

**THE AFRICAN UNION'S RESPONSIBILITY TO PROTECT IN THE  
LIBYAN CRISIS 2011**

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## LIST OF ABBREVIATION

<b>ACHPR</b>	<b>African Commission on Human and Peoples' Rights</b>
<b>ACJHR</b>	<b>African Court on Justice and Human Rights</b>
<b>AMIB</b>	<b>African Union Mission in Burundi</b>
<b>AMIS</b>	<b>African Union Mission in Somalia</b>
<b>AQIM</b>	<b>Al Qaeda in the Maghreb Region</b>
<b>ASF</b>	<b>African Standby Force</b>
<b>AUC</b>	<b>African Union Commission</b>
<b>AU</b>	<b>African Union</b>
<b>ECOWAS</b>	<b>Economic Community of Western African States</b>
<b>ECOMOG</b>	<b>ECOWAS's Monitoring Group</b>
<b>HRC</b>	<b>Human Rights Council</b>
<b>ICISS</b>	<b>International Commission on Intervention and State Sovereignty</b>
<b>NATO</b>	<b>North Atlantic Treaty Organisation</b>
<b>OHCHR</b>	<b>Office of the High Commissioner for Human Rights</b>
<b>PAP</b>	<b>Pan-African Parliament</b>
<b>PSC</b>	<b>Peace and Security Council (of the AU)</b>
<b>UNSC</b>	<b>United Nations Security Council</b>
<b>UNHCR</b>	<b>United Nations High Commissioner for Refugees</b>
<b>USD</b>	<b>United States Dollars</b>

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# 1. INTRODUCTION

## 1.1 Background

“For too long the world has stood by in the face of atrocities. The Responsibility to Protect is a commitment to act.”<sup>1</sup> After the 2005 World Summit, the international community endorsed a new international norm, the Responsibility to Protect. This new international norm stipulates that the primary responsibility to protect the population of a country lies with the state itself. When a state is either unable or unwilling to protect peoples, the responsibility shifts to the international community. The obligation must be exercised preventively and the tools of action include diplomatic, legal and other peaceful measures; coercive measures such as sanctions; and, as a last resort, military force.<sup>2</sup>

The African Union (AU) adopted a Common African Position on the proposed reform of the UN known as the ‘Ezulwini Consensus’.<sup>3</sup> The international norm of Responsibility to Protect was formally adopted in the Ezulwini Consensus.<sup>4</sup> The AU highlighted the importance of empowering regional organisations to take actions as the General Assembly of the United Nations and the Security Council (UNSC) are often ‘too far from the scenes of conflict and may not be in a position to undertake effectively a proper appreciation of the nature and development of conflict situations’.

The uprising in Libya gave the AU the opportunity to convert their intention penned in the Ezulwini Consensus into actions. The events during and after the uprising in Libya which even led to military intervention by NATO upon the vote of Resolution 1973 by the SC demonstrates that the AU has failed to materialize its intention of applying the Responsibility to Protect as effectively as it would have desired. It is said that the reaction of the AU by merely condemning the crackdown against protesters were too weak for the West to consider it.

This dissertation tries to look at the reasons why the AU was not firm and convincing enough in its actions and reactions following the Libyan uprising. What are the impediments that the AU is currently facing to deal with such situations as the Libyan crisis on the African continent? What solutions can be proposed to make the AU more relevant?

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<sup>1</sup> Global Centre for the Responsibility to Protect <http://globalr2p.org/> (accessed 15 August 2011).

<sup>2</sup> 2001 Report of the International Commission on Intervention and State Sovereignty; see also 2005 World Summit Outcome Document United Nations General Assembly para 138 and 139.

<sup>3</sup> See ‘The Common African Position on the Proposed Reform of the United Nations’ African Union Executive Council 7<sup>th</sup> Extraordinary Session Addis Ababa, Ethiopia (7-8 March 2005).

<sup>4</sup> As above page 6.

## 1.2 Research question

This dissertation investigates the factors behind the AU failure to accomplish its responsibility to protect. It looks at the reasons why article 4(h) of the Constitutive Act of the African Union was not applied and the AU did not intervene militarily in Libya. This dissertation looks at the factors that prohibited the AU to invoke article 4(h) and to fulfil their responsibility to protect. Based on this, it will be examined whether the method of financing of the AU must be revisited. The research process will also focus on whether the AU has the military force capable of intervening in situation such as the Libya Crisis. The failure of all African states to be on the same wavelength on the Libyan crisis will also be subject of the interrogation.

## 1.3 Relevance of the subject

On the 10<sup>th</sup> of March 2011, the PSC came up with an AU Road Map which merely provided for cessation of hostilities in Libya and condemnation of the gross human rights violations.<sup>5</sup> It was a deal which consisted of a cease-fire and the suspension of NATO airstrikes which Colonel Muammar Qaddafi accepted and the rebels rejected.

The international community was of the view that whatever be the outcome of the Libyan revolution, AU's international standing is going to be affected.<sup>6</sup> The Road Map did not mention whether Qaddafi will be removed from power or not which probably is the reason why the rebels did not accept it. Does this situation have to do with the person of Colonel Qaddafi himself? Indeed, he is highly influential at the AU being among the major contributors to the treasury of the AU and also a group contributor.

There seems to have an organizational issue, as pointed out by the AU Commission Chairman, Mr. Jean Ping,<sup>7</sup> within the AU which prevents it from fulfilling its roles and being totally impartial on matters concerning human rights violations. A look at the voting pattern of the UN Resolution 1970 and 1973 where all the three African states (South Africa, Nigeria and Gabon) voted for also seems to show that all the members of the African Union may not be on the same wavelength. South Africa eventually stated that it was in favour of no fly zone but no external military intervention and that the West has over interpreted some clauses of the Resolution 1973.

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<sup>5</sup> See k Okoampa 'On Libya, African Union does not get it' available at <http://www.modernghana.com/news/341364/1/on-libya-african-union-does-not-get-it.html> (accessed 25<sup>th</sup> August 2011).

<sup>6</sup> See 'On the African Union and Libya' Sahel Blog covering politics and religion in the Sahel and the Horn of Africa available at <http://sahelblog.wordpress.com/2011/04/12/on-the-african-union-and-libya/> (accessed 25<sup>th</sup> August 2011)

<sup>7</sup> See CNN World 'Can African Union broker a Libya peace plan?' available at <http://www.cnn.com/2011/WORLD/africa/04/11/libya.war.african.union/> (accessed 25<sup>th</sup> August 2011).



## 1.4 Literature Review

The crisis in Libya has been examined and observed from several different perspectives. Thomas Weiss, renowned writer on the concept of responsibility to protect has discussed about the changing concept of humanitarian intervention into responsibility to protect.<sup>8</sup> He regards the intervention in Libya as a genuine application of the responsibility to protect.<sup>9</sup> On a more specific note, the role of the AU and its effectiveness has also been the subject of many papers. In a conference paper,<sup>10</sup> Manal Omar<sup>11</sup> is of the view that the AU has a strong influence over Colonel Qaddafi but some political figures of Africa share too close a relationship with him to be honest and neutral brokers.<sup>12</sup> In the same paper, Richard Williamson<sup>13</sup> argues that the AU is not one of the more effective regional groups despite its large membership and that it does not have a record of robust action.<sup>14</sup> Therefore, the role of the AU, according to them, could not be very critical in the Libyan Crisis. In contrast, Dr Ian Davis, director of NATO watch, has seen the role of the AU as fundamental in negotiating a ceasefire with Colonel Qaddafi and urged NATO to respect it.<sup>15</sup>

It should be highlighted that there is a plethora of writings from Africa where the concern is seemingly more about the divided opinion of African states over the intervention by the West and also a sentiment of neocolonialism. Henri Mbouri Mbak denounces a confused and hypocritical stand of certain African leaders over the Libyan crisis.<sup>16</sup> Souleymane Camara interrogates whether the West is embarking on a process of neocolonialism of the black continent by making reference to the 'oil agenda' of the West.<sup>17</sup>

## 1.5 Objective of the dissertation

This dissertation aims at investigating the reasons why the AU could not intervene militarily by sending the African Standby Force to Libya or could not be strong enough as the international community would want it to against Colonel Qaddafi. The Constitutive Act of the African Union stipulates in its article 3 that the promotion of peace, security and stability on the continent is one of the key objectives of the

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<sup>8</sup> T Weiss *Humanitarian intervention: Ideas in action* (2007).

<sup>9</sup> Global Centre for the Responsibility to Protect *RtoP alive and well after Libya* (2011) available at [www.globalr2p.org](http://www.globalr2p.org) (accessed 25<sup>th</sup> August 2011).

<sup>10</sup> The Brookings Institution *Libya and the responsibility to protect* (16<sup>th</sup> June 2011).

<sup>11</sup> Director, Iraq and Iran Program, United States Institute of Peace.

<sup>12</sup> n 10 page 32.

<sup>13</sup> Non Resident Senior Fellow, Foreign Policy, the Brookings Institution.

<sup>14</sup> n 10 above.

<sup>15</sup> NATO watch *Libya: NATO must stick to the R2P script* (31<sup>st</sup> March 2011) available at [www.globalr2p.org](http://www.globalr2p.org) (accessed 25<sup>th</sup> August 2011).

<sup>16</sup> See 'L'Afrique face à l'intervention armée' *Journal Afrique Expansion* September 2011 200.

<sup>17</sup> See 'La communauté internationale veut-elle recoloniser l'Afrique' *Journal Afrique Expansion* September 2011 256.

AU. This dissertation looks at what has prevented the AU to respect their obligation under the Ezulwini Consensus as well as the article 3 of the Constitutive Act.

It will be studied whether the organizational structure, the military capacity and the financial structure of the AU is self-restrictive for the AU to react in the case of Libya. What was the reason why AU could not act following the crisis in Libya? While many people have jumped to criticism of the AU after the events, this dissertation will seek rather constructively look at the reasons for AU's weak reaction and try to propose some measures in the form of possible reforms so as to strengthen the AU and its mechanisms to react to prevent future violence in AU member states.

