentally altered the dynamics within the organisation, and contributed to the rapid transformation of the OAU into the African Union. South Africans, including civil society experts, academics and NGO activists, have had a hand in drafting the legal parameters of new institutions such as the Peace and Security Council, the Pan-African Parliament and the African Court on Human and Peoples' Rights. Indirectly, the promotion of NEPAD by the South African government has added momentum to the AU's development.

The organisation's shift in emphasis from sovereignty to intervention in the internal problems of member states has been made feasible by the Mbeki presidency's substantial commitment of resources, troops and leadership to peace operations on the continent. This would appear to be motivated by South Africa's national interest in boosting the country's image as a middle power, capable of keeping the peace in the region and worthy of a seat on the UN Security Council.

In other areas of intervention – the defence of human rights in a supra-national court and sanctions in defence of democracy – South Africa has played a less positive role, particularly with respect to the crisis in Zimbabwe. One could conclude that South Africa's foreign policy in support of intervention through the African Union is based to a greater extent on strategic objectives than the rhetoric of "non-indifference" suggests.

⁵³ South African Department of Foreign Affairs, Strategic Plan, March 2004
<<http://www.dfa.gov.za/departments/stratplan04/index.htm>> accessed 20/10/2004.