## **1.6 Research methodology**

The library of the AU and virtual library of the University of Pretoria were the basic windows of research. Books on international law and politics as well as journal articles and publications were used to provide the theoretical structure of the dissertation. However, a very significant part of the dissertation were based on interviews and facts obtained from interviewing people who are closely involved with this subject matter at the AU. The interviews are the cornerstone of this dissertation because from these exercises, factual information were obtained which cannot be found in books and journals.

## **1.7 Overview of chapters**

Chapter **one** introduces the study.

Chapter **two** gives an overview of the human rights violations in Libya before embarking on the international norm of responsibility to protect. The chapter also looks at how the AU has endorsed this responsibility.

Chapter **three** looks at the pattern of behaviour of the AU wherever it has intervened. This allows to see why Libya has been the exception. A legal interpretation of article 4(h) is done to analyse why there has been inconsistencies in AU's intervention.

Chapter **four** analyses the dynamics in Libya which has prevented AU from invoking article 4(h). This chapter is basically investigative and based on interviews carried out in AU.

Chapter **five** proposes some recommendations which the AU must think of implementing in order to give legal force and value to article 4(h) and enable the AU to fulfil its responsibility to protect.

## 2. THE RESPONSIBILITY TO PROTECT

### 2.1 Introduction

The uprising in the Libyan Arab Jamahiriya (Libya) has captured the attention of the world. The reaction of the international community has been immediate and clear with the condemnation of human rights violations inflicted by the Libyan leader Colonel Qaddafi. The debate around Libya has been ranging from intervention to protect civilians to a political move by France and United Kingdom for political benefits to simply a move to take control of the oil in Libya. The present chapter looks at the human rights violations in Libya and how the world has reacted to them. In addition, it also introduces the concept of responsibility to protect and how the AU endorsed it. This newly born international concept will be discussed in light of the Libyan crisis and it will be debated whether or not R2P applied in the Libyan case and was a basis for intervention. R2P has been adopted by the AU and also its Constitutive Act is in favour of intervention on humanitarian ground.

### 2.2 Human rights violations in Libya

Revolution in certain countries of the Arab world against authoritarian rule started as early as January 2011 and was coined the Arab Spring. The revolution saw the authoritarian regime of Hosni Mubarak of Egypt and Ben Ali of Tunisia falling in a relatively peaceful manner.<sup>18</sup> However, the people of Libya did not have the same fate of a peaceful change of regime. On 15<sup>th</sup> February 2011, protests against the 42 years long autocratic rule of Colonel Qaddafi broke out in Benghazi. Citizens were protesting for basic services such as healthcare and other basic facilities which are unattainable due to poverty. The protests continued in several areas of Libya challenging Colonel Qaddafi to leave power and denouncing the brutal ways of his government. In order to stifle the protests, force was used which resulted in the death of hundreds of people. Tear gas and rubber bullets were used against protesters.<sup>19</sup> Civilians were illegally and arbitrarily detained and tortured.

On the 25<sup>th</sup> February 2011, the United Nations High Commissioner for Human Rights, Navi Pillay, addressed the Human Rights Council during a special session to describe the gravity of the situation in Libya and to request that the members fulfil their responsibility to protect the Libyan people.<sup>20</sup> The reported nature and scale of attacks by the autocratic regime was qualified as egregious violations of

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<sup>18</sup> See 'Libya's agony' *News Africa* 31 July 2011 13.

<sup>19</sup> See World Threats 'Protests in Libya starts early' 15 February 2011 available at <http://www.worldthreats.com/?p=6291> (accessed 25<sup>th</sup> August 2011).

<sup>20</sup> United Nations Human Rights Council Situation of human rights in the Libyan Arab Jamahiriya: statement by Navi Pillay, UN High Commissioner for Human Rights 15<sup>th</sup> Special Session Geneva, 25 February 2011.

international humanitarian and human rights law.<sup>21</sup> Navi Pillay highlighted the fact that Libyan Forces were firing on protesters and bystanders and stopping ambulances from reaching hospitals. The human rights violations were confirmed by UN Secretary-General Ban Ki Moon in a remark to the SC meeting on peace and security in Africa on the 25<sup>th</sup> February 2011.<sup>22</sup> Libya was eventually suspended from the Human Rights Council on the 1<sup>st</sup> March 2011.<sup>23</sup>

The human rights violations were not limited to killing of citizens. One of the consequences of the civil unrest was the targeting of black Africans by the rebels. UN High Commissioner for Refugees, Antonio Guterres, issued a strong call for sub-Saharan Africans to be protected in Libya.<sup>24</sup> It is reported that by late August, 656, 000 people, consisting of migrant workers from Egypt and Tunisia as well as other nationalities, have fled from Libya. More than 4,000 refugees and asylum seekers are currently in camps at the Ras Adjir crossing. It is also reported by the UNHCR that tens of thousands of people from the Berber ethnicity have fled the Western Mountains and sought refuge in Tunisia. As much as 60,000 Libyan refugees are being hosted by local families in Tunisia.<sup>25</sup> The UN office for the Co-Ordination of Humanitarian Affairs reported that citizens were intimidated at borders and their freedom of movement, security, food and water was not being upheld.<sup>26</sup>

In the face of such gross human rights violations, the international community responded via statements from governments, resolutions by the UNSC and issuance of a Road Map towards political negotiation by the AU inter alia. The following section will summarize the reactions and actions of the international community.

### **2.3 Contrasting response of the international community and the AU**

For ease of reference, a chronology of events is annexed which summarizes the response of the international community in relation to the Libyan crisis. It is clear that the international community believed that use of force was the only option to protect civilians in Libya. Very limited use of diplomacy and negotiation were used to try and find a political solution. The Human Rights Council's

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<sup>21</sup> As above.

<sup>22</sup> 'Fundamental Issues of Peace, Security at stake, Secretary-General warns as he briefs SC on situation in Libya', 25 February 2011, <http://www.un.org/News/Press/docs/2011/sc10185.doc.htm>

<sup>23</sup> Libya was suspended for gross violations of human rights.

<sup>24</sup> See 'UNHCR concerned as sub-Saharan Africans targeted in Libya' available at <http://www.unhcr.org/4e57d1cb9.html> (accessed 17 August 2011).

<sup>25</sup> See 'Responding to the Libyan Crisis' available at <http://www.unhcr.org/pages/4d7755246.html>

<sup>26</sup> 'Top UN officials call for urgent access to Libyan areas affected by violence', 6 March 2011, <http://www.un.org/apps/news/story.asp?NewsID=37692&Cr=Libya&Cr1=> (accessed 20 September 2011).

address to the United Nations SC was based on the international norm of responsibility to protect whereby Navi Pillay reminded the international community its responsibility to protect civilians.<sup>27</sup>

As far as the AU is concerned, the AU Commission and the PSC decided to adhere to a political solution to the Libyan Crisis which failed. They tried to get the Libyan government and the members of the National Transitional Council on the same table but never on the same wavelength. Did AU fail under its duty to protect civilians? The responsibility to protect is not limited to use of force. Indeed, use of force is the last resort. Diplomatic, humanitarian and other peaceful means should be given priority.<sup>28</sup> However, when it became clear that diplomatic channel was inappropriate due to the continuing violations by the Libyan authorities, why did the AU fall short of using other means even if the AU's Constitutive Act of 2000 enunciated one of the most interventionist regimes in the world in cases of human rights abuses and regional instability?<sup>29</sup> The following section looks at the concept of responsibility to protect and how it should have been applied by the AU.

#### **2.4 The responsibility to protect**

The UN Charter provides that the Charter does not authorize any kind of intervention in matters which are essentially within the domestic jurisdiction of a state.<sup>30</sup> The rationale behind this prohibition is intrinsically link to the very purpose of the creation of the United Nations: to prevent interstate wars in the wake of the destruction of World War II. Such prohibition became essential after the failure of the League of Nations which allowed states members to take action against states who acted unlawfully irrespective of obtaining an authorization from the council.<sup>31</sup> Article 2(4) of the UN Charter also imposes on state members an obligation to refrain from the threat or use of force against the territorial integrity and political independence of any state. Again this is a reflection of mood within which the UN Charter was founded which was basically to prevent any state to use force against another. The only avenue to use force against another state is under Chapter VII of the UN Charter which provides two scenarios justifying use of force. Firstly, if the SC determines that there is any threat to the peace, breach of the peace or an act of aggression,<sup>32</sup> it may authorize the use of force to maintain or restore

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<sup>27</sup> See n 20 above.

<sup>28</sup> World Summit Outcome Document para 139.

<sup>29</sup> See Mail and Guardian 'Africa must support Libya intervention' available at <http://mg.co.za/article/2011-04-01-africa-must-support-libya-intervention> (accessed 07 September 2011).

<sup>30</sup> See art 2(7) of the United Nations Charter; see also the Preamble of the Declaration on Principles of International Law Friendly Relations and Co-operation among States para 8.

<sup>31</sup> P Dupuy *The constitutional dimension of the Charter of the United Nations revisited* (1997) 21.

<sup>32</sup> See art 39 of the United Nations Charter; see also J Patrik 'The humdrum use of ultimate authority: Defining and analysing chapter vii resolutions' (2009) 78 *Nordic Journal of International Law* 309-342.

international peace and security.<sup>33</sup> The second instance validating any forceful action against another state is countries exercise their right to individual or collective self-defence against an armed attack.<sup>34</sup>

In as much as Chapter VII has been a laudable effort to minimize interstate wars, it has, coupled with article 2(4) and 2(7) of the UN Charter, created a notion of strict non-interference in the internal affairs of a state leading to what Gareth Evans refers to as sovereignty being essentially a licence to kill.<sup>35</sup> Even if intervention using force in another state was backed by some valid humanitarian reasons, the reaction would be condemnation for violation of territorial sovereignty. For instance, Vietnam's invasion of Cambodia to halt the massacre of the Khmer Rouge<sup>36</sup> or Tanzania's intervention in Uganda<sup>37</sup> to overthrow the ruthless dictator Idi Amin was not applauded for its humanitarian and human rights reasons but instead severely condemned and criticized.

## 2.5 From humanitarian intervention to responsibility to protect

As the Cold War ended, a series of highly complicated conflicts based on rivalries or ethnic and religious divisions started. The collapse of the structures of states as well as the gap left by the geopolitical rivalry between two superpowers fuelled the spreading of such conflicts across the world.<sup>38</sup> Some bloody examples of such conflicts were Somalia in 1993<sup>39</sup>, Rwanda in 1994, Srebrenica in 1995<sup>40</sup> and Kosovo in 1999. The international community started to look at such conflicts as a greater threat than interstates wars.<sup>41</sup> This gave way to an international debate in the international community about whether or not there should be a right to intervene on humanitarian ground. On one hand there were proponents of the right to intervene such as Bernard Kouchner who believed that the right and duty of states to intervene was intrinsic with the right of civilians during conflicts and the right of humanitarian agencies to provide affected people with assistance.<sup>42</sup> On the other hand, proponents of territorial

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<sup>33</sup> See art 42 of the United Nations Charter.

<sup>34</sup> See art 51 of the United Nations Charter.

<sup>35</sup> See 'Ending mass Atrocity Crimes: The responsibility to protect balance sheet after libya' speech delivered by Professor Gareth Evans at Leo Baeck Centre, Melbourne (31 July 2011) available at <http://www.gevans.org/speeches/speech443.html> (accessed 17 September 2011).

<sup>36</sup> See Cambodia 'Vietnam: was it liberation or invasion' available at <http://www.mekong.net/cambodia/jan7.htm> (accessed 17 September 2011).

<sup>37</sup> See DG Acheson-Brown 'The Tanzanian invasion of Uganda: a just war?' (2001) 12 *International Third World Studies and Review* 6.

<sup>38</sup> See J Garrigues 'The responsibility to protect: from an ethical principle to an effective policy' FRIDE Peace, Security and Human Rights Programme (November 2007).

<sup>39</sup> See paper by GP Valladares 'Somalia humanitarian intervention' available at [http://www.luisedruke.com/luise/book\\_thess/valladares\\_621\\_667.pdf](http://www.luisedruke.com/luise/book_thess/valladares_621_667.pdf) (accessed 10 September 2011).

<sup>40</sup> See JN Pieterse 'Sociology of humanitarian intervention: Bosnia, Rwanda and Somalia compared' (1997) 18 *International Political Science Review* 71-93.

<sup>41</sup> See United Nations Institute for Disarmament Research Special Comment by Jayantha Dhanapala available at <http://www.unidir.org/pdf/articles/pdf-art255.pdf> (accessed 15 September 2011).

<sup>42</sup> See M Bettati & B Kouchner *Le devoir d'ingerence* (1987) 300.

sovereignty still believed that whatever happens within the border of a sovereign state remain the internal affairs of the state concerned.<sup>43</sup>

However, in view of the humanitarian massacre which took place in Bosnia, Rwanda and Somalia as mentioned above, the international community finally acknowledged that there was a need to redefine the parameters of international responses to conflicts.<sup>44</sup> The Brahimi Report proposed combining military interventions with humanitarian exercises such as institutional strengthening and gender called integrated missions.<sup>45</sup> International humanitarian organisations hit back by saying that their call to intervene was often used as an excuse to intervene militarily for personal interests of some states. The blurred picture of humanitarian intervention persisted as there was a serious lack of normative precedent to apply the norm and also there always existed the dilemma of non-consensual military intervention.<sup>46</sup>

In 2000, Kofi Annan, the then Secretary-General of the United Nations addressed the General Assembly and posed the following issue to the world : If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?<sup>47</sup> In 2001, following Kofi Annan’s challenge, the International Commission on Intervention and State Sovereignty (ICISS), set up by the Canadian Government, took the task of defining the scope and objectives of the responsibility to protect.<sup>48</sup> A comprehensive report called the *Responsibility to Protect* was consequently published. Essentially, the report claims that when a population is suffering serious harm as a result of an internal war, insurgency, repression or failure of the State, and the State involved has no will or capacity to contain or prevent it, the principle of non-intervention cease to apply in the fact of international responsibility to protect.<sup>49</sup>

In 2004, a report to the General Assembly of the United Nations, entitled *A More Secure World: Our Shared Responsibility* was released by the UN Secretary-General’s High level Panel on Threats,

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<sup>43</sup> See SN Macfarlane ‘The responsibility to protect: is anyone interested in humanitarian intervention?’ (2004) 25 *Third World Quarterly* 979.

<sup>44</sup> See n 38 p 9.

<sup>45</sup> See General Assembly and SC, Report of the Panel on UN Peace Operations, [http://www.un.org/spanish/peace/operations\\_report/](http://www.un.org/spanish/peace/operations_report/) (accessed 13 August 2011).

<sup>46</sup> T Weiss, ‘Using military force for human protection: What’s next?’ *Multilateralism Under Challenge: Power International Order, and Structural Change* (2006) 376.

<sup>47</sup> The Secretary-General, *We the Peoples: The Role of the United Nations in the Twenty-First Century*, chap 4, at 48, delivered to the General Assembly, (3 April 2000) UN Doc No A/54/2000, available at [www.un.org/millennium/sg/report/full.htm](http://www.un.org/millennium/sg/report/full.htm). (accessed 15 August 2011).

<sup>48</sup> See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* International Development Research Centre, Ottawa 2001 available at [www.iciss.ca/menu-en-asp](http://www.iciss.ca/menu-en-asp) (accessed 12 August 2011).

<sup>49</sup> See paper by E Posada ‘The responsibility to protect’ available at [http://www.ideaspaz.org/articulos/download/24responsibility\\_to\\_protect.pdf](http://www.ideaspaz.org/articulos/download/24responsibility_to_protect.pdf) (accessed 16 August 2011).

Challenges and Change.<sup>50</sup> It was recommended by the Panel that the emerging norm of responsibility to protect should be adopted by the international Community. A similar recommendation followed in 2005 in the report by the Secretary General called *In Larger Freedom* to the UN General Assembly during the opening of the 2005 World Summit Session.<sup>51</sup> In 2005, the Outcome Document of the World Summit was adopted by the General Assembly and the responsibility to protect was endorsed by the international community.<sup>52</sup>

## 2.6 The concept of responsibility to protect

The ICISS Report explains that the responsibility to protect consists of the responsibility to prevent, to react and to rebuild. It also develops principles which would help legitimizing military intervention. It also caters for the operational structures for the protection of civilians and finally makes pragmatic recommendations for achieving the objectives of the principle.<sup>53</sup> The ICISS Report has been represented in such a way that it turns the right to intervene into a responsibility to do so. It is based on two fundamental principles namely the sovereignty of the state which implies that the first responsibility to protect lies on the state and, in case of incapacity or unwillingness of the state to do so, the responsibility to protect overrides the principle of territorial sovereignty and non-interference. The ICISS Report thus modifies the concept of sovereignty from the concept of control to a concept which implies responsibility of not only the state but the international community.<sup>54</sup>

Among the responsibility to prevent, react and rebuild, the responsibility to prevent has highest priority. The ICISS Report highlights that knowledge of the fragility of a situation through early warnings, comprehension of policy measures that can stabilize the situation and political will are the three keys for an effective application of the responsibility to protect.<sup>55</sup> The basic idea is that the responsibility to protect is about the reaction of the international community in the face of compelling need for human rights protection.<sup>56</sup> In addition to diplomatic and peaceful means of application of the responsibility to protect, coercive measures such as arms embargoes, economic sanctions, no-fly zones and travel

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<sup>50</sup> See United Nations General Assembly *A more secure world: our shared responsibility* Report of the High-level Panel on Threats, Challenges and Change (2 December 2004) 59th Session (2004) UN Doc A/59/565 para 203 available at [www.un.org/secureworld](http://www.un.org/secureworld) (accessed 15 August 2011).

<sup>51</sup> UNGA *In larger freedom: towards development, security and human rights for all* Report of the Secretary-General (21 March 2005) 59th Session (2005) UN Doc A/59/2005 para 135 available at: [www.un.org/largerfreedom](http://www.un.org/largerfreedom) (accessed 17 August 2011).

<sup>52</sup> See World Summit Outcome Document, United Nations General Assembly Resolution 60/1 (24 October 2005) UN Doc A/RES/60/1 at para 138–139.

<sup>53</sup> See J Garrigues n 38 above p 9.

<sup>54</sup> See FM Deng *Sovereignty as responsibility: conflict management in Africa* (1996).

<sup>55</sup> See *The Responsibility to Protect* n 48 p 20.

<sup>56</sup> *The Responsibility to Protect* n 48 above p 29.



prohibitions on individuals can be imposed. Military action is regarded as the last resort. In addition, the ICISS Report provides for just cause for military intervention.<sup>57</sup> There are some precautionary principles that the ICISS Report proposes such as right intention, last resort, proportional means and reasonable prospects. Gareth Evans argues that military intervention is essential in some cases and he says that if there is one thing worse than using military force when we should not, it is not using military force when we should.<sup>58</sup> Article 42 has been interpreted in an expansive way by the UNSC since the end of cold war and it has defined what constitutes a threat to peace and international security broadly and sometimes the way its members prefer as pointed out by the ICISS Report.<sup>59</sup>

Gareth Evans argues that the absence of any kind of judicial review of the resolutions of the UNSC will provide more latitude for members to interpret 'international threat' as they want. Chapter VIII of the UN Charter provides that regional organisations have a role to play in security in the world but does not allow any enforcement actions by them without the authorization of the UNSC. However, international practice has shown that there is a tendency to allow regional bodies some discretion to deal with situations pertaining to human rights violation and seek the authorization of the UNSC after the event. This was the case in Liberia in 1992 and Sierra Leone in 1997 where ECOWAS's Monitoring Group (ECOMOG) intervened. Therefore, the question of legality of intervention remains within the powers of the UNSC.

As far as the legitimacy of interventions is concerned, the ICISS Commission has suggested that the UNSC adopts five criteria of legitimacy.<sup>60</sup> These are just war (is there serious and irreparable harm occurring to human beings, or imminently likely to occur), right intention (the primary purpose of the military action must be to halt human rights violations), last resort (every non-military actions must have been tried), proportional measures (minimum military action possible to restore the human rights situation) and reasonable prospects (the military action should stand a good chance of restoring the situation). However, it is debatable whether the UNSC applies those five criteria. Indeed, the World Summit was silent on the question of legitimacy while adopting the norm of responsibility to protect in 2005. In the case of Kosovo in 1999, the military action was considered as legitimate but not legal since the UNSC did not authorize such intervention. In such cases, the choice is between respecting the international order and abiding by the UNSC decision or intervening to protect lives of people even

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<sup>57</sup> *The Responsibility to Protect* n 48 above p 32.

<sup>58</sup> See G Evans "The responsibility to Protect and the use of military force" paper presented to Seminar on International Use of Force, World League Forum, The Hague (11 December 2011).

<sup>59</sup> *The Responsibility to Protect* n 48 above p 66.

<sup>60</sup> See G Evans n 58 above p 5.

without authorization of the UNSC. As far as the norm responsibility to protect is concerned, it advocates for both legality and legitimacy.

Being still an emerging concept not yet defined by binding international instruments, there is always the danger of misinterpretation of the responsibility to protect. States who act unilaterally by using military action may attempt to justify such actions using the newly born doctrine.<sup>61</sup> Such concerns are illustrated in the way US and UK invaded Iraq in 2003 and argued ex post facto that such intervention was based on humanitarian grounds. The Outcome Document is very clear that any action under the responsibility to protect must be through the UNSC. Despite that, in 2008, Russia's intervened in Georgia and invoked the responsibility to protect without getting any authorization from the UNSC.<sup>62</sup> In 2006, the UN SC voted for a thematic resolution on the protection of civilians in armed conflicts where it reaffirmed the provisions of paragraph 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>63</sup> On the 31<sup>st</sup> August 2006, the responsibility to protect was again used as a basis to call for deployment of UN peacekeepers to Darfur.<sup>64</sup> The 2009 Secretary General's Report entitled *Implementing the Responsibility to Protect* attempted to clarify and operationalize the doctrine by proposing a three-pillar strategy.<sup>65</sup> These are the protection responsibilities of the state, the provision of international assistance and capacity-building to vulnerable states and the promotion of timely and decisive action where prevention fails.

The crisis in Darfur has highlighted how the implementation of the responsibility to protect may be impeded by several factors. The international community and more specifically major international players' approach to Darfur has been defined by tough rhetoric followed by half-measures and inaction which they have justified by citing an array of bureaucratic, diplomatic and political hurdles standing in the way of a robust response.<sup>66</sup> The first lessons learnt from Darfur is that a timely response is vital

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<sup>61</sup> See The Global Voice of Legal Profession 'the responsibility to protect in the case of humanitarian crisis: an emerging norm of international law?' available at [http://www.ibanet.org/Human\\_Rights\\_Institute/About\\_the\\_HRI/HRI\\_Activities/Responsibility\\_to\\_Protect.aspx](http://www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/Responsibility_to_Protect.aspx) (accessed 15 August 2011).

<sup>62</sup> See Global Centre for the Responsibility to Protect 'The Georgia-Russia Crisis and R2P' available at <http://globalr2p.org/media/pdf/GeorgiaRussia.pdf> (accessed 13 August 2011).

<sup>63</sup> UN SC Resolution 1674 'adopted by the SC at its 5430<sup>th</sup> meeting' (28 April 2006) 5430<sup>th</sup> meeting UN Doc S/RES/1674 (2006).

<sup>64</sup> *Recalling* also its previous resolutions [...] and 1674 (2006) on the protection of civilians in armed conflict, which reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document...

<sup>65</sup> UNGA *Implementing the Responsibility to Protect* Report of the Secretary General (12 January 2009) 63<sup>rd</sup> Session (2009) UN Doc A/63/677 available at [www.unhcr.org/refworld/docid/4989924d2.html](http://www.unhcr.org/refworld/docid/4989924d2.html) (accessed 12 August 2011).

<sup>66</sup> See M Banda 'The Responsibility to Protect: Moving the agenda forward' (March 2007) available at [http://www.unac.org/en/get\\_involved/donate/index.asp](http://www.unac.org/en/get_involved/donate/index.asp) (accessed 14 August 2011).

otherwise it can be more politically and financially costly. Secondly, the UNSC has probably the most important role to play in implementing the responsibility to protect. Special mention must be made of the veto holders who have the moral obligation of making the UN Charter as effective as possible and keep aside any state interests.<sup>67</sup> And the most important lesson is regional peace cannot be attained if regional organisations are not strong enough with robust responses. The AU troop was criticized for lacking a robust mandate and sufficient capacity to protect civilians.<sup>68</sup> After much lobbying and an unfortunate reluctance from the major military forces of the world, the UNSC extended its mandate of UNAMID from Southern Sudan to Darfur via Resolution 1706 (2006).

Political will is definitely sine qua non for an effective and meaningful implementation of the responsibility to protect. In the words of former US national security advisor Anthony Lake, *‘There is a moral imperative that is all the deeper with our superpower status. How can Americas sit on the sidelines when innocent civilians are being slaughtered? We lose credibility on other issues if we turn our back on humanitarian tragedies. More important, it is wrong to do so. With our great power comes great responsibility and leadership in human as well as geopolitical terms. Not acting when you can is as much a decision as becoming involved. This does not mean that we must always act. But there are consequences when we do not.’*<sup>69</sup>

## **2.7 Responsibility to protect and the AU**

Protection of human rights and fulfilling the obligations to respect, protect, promote and fulfil human rights in Africa has been endorsed by the AU and more specifically the African Commission on Human and Peoples’ Rights.<sup>70</sup> It is recognized that upholding human rights is essential in the contribution to international security.<sup>71</sup> To achieve respect for human rights and international security, states have the responsibility to protect their citizens from human rights violations. African states are parties to a plethora of human rights instruments at the global or regional level. However, rights guaranteed by such legal instruments still remains unfulfilled and in many cases with the complicity of states themselves.<sup>72</sup> In this respect, the Constitutive Act of the African Union, in its article 4(h), provides for ‘the right of the

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<sup>67</sup> MB Taylor ‘humanitarianism or Counterinsurgency?R2P at the crossroads’ (2006) 61 *International Journal* 146.

<sup>68</sup> M Banda n 66 p 37.

<sup>69</sup> See International Development Research Centre ‘Redefining sovereignty and intervention’ available at [www.idrc.ca](http://www.idrc.ca). (accessed 14 August 2011).

<sup>70</sup> See *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 44-47.

<sup>71</sup> S Gumedze ‘The African Union and the responsibility to Protect’ (2010) 10 *African Human Rights Law Journal* 136; see also C Heyns & F Viljoen ‘The regional protection of human rights in Africa: An overview and evaluation’ in PT Zeleza & PJ McConnaughay *Human Rights, the rule of law, and development in Africa* (2004) 129.

<sup>72</sup> B Anton & D Joseph *Human Rights in Africa: legal perspectives on their protection and promotion* (2009).

African Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely; war crimes, genocide and crimes against humanity.’ The African continent has been plagued by armed conflicts leading to massive human rights violations.<sup>73</sup> States are failing to fulfil their responsibility to protect civilians. Looking at the poor record of human rights in Africa, the article 4(h) of the Constitutive Act of the African Union is essentially important for the AU to intervene without the consent of the culprit states.<sup>74</sup> To be on the same wavelength with the United Nations and international community on the issue of responsibility to protect, the AU endorsed and adopted the doctrine in the Ezulwini Consensus.<sup>75</sup>

The importance that the AU has attached to the right of intervention is shown by the fact that the AU evolved from the OAU’s principle of non-interference and *uti possidetis juris*. It was high time to make the notion of sovereignty elastic and to redefine sovereignty in line with the responsibility to protect and not a licence to do whatever one desires within ones territory with any interference from the outside world.<sup>76</sup> The failure of the OAU in the Rwandan Genocide was also a catalyst for the debate of redefining sovereignty. President Museveni had strong words against the OAU who he held responsible for the massacre of millions of Ugandans under Idi Amin because of the non-interference of the OAU under the excuse of the situation being an internal affair of Uganda.<sup>77</sup> Such failures of the OAU resulting into loss of millions of lives lead to the formation of the African Union with the right of intervention being incorporated in its Constitutive Act.

Article 4(g) of the Constitutive Act of the African Union recognizes that according to the principle of non-interference, a state cannot intervene in the internal affairs of another. This was reiterated in the Ezulwini Consensus as follows: *it is important to reiterate the obligation of states to protect their citizens, but this should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of states.*<sup>78</sup> However, the AU places limitations on state sovereignty regarding

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<sup>73</sup> See generally O Furley & R May *Ending Africa’s wars: Progressing to Peace* (2006) 1.

<sup>74</sup> K Kindiki ‘The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: A critical appraisal’ (2003) 3 *African Human Rights Law Journal* 107.

<sup>75</sup> See African Union Executive Council ‘The Common African Position on the Proposed Reform of the United Nations: The Ezulwini Consensus’ (7 March 2005) 7<sup>th</sup> Extraordinary Session Doc Ext/EX.CL/2 (VII) available at [www.africa-union.org/News...of.../Ext%20EXCL2%20VII%20Report.doc](http://www.africa-union.org/News...of.../Ext%20EXCL2%20VII%20Report.doc) (accessed 14 May 2011).

<sup>76</sup> See O Obasanjo Africa, rise to challenge: Towards a Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) available at [http://www.africa-union.org/Special\\_Programs/CSSDCA/CSSDCA%A0.htm](http://www.africa-union.org/Special_Programs/CSSDCA/CSSDCA%A0.htm) (accessed 13 September 2011).

<sup>77</sup> President Museveni of Uganda, 22<sup>nd</sup> Ordinary Session of the OAU Assembly of Heads of State and Government, Addis Ababa, Ethiopia, July 1986.

<sup>78</sup> n 75 p 7.

sovereignty as a responsibility.<sup>79</sup> There is indeed no contradiction between article 4(g) and 4(h) as 4(g) prohibits unilateral intervention while 4(h) illustrates the doctrine of non-indifference.<sup>80</sup> The responsibility to protect is further reinforced in article 4(j) of the Protocol Relating to the Establishment of the PSC of the African Union (PSCAU Protocol) which provides that '*the PSCAU shall be guided by the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with the article 4(h) of the Constitutive Act.*' Darfur is an example where the AU applied the responsibility to protect by establishing the African Union Mission in Sudan (AMIS) with a force of 150 troops for peacekeeping purposes. However, article 4(h) was not invoked explicitly.

The AU was applauded for choosing non-indifference over non-intervention by the Secretary General of the UN Ban Ki-Moon.<sup>81</sup> The African Commission on Human and Peoples' Rights looked at the application of responsibility to protect to specific situations in the African continent with the help of the African Peer Review Mechanism providing insightful assessments and recommendations on matters pertaining to responsibility to protect.<sup>82</sup> The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa was also cited as the first international legal instrument established to address a matter closely related to responsibility to protect and other regions were encouraged to follow the path of the AU.<sup>83</sup> The early warning systems developed by both the AU and Regional Economic Communities has also been identified as being very helpful in the implementation of the responsibility to protect.<sup>84</sup>

The legal framework within which the responsibility to protect can be operationalised has thus been shown in this section. It is clear that the Constitutive Act of the African Union supports the doctrine and

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<sup>79</sup> See D Kuwali 'The end of humanitarian intervention: Evaluation of the African Union's right of intervention' available at [http://www.humansecuritygateway.com/documents/AJCR\\_EndOfHumanitarianIntervention\\_EvaluationAUsRightOfIntervention.pdf](http://www.humansecuritygateway.com/documents/AJCR_EndOfHumanitarianIntervention_EvaluationAUsRightOfIntervention.pdf) (accessed 16 August 2011).

<sup>80</sup> G Puley 'The responsibility to protect: East, West and Southern African perspectives on preventing and responding to humanitarian crises' available at <http://www.responsibilitytoprotect.org/files/ploughshares.pdf> (accessed 20 August 2011).

<sup>81</sup> See UNGA *The role of regional and sub regional arrangements in implementing the responsibility to protect* Report of the Secretary General (28 June 2011) 65<sup>th</sup> Session (2011) Un Doc A/65/877 para 11 available at <http://www.un.org/en/ga/65/index.shtml> (accessed 16 August 2011).

<sup>82</sup> See ACHPR Resolution 117 (XXXII) 07 'Resolution on Strengthening the Responsibility to Protect in Africa' available at [http://www.achpr.org/english/resolutions/resolution117\\_en.htm](http://www.achpr.org/english/resolutions/resolution117_en.htm) (accessed 19 August 2011).

<sup>83</sup> UNGA *The role of regional and sub regional arrangements in implementing the responsibility to protect* n 118 above para 20.

<sup>84</sup> UNGA *The role of regional and sub regional arrangements in implementing the responsibility to protect* n 118 above para 24.

there is general consensus on a change of stand from non-intervention to non-indifference.<sup>85</sup> While the AU has intervened in countries like Burundi, Darfur and Somalia, the effectiveness of those interventions can still be questioned. In Darfur for instance, it was probably too little too late. It is relevant to analyse the pattern of behavior of the AU in cases of intervention as it will be important to see whether the AU is inconsistent in its interventions or are there some other political or logistical impediments to AU's methods of intervention. Is AU's intervention in countries like Darfur, Burundi and Somalia the rule and Libya the exception? If such is the case, what can be the explanation?

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<sup>85</sup> See B Kioko 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention' (2003) 85 *International Review of the Red Cross* 811.

### **3. THE AU'S PRACTICE OF INTERVENTION**

#### **3.1 Introduction**

This chapter will look at the pattern of behavior of the AU when it comes to intervention. It is relevant to analyse how the AU intervene and under what conditions. This is so as ideally, there ought to have only one defined method of intervention if the essential criteria are met. This should have been the case as the right of intervention is incorporated in the Constitutive Act of the AU and it should have provided for guidance without any political discretion. The thresholds of the article 4(h) will also be analysed and see what the law provides for in cases of intervention. It is essential to point out that article 4(h) does not provided for military intervention as the only resort. In fact political mediation and dialogue are first strongly encouraged. The effectiveness with which AU used political dialogue and mediation will be studied.

#### **3.2 Pattern of behavior of AU**

The AU has played a role in the various crises that the African Continent has witnessed. In some cases, political mediation and diplomacy has been preferred while in others military force and intervention were chosen as the modus operandi. This section will analyse the behavior of AU in situations where the common factor was human rights violation. The countries under study are Ivory Coast, Sudan (Darfur) and Zimbabwe.

##### **3.2.1 Ivory Coast**

In early 2011, violence broke out in Ivory Coast after Alassane Ouattara was declared the new President of the Country by the Independent Electoral Commission after he received 54.1% of the votes. The Constitutional Council declared the elections to be invalid and a political stalemate was created in the country. Laurent Gbagbo and Alassane Ouattara both declared themselves winners and established separate governments for the country. Since support for each of them is divided along ethnic, regional and religious grounds, violence soon escalated between parties causing death and internal displacement of thousands of people.<sup>86</sup> The International Committee of the Red Cross reported that at least 2000

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<sup>86</sup> UNCHR 'Escalating violence in Cote D'Ivoire sees dramatic rise in displacement' (25 March 2011) available at <http://www.unhcr.org/4d8c88ab9.html> (accessed 05 March 2011).

civilians were killed while the UN High Commissioner for Refugees stated that over 500 000 Ivorians were displaced and 94 000 fled to Liberia to avoid violence.<sup>87</sup>

Peaceful and political solution was constantly on the agenda of the AU during the Ivorian Crisis.<sup>88</sup> The Chairperson of the AU Commission suspended the use of legitimate force to oust Laurent Gbagbo and reiterated the belief of the AU to find a peaceful and long lasting solution to the crisis.<sup>89</sup> Indeed, the AU and the Economic Community of West African States (ECOWAS) adopted mediation and diplomatic pressure as a means to resolve the crisis. The AU planned to have talks between Ouattara and Gbagbo and Thabo Mbeki and Raila Odinga were chosen as mediators. On 28 January 2011, a High Level Panel was established for evaluation, monitoring and formulation of a solution the Ivorian Crisis. The importance that the AU accorded to mediation and diplomatic solution is in fact captured by the communiqué of 4<sup>th</sup> of March 2011 whereby it called on parties *to refrain from acts and steps likely to undermine the ongoing efforts, including the media campaigns inciting hatred and violence.*<sup>90</sup> A proposal was issued by the AU inviting for the formation of a government of unity with an honourable exit of Gbagbo.<sup>91</sup>

On the 4<sup>th</sup> of April, a military operation began and French forces opened fire on Gbagbo's troops to protect civilians. The AU did condemn the use of force by France and the UN and the Chairman of the AU, Teodoro Obiang Nguema said that Africa does not need any foreign influence and will itself manage its own problems.<sup>92</sup> Thabo Mbeki argued that the international community was at fault from the very beginning by pressuring Ivory Coast to have elections as they thought it would end the crisis which began since 2002 without knowing that the time was not ripe for Ivory Coast to have elections. He also painted the picture of how weak the AU was in persuading stakeholders that mediation was the way

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<sup>87</sup> International Coalition for the Responsibility to Protect 'Crisis in Cote D'Ivoire' available at [http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-ivory-coast#p\\_h\\_crisis](http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-ivory-coast#p_h_crisis) (accessed 05 October 2011).

<sup>88</sup> PSC Communiqué 'Communiqué of the 259<sup>th</sup> meeting of the PSC' PSC/AHG/COMM (CCLIX) available at [http://au.int/en/dp/ps/sites/default/files/2011\\_jan\\_28\\_psc\\_259thmeeting\\_cotedivoire\\_communique\\_en.pdf](http://au.int/en/dp/ps/sites/default/files/2011_jan_28_psc_259thmeeting_cotedivoire_communique_en.pdf) (accessed 12 September 2011).

<sup>89</sup> See allAfrica.com 'Cote D'Ivoire: Why we suspended option of force-AU' available at <http://allafrica.com/stories/201101310160.html> (accessed 12 September 2011).

<sup>90</sup> PSC Communiqué 'The High Level Panel for the resolution of the crisis in Cote d'Ivoire concludes its 3<sup>rd</sup> meeting in Nouajchott' available at [http://au.int/en/dp/ps/sites/default/files/COMMUNIQUE\\_EN\\_4\\_MARCH\\_2011\\_PSD\\_THE\\_HIGH\\_LEVEL\\_PANEL\\_INVITES\\_THE\\_IVORIAN\\_PARTIES\\_TO\\_ITS\\_NEXT\\_MEETING.pdf](http://au.int/en/dp/ps/sites/default/files/COMMUNIQUE_EN_4_MARCH_2011_PSD_THE_HIGH_LEVEL_PANEL_INVITES_THE_IVORIAN_PARTIES_TO_ITS_NEXT_MEETING.pdf) (accessed 12 September 2011).

<sup>91</sup> UN News Centre 'UN and African blocs must remain united to ensure respect of poll results' available at <http://www.un.org/apps/news/story.asp?NewsID=37417&Cr=Ivoire> (accessed 14 September 2011).

<sup>92</sup> See Directscoop.com 'The AU condemned the use of force by France and the UN' available at <http://directscoop-en.net/2011/04/05/cote-divoire-the-african-union-condemned-the-use-of-force-by-france-and-the-un/> (accessed 12 September 2011).



forward.<sup>93</sup> Another point that should be highlighted in the Ivorian case is how AU was relatively silent over foreign intervention and bombing of a Presidential Palace in comparison to the Libyan bombings by NATO. This case was about AU departing with a political solution and mediation for Ivory Coast before becoming silent and passive over the external intervention by France and the UN.

### 3.2.2 Darfur

Violence in Darfur started in 2003 when hostilities began between rebel forces and the government of Sudan. Janjaweed militias, supported by the central government terrorized populations by raping, slaughtering, depriving people of food, properties and destroying their livelihood. The crisis has been the result of growing conflicts between ethnic groups for land rights and an expounded ideology of the 'Arab' superiority compared to 'Africans'. The rebel groups claimed that they have taken weapons in self-defence and in response to the discrimination which is ongoing against them by the 'Arabs'. The numbers of casualties is terrifying and bears testimony of the failure of the international community to protect civilians in Africa. Over 300 000 people have lost their lives, 4.2 millions are 'war-affected', 2.5 million have been displaced within Sudan and 240,000 are refugees in Chad and Central African Republic.<sup>94</sup>

The international community has described the situation in Darfur as the biggest humanitarian crisis currently in the world which amounts to genocide.<sup>95</sup> Despite such opinion, the international will to react and protect citizens remained weak.<sup>96</sup> Former US Secretary of State, Colin Powell described the situation as genocide and he was criticized by the AU which called it a 'big mistake' and Powell undermining the AU.<sup>97</sup> Similar views were held by the PSC and the Assembly of Heads of State and Government.<sup>98</sup> The UN International Commission of Inquiry established by the UNSC Resolution 1564 (2004) did report that there are crimes against humanity and war crimes have been taking place in

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<sup>93</sup> See Foreign Policy 'what the World got wrong in Cote D'Ivoire' available at [http://www.foreignpolicy.com/articles/2011/04/29/what\\_the\\_world\\_get\\_wrong\\_in\\_cote\\_d\\_ivoire?page=0,3](http://www.foreignpolicy.com/articles/2011/04/29/what_the_world_get_wrong_in_cote_d_ivoire?page=0,3) (accessed 14 September 2011).

<sup>94</sup> See Darfur Consortium 'Darfur Crisis' available at [http://www.darfurconsortium.org/darfur\\_crisis/background.html](http://www.darfurconsortium.org/darfur_crisis/background.html) (accessed 12 September 2011).

<sup>95</sup> Globalaffairs 'The Genocide of Darfur: The biggest humanitarian crisis' available at <http://www.globalaffairs.es/en/the-genocide-of-darfur-the-biggest-humanitarian-crisis/> (accessed 17 September 2011).

<sup>96</sup> E Patrick 'The genocidal impact of forced migration in Sudan' (2005) 18 *Journal of Refugee Studies* 410.

<sup>97</sup> See News from Africa 'The UN Report on Darfur: What role for the AU?' available at [http://www.newsfromafrica.org/newsfromafrica/articles/art\\_9628.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_9628.html) (accessed 14 September 2011).

<sup>98</sup> As above.

Darfur.<sup>99</sup> However, even then the AU did not deem it fit to invoke article 4(h) of the Constitutive Act on the right of intervention.

The AU once again decided to take the role of political mediator and was taking the leading role in responding to the Darfur Crisis.<sup>100</sup> The AU, indeed, was the mediator between the rebel movements and the government.<sup>101</sup> In 2004, the AU deployed military force to monitor the N'djamena ceasefire.<sup>102</sup> Eventually when the Darfur Peace Agreement was signed, the AU took the role of the guarantor of the agreement.<sup>103</sup> In 2004, the AU founded the African Mission in Sudan (AMIS) with a force of 150 troops which was increased to 7,000 troops in mid 2005.<sup>104</sup> However, this number was still inadequate and ineffective in containing the violence in Darfur. On the 31<sup>st</sup> of August 2006, the UN troops joined the peacekeeping mission and were endorsed by UNSC Resolution 1706 (2006).<sup>105</sup> However, the Sudanese government did not consent to this hybrid AU/UN mission. In July 2007, invoking the responsibility to protect, the UNSC adopted Resolution 1769 to bypass the non-consent of the Sudanese government and the AU/UN hybrid mission (UNAMID) was operationalised.<sup>106</sup>

The Darfur mission is often described as the military failure of the AU.<sup>107</sup> The AU had no resources and logistics to prevent or contain violence in Darfur even if it was insisted that the AU prefers an African solution to this African problem. The then Senegalese minister of Foreign affairs, Cheikh Tidiane Gadio, criticized the stand of the AU and highlighted that logistics from African governments did not follow effectively to provide an African solution.<sup>108</sup> Constraints like fuel shortage and bad weather made the AU mission very difficult and this bears testimony of the difficulties the AU has to handle such

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<sup>99</sup> UN SC 'Resolution 1564 (2004) adopted by the SC at its 5040<sup>th</sup> meeting' (18 September 2004) UN Doc S/RES/1564 (2004) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/515/47/PDF/N0451547.pdf?OpenElement> (accessed 14 September 2011).

<sup>100</sup> N Blokker & N Schrijren *The SC and the use of force* 200? 240

<sup>101</sup> See Globalisation 'Darfur: A case study' available at [http://www.globalization101.org/news1/Darfur\\_globalization](http://www.globalization101.org/news1/Darfur_globalization) (accessed 13 September 2011).

<sup>102</sup> See Reuters 'Sudan signs ceasefire with Darfur JEM rebels' available at <http://www.reuters.com/article/2010/02/20/us-sudan-darfur-idUSTRE61J2DJ20100220> (accessed 12 September 2011).

<sup>103</sup> See Conciliation Resources 'The Darfur Peace Agreement: Expectations unfulfilled' available at <http://www.c-r.org/our-work/accord/sudan/dpa-unfulfilled.php> (accessed 12 September 2011).

<sup>104</sup> See African Union 'The situation in the Darfur Region of the Sudan' available at <http://www.africa-union.org/DARFUR/homedar.htm#> (12 September 2011).

<sup>105</sup> UN SC 'Resolution 1706 (2006) adopted by the SC at its 5519<sup>th</sup> meeting' (31 August 2006) UN Doc S/RES/1706 (2006) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/484/64/PDF/N0648464.pdf?OpenElement>

<sup>106</sup> UN SC 'Resolution 1769 (2007) adopted by the SC at its 5727<sup>th</sup> meeting' (31 July 2007) UN Doc S/RES/1769 (2007) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/445/52/PDF/N0744552.pdf?OpenElement>

<sup>107</sup> See E Reeves 'The Failure of the AU in Darfur' available at <http://www.sudantribune.com/The-Failure-of-the-African-Union,11547> (accessed 31 August 2011).

<sup>108</sup> As above

humanitarian crisis.<sup>109</sup> The way the AU handled the situation in Darfur is also criticized especially the way the AU has downgraded the security issues in Darfur. It is reported that AU special envoy for Sudan, Salim Ahmed Salim, was full of praise for the Sudanese government for their unequivocal commitment to contribute to peace talks while, in reality, they kept on arming and supporting the Janjaweed.<sup>110</sup> Therefore, in the Darfur case, it is clear that the AU did not invoke article 4(h) but instead engaged in a debate of whether there was genocide or not even if thousands of lives were lost. In addition, when they decided to deploy troops to contain the violence, it proved to be grossly inadequate.

### 3.2.3 Zimbabwe

Election related violence in Zimbabwe in 2008 is another example where the AU was supposed to intervene but could not be as influential as it should have been. After Mugabe's ZANU-PF party refused to accept defeat at the first round of the election by delaying the state-controlled electoral commission to declare the result, a second round was announced. Election observers from SADC criticized the election saying that it was not free and fair and the polling was disturbed by violence and bloodshed.<sup>111</sup> The ruling party used party-militias to beat and kill in their favour and the victims were mostly from the Movement for Democratic Change, the main opposition party. The farming village of Chaona located 65 miles north of Harare was a scene of horrible election violence with women stripped and severely beaten while men were beaten at their genitals causing death in seven cases. Military men from the Zimbabwean Defence Force were being used by Mugabe to spread violence with the aim of clinging to power.

The role of the AU has been very unconvincing in the Zimbabwe case. On 30<sup>th</sup> June 2008, Kenyan Prime Minister Raila Odinga urged the AU to suspend Zimbabwe from AU until free and fair elections are organized in Zimbabwe.<sup>112</sup> However, on the same day during the AU summit in Sharm el-Sheikh, Zimbabwe was not even mentioned in opening speeches despite the international prominence it carried.<sup>113</sup> On the 1<sup>st</sup> of June 2008, the AU called for a government of unity in Zimbabwe despite

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<sup>109</sup> See Citizens for Global Solutions 'African Union Mission in Darfur' available at [http://archive1.globalsolutions.org/programs/peace\\_security/news/au\\_force\\_darfur\\_analysis.html](http://archive1.globalsolutions.org/programs/peace_security/news/au_force_darfur_analysis.html) (accessed 15 September 2011).

<sup>110</sup> See L Nathan 'No ownership, no peace: The Darfur Peace Agreement' Crisis States Research Centre working paper p 2.

<sup>111</sup> See The Washington Post 'Inside Mugabe's violent crackdown' available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/04/AR2008070402771.html> (accessed 13 October 2011).

<sup>112</sup> See BBC News 'Kenya urges AU to suspend Mugabe' available at <http://news.bbc.co.uk/2/hi/africa/7481857.stm> (accessed 13 October 2011).

<sup>113</sup> See ALJAZEERA 'Mugabe avoids criticism at AU talks' available at <http://english.aljazeera.net/news/africa/2008/06/200863013246676180.html> (accessed 13 October 2011).

knowing that the election was stolen by Mugabe.<sup>114</sup> Again the AU preferred talks and diplomatic moves without considering the death of hundreds and the violence that thousands suffered. All the criteria for intervention were met in the Zimbabwe case as the country had lost its sovereignty by failing to protect its people from death and violence.<sup>115</sup> Still, the AU failed to intervene.

The above pattern of behavior has shown that the AU has most of the time been for political solutions and they have refused to intervene even in cases where intervention was required and would have been justified in law. In cases the AU has intervened, it was either late and ineffective with thousands of people dead such as Darfur or without any real change such as Somalia. The AU has also been inconsistent. Like the Ivorian case, the Zimbabwean one too was the use of unconstitutional means to win elections. In the Ivorian Case, the AU was clear that Gbagbo should go. Mugabe, on the other hand, was even allowed to attend the 2008 AU summit without anything being said against him albeit he too could be accused of using unconstitutional means to cling on power. But ideally should article 4(h) not be applied consistently?

### **3.3 Legal interpretation of article 4(h)**

The article 4(h) allows intervention in cases of mass atrocity crimes in the form of war crimes, genocide and crimes against humanity. This article comes as a limitation to intervention by AU in the sense that not all human rights violations will fulfil the criteria of intervention. Article 4(h) provides for two important elements namely internationally punishable serious crimes as well as a significant involvement of the government in those crimes.<sup>116</sup> The PSC has the duty to recommend an intervention to the AU assembly where there are grave circumstances as defined by relevant international conventions and instruments according to article 7(1) (e) of the PSC Protocol. It implies that the AU has to function according to the definition of the war crimes, crimes against humanity and genocide as defined in the Rome Statute, the Genocide Convention or even the statutes of the International Criminal Tribunals like that of former Yugoslavia or Rwanda. However, the dilemma of lack of legal definition of what constitute grave circumstances or genocide can become a hindrance for the proper application of article 4(h). It is argued that article 4(h) was designed to prevent mass atrocity crimes and therefore, it

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<sup>114</sup> See BBC News 'African call for Zimbabwe Unity' available at <http://news.bbc.co.uk/2/hi/africa/7484165.stm> (accessed 13 October 2011).

<sup>115</sup> See International Law Observer 'Call for AU intervention in Zimbabwe' available at <http://internationallawobserver.eu/2008/12/09/call-for-the-african-union-intervention-in-zimbabwe/> (accessed 13 October 2011).

<sup>116</sup> See A Roberts 'Humanitarian War: Military intervention and human rights' (1993) 69 *International Affairs* 3.

would be contradictory to wait for grave circumstances before saving lives of human beings.<sup>117</sup> Considering the speed with which mass crimes can occur sometimes, it may be wiser for the AU to prioritize intervention over strict legal interpretation of article 4(h) especially in the absence of precise and legal definition of such crimes in international law.<sup>118</sup> In addition, article 4(h) can be interpreted in the light of the responsibility to protect which also has a prevention dimension.

Authorization from the UNSC is an important issue which needs consideration while interpreting article 4(h). The Ezulwini Consensus provides for approval by the AU from the UNSC even after the event.<sup>119</sup> Therefore a post facto authorization is enough for states not to be in violation of the UN Charter.<sup>120</sup> The UNSC is legally and morally<sup>121</sup> obligated to authorize any intervention under article 4(h) if the criteria are met in order to respect the principle and spirit of article 1 and 2 of the UN Charter.<sup>122</sup> Mass atrocity crimes such as genocide should not only be refrained completely from being committed but also they should be prevented by being committed by other states also in accordance with the Genocide Convention.<sup>123</sup> Use of force is however the last resort even while fulfilling the responsibility to protect. Despite the necessary condition of exhausting all other means, it cannot be interpreted as an obligation to use diplomatic means to try and prevent mass atrocity crimes as in the meantime hundreds of lives can be lost. What is only required is a reasonable assessment of the viability and effectiveness of any diplomatic means and going on use of force if it is clear that diplomacy would fail the victims.<sup>124</sup>

The number of victims in Libya as well as threatening speeches by Colonel Qaddafi similar to hate speeches in Rwanda was indicative enough of crimes against humanity being committed in the country. As discussed above, it was not required by the AU to prove crimes against humanity beyond reasonable doubt for it to invoke article 4(h) and to intervene.

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<sup>117</sup> See D Kuwali 'The end of humanitarian intervention: Evaluation of the African Union's right of intervention' n 120 above.

<sup>118</sup> See A Abass 'The Darfur Crisis: The role of the AU in Darfur' (2007) 65 *Utrecht Journal of International and European Law* 47.

<sup>119</sup> See The Ezulwini Consensus n 3 above p 6.

<sup>120</sup> See H Kochler *The use of force in international relations* (2005) 75.

<sup>121</sup> See N Wheeler *Saving strangers: Humanitarian intervention in international society* (2000) 34.

<sup>122</sup> See M Banda 'The Responsibility to Protect: Moving the agenda forward' n 66 above p 37.

<sup>123</sup> See *Case Bosnia and Herzegovina v Serbia and Montenegro* ICJ (26 February 2007) (2007) ICJ Reports 91 para 82.

<sup>124</sup> See D Kuwali 'Protect responsibility: The AU's implementation of article 4(h) intervention' (2008) 11 *Yearbook of International Humanitarian Law* 81.

### 3.4 The use of mediation and diplomacy by AU in Libya

Despite the threshold of article 4(h) being met in the Libyan case, military intervention was not the pathway chosen by the AU. As can be seen by the pattern described above, mediation and diplomacy is the preferred method of the AU. It is reminded that the responsibility to protect promotes mediation and diplomacy and military intervention is only last resort. At the outset, it was not an improper move by the AU to engage into diplomacy and mediation in finding a political solution to the Libyan crisis. This section considers whether diplomacy was the right way or whether the situation had a real sense of urgency where intervention would have been more proper.

The AU is specifically mandated to use diplomacy and mediation according to article 6 of the PSC Protocol which states that the PSC will be active in the areas of peace- making, utilization of good offices, mediation and enquiry. The office of the Chairperson of the AU is also another means for mediation and diplomacy in terms of good office. In addition, the AU Panel of the Wise is empowered to carry out quiet diplomacy.<sup>125</sup> The AU has been able to successfully mediate some conflicts such as the one in Burundi where the Arusha Peace and Conciliation Agreement for Burundi was signed in August 2000 with the help of Nelson Mandela as mediator. In other instances, AU has faced difficulties in implementing peace agreement such as the Darfur Peace Agreement of May 2006.

It has been proven that mediation and diplomacy can be effectively used to end civil wars and it has been more fruitful in preventing wars in the last 15 years than use of force in the last 200 years.<sup>126</sup> Diplomacy and negotiation was the route chosen by the PSC. According to Ms Nassera from the PSC, political dialogue was preferred due to the concern the AU had about the after war effect on Libya itself and also around surrounding regions.<sup>127</sup> For instance, it is reported that there are around 10, 000 anti aircraft missiles owned by the Libyan Army which, after the war, may fall in the wrong hands of terrorist groups and reported Al-Qaeda according to Mr. Ben Kioko.<sup>128</sup> It is reported that the NTC refused any negotiation because the AU was not clear on whether Colonel Qaddafi would go or not. Ms Nassera was of the opinion that the AU is not legally mandated to overthrow Colonel Qaddafi as it could have if the latter was involved in any sort of unconstitutional means of staying in power after an

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<sup>125</sup> See A Ramsbotham 'Safeguarding Civilians' available at [http://www.responsibilitytoprotect.org/files/safeguarding\\_civilians\[1\].pdf](http://www.responsibilitytoprotect.org/files/safeguarding_civilians[1].pdf) (accessed 10 October 2011) p 15.

<sup>126</sup> See Human Security Report Project 'Human Security Brief 2006' available at <http://www.hsrgroup.org/human-security-reports/2006/text.aspx> (accessed 12 October 2011).

<sup>127</sup> Ms Nassera Roguiai, Focal Point of the ad hoc High Level Committee on Libya, interviewed on the 6<sup>th</sup> of October 2011 at the Legal Department of the AU in Addis Ababa.

<sup>128</sup> Mr. Ben Kioko Legal Counsel of the AUC, interviewed on the 14<sup>th</sup> of October 2011 at the PSC in Addis Ababa.

election for instance.<sup>129</sup> However, she added that, by considering the narrow impasse in which Colonel Qaddafi was and the fact that he had support from nowhere, it was realistic to think that he would have eventually gone.

The plan was indeed to use political dialogue while hoping that circumstances would be such that the Libyan leader would eventually leave. This kind of mediation does not respect the degree of separation that is required between the various organs of the AU.<sup>130</sup> The Ad-Hoc Committee on Libya was a temporary political set up used for mediation. The fact that too much attention and emphasis was given to the Committee may have prevented the PSC to function properly with the possibility of condemning one of the parties on the negotiation table. The efficacy of mediation and diplomacy has been questioned in cases where there is possibility of mass killing as was the case in Rwanda 1994.<sup>131</sup> Colonel Qaddafi was always known as being the head of a state where there is oppression and human rights not respected. This should not be measured by looking how Pan-Africanist he was. The massive expression of the people of Libya through demonstration tells the story of a population who have had enough. Still, the AU has always been quiet as it has been on various other dictators such as Mugabe.

It can therefore be concluded that the mediation process that the AU wanted to lead was a little too late and probably a face-saving exercise.<sup>132</sup> Using mediation or diplomacy while people are being threatened and killed as was the case in Libya does not help the AU to fulfil its responsibility to protect. Also, insisting on diplomatic means and mediation while the international community, including the Arab League and the Libyan people themselves were loudly and strongly requesting for a No-Fly zone from the UNSC raises doubts about how planned and precise the AU was in its road map. The importance of mediation and diplomacy is recognized but the importance of intervention in urgent cases where human lives are at stake cannot be undermined in any case. The AU did act on the responsibility to protect the effectiveness of which is another debate. But, it has to be said that AU did not fulfil its responsibility to protect. The following chapter tries to look at the dynamics explaining the inaction of AU in Libya.

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<sup>129</sup> n 126 above.

<sup>130</sup> See L Nathan Crisis States Research Centre, LSE *Mediation and the African Union's Panel of the Wise* Discussion Paper No 10.

<sup>131</sup> See A Ramsbothan n 125 above p 12.

<sup>132</sup> See A Hengari 'The AU Struggles to exist on Libya' available at [http://www.namibian.com.na/index.php?id=28&tx\\_ttnews%5Btt\\_news%5D=79586&no\\_cache=1](http://www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=79586&no_cache=1) (accessed 10 October 2011).

## 4. FACTORS EXPLAINING AU'S STAND ON LIBYA

### 4.1 Introduction

Despite having the appropriate legal framework for an intervention in Libya, the AU opted for a political solution in the form of diplomatic dialogue. At the AU, it is pointed out that intervention was never the considered path from the beginning of the crisis in Libya. Several reasons are given to justify such a stand of the AU such as inadequate resources for intervention and also the consequences of intervention which do not tally with the security projects and plans of the AU on the African continent. However, it can be argued that even if the AU, through the PSC, would have been eager for an intervention, it would not have been helped and supported by African states because of divided opinion and lack of political will. In addition, the attitude of the West, including the UN and superpower countries was not supportive enough.

### 4.2 African states preferring political dialogue to war

The issue of lack of will to engage into fight is fundamental and requires primary attention. To engage militarily in a country is a serious political issue.<sup>133</sup> Therefore for the AU to intervene militarily, it was mandatory to have consensus among African states on the will to fight. African states were not ready to fight. Colonized and dominated in many aspects, the African continent has just started to rebuild itself and inculcate doctrines such as democracy, rule of law and respect for human rights in the political system of African countries. This has been done through political steps such as the concept of Pan Africanism or with the help of law such as the advent of a plethora of human rights instruments and the setting up of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. Different African countries have different foreign policies and different relations with non-African countries based on their interests. Not readily engaging into battles and fights can be a good approach by African states and by extension the AU. However, the issue in the Libyan case was that not all African countries had the same opinion of diplomatic channels over war. Divided opinions have crippled the AU to some extent.

The AU is after all the grouping of all African states which pledge to similar aspirations and commitments. The AU is therefore the voice of 54 heads of states and governments. The danger is situations where there is no consensus. It does not mean that not having consensus is an improper thing as an argumentative atmosphere is always constructive. However, the Libyan case was a case where

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<sup>133</sup> See M Wight *Diplomatic investigations: Essays in the theory of international politics* (1966) 122.



debate was not going to be constructive and that ideally there ought to have consensus against human rights violations and dictatorship. The reasons cited by many people were that Colonel Qaddafi was a Pan-Africanist and was even responsible for the AU. It was just a move by the West to topple him down for their interests. The personality of Colonel Qaddafi and his influence will be dealt with later in this chapter. For now, it suffices to say that there is no reason justifying the death of human being and them being subject to threat of extermination.

The confused position coupled with the unwillingness to fight of many African leaders has not been helpful for the AU to come up with a solid plan for intervening in Libya. The President of Chad, Idriss Deby, the Central African President Francois Bozize and Malian President Amadou Toumani Toure did express their solidarity to Colonel Qaddafi and abstained from any condemnation of the Libyan regime. Ugandan President, Yoweri Museveni blamed the West of being selective in the way they want to deliver justice and that they do so for their own interests. Zimbabwean President Robert Mugabe was of the view that it was all about the control of the Libyan oil. On the other hand, Rwandan President Paul Kagame and Senegalese President Wade supported the military intervention and the raid by NATO. Kings and traditional leaders of Ghana, Congo, DRC, Sierra Leone, Sudan, Namibia, Mali, Kenya, South Africa, Zimbabwe, Ivory Coast and Chad were all very vocal in supporting Colonel Qaddafi.<sup>134</sup> South Africa, Nigeria and Gabon were all in favour of the Resolution 1973 despite the fact that South Africa was later of the view that Resolution 1973 has been misinterpreted and NATO has not respected its mandate.<sup>135</sup> The three African countries at the UNSC did see the dire situation in Libya whereas other African countries were emphasizing on the intervention by the West despite hundreds of people being killed and Colonel Qaddafi threatening to cause more casualties.

At the 17<sup>th</sup> Summit of the AU held in Equatorial Guinea, it is reported that African leaders were divided on what to do with the Libyan case especially as Colonel Qaddafi was a main contributor in AU and also for many other African countries.<sup>136</sup> It becomes even more embarrassing when the UN reports that African leaders are divided over the Libyan question.<sup>137</sup> Whether the action of NATO and the West was

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<sup>134</sup> See 'African Traditional Chiefs to the rescue of Colonel Qaddafi' *Journal Afrique Expansion* September 2011 202.

<sup>135</sup> See [Voltairenet.org](http://www.voltairenet.org) 'UN SC Resolution 1973 in favour of a no-fly zone in Libya' available at <http://www.voltairenet.org/UN-security-council-resolution> (accessed 15 October 2011).

<sup>136</sup> See [AfricanBulletin.com](http://www.african-bulletin.com) 'Libya: The African leaders remain divided over the case Muammar Qaddafi' available at <http://www.african-bulletin.com/watch/874-libya-the-african-leaders-remain-divided-over-the-case-muammar-gaddafi.html> (accessed 10 October 2011).

<sup>137</sup> See Agency Reporter 'African leaders divided over Libya-UN' available at <http://www.punchng.com/Articl.aspx?theartic=Art201106021562443> (accessed 13 October 2011).

or not justified and fair should not be the focus of African leaders.<sup>138</sup> In a way, it is their inaction and lack of political will to act in favour of the African continent that encourages the West to intervene on African soil. The divided opinion of African leaders has certainly been a major barrier against the actions of the AU. Lack of political will was also in the limelight in the Darfur case. Leaders are not prepared to react simply so as they do not set a precedent as they fear their countries may be next in the list of intervention.

There are at least six countries in Africa which are currently facing situations similar to that of Libya in terms of ethnic conflicts and tensions such as Ivory Coast and Uganda.<sup>139</sup> Others are plagued with political crisis in the likes of Zimbabwe and Nigeria. Personal interests of African leaders impede the necessary political will that was required for the AU to react much more meaningfully in Libya. Lack of political will has been a serious issue in the security sector of the AU. For the AU to function properly especially in cases where intervention is required, the finance, defence and foreign affairs sectors must be gelled together in the AU headquarters. For that to happen political will of whether or not to engage in military operations in a country is sine qua non and unfortunately it went missing in the Libyan case.

#### **4.3 Inadequate resources**

The African continent is probably the continent where there have been most human casualties in terms of death and displacement. According to Paul Williams, this has made protection of civilians a critical issue in African security.<sup>140</sup> He argues that civilian protection is imperative for sustainable political peace. In addition, this is the view which the AU shares more precisely through its Africa Union-UN high level meeting to the conflict in Darfur. Indeed, the committee concluded that civilian security was a prerequisite for progress towards political solution.<sup>141</sup> Interviews at PSC have shown that military intervention in Libya was not a solution thought of by the AU. However, deployment of a small African troop in Libya to quell the uprising and the killings of civilians by the Libyan authority coupled with political dialogue with NTC and Colonel Qaddafi was thought of at one point in time. But inadequate resources did not make such a plan successful. Undoubtedly, the AU lack resource for intervention as

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<sup>138</sup> See in general The Rising Continent 'Libya: A wake up call for African leaders' available at <http://www.punchng.com/Articl.aspx?theartic=Art201106021562443> (accessed 12 October 2011).

<sup>139</sup> See Pambazuka News 'The UN Report on Darfur: what role for the AU' available at <http://www.Pambazuka.org> (accessed 12 October 2011).

<sup>140</sup> See P Williams 'Enhancing civilians protection in peace operations: insights from Africa' research paper from the Africa Centre for Strategic Studies September 2010 p 5.

<sup>141</sup> See UNSC *Report of the Secretary-General and the Chairperson of the African Union Commission on the hybrid operation in Darfur* (5 June 2007) UN Doc S/2007/307/Rev.1 para 40 available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Sudan%20S2007%20307%20Rev%201.pdf> (accessed 12 October 2011).

the African Standby Force has not been operationalised yet and also there was an interrogation mark on who would send military men to form a troop to go to Libya.

It has been the dream of Pan Africanists that Africa's defence forces should integrate and unite in the form of a Pan-African Armed Forces.<sup>142</sup> It was the plan of the AU to have its own Pan-African Stand-by Rapid-Reaction force composed of 15,000 troops by the year 2010.<sup>143</sup> To realize this dream, continental integration and collective security were concepts being debated in view of an emerging regional security structures. Unfortunately, this dream has not been realized yet even though progress has been made as far as the African Stand-by Force (ASF) is concerned.<sup>144</sup> It is argued that the reaction of the AU could have been different if the ASF was ready and operational even though the AU might not have opted for military intervention in the form of aerial bombardment or combats. This would certainly have permitted the AU to deploy a troop in Libya for peacekeeping and also made it easier for itself to pursue its political dialogue for a solution. Unfortunately, the fact that the ASF is not operationalised yet meant that the AU could not consider any form of intervention in pursuance to article 4(h) of the AU Constitutive Act.

The potential for the AU to adhere and respect the concept of responsibility to protect and eventually react to the Libyan crisis is much dependent on the ASF.<sup>145</sup> The bureaucratic process of the UN to deploy troops and the precedent of Rwanda made it relevant for Africa to establish the ASF. However, the ASF cannot work on its own. It has to be supported by operational and organizational structures. The PSC is mandated to do so in accordance with article 13 of the PSC Protocol. The reason for an ASF is to enable PSC to deploy rapidly in case of grave circumstances and also for the AU to play a lead role in African conflict situations.<sup>146</sup> The Panel of the Wise, a Continental Early Warning System and a Peace Fund was also developed in order to support the ASF. Despite a good structure of the AU to cope with security issues, the operationalisation has been very much questionable<sup>147</sup>. The Libyan people have probably been a victim of this slow operationalisation.

One of the reasons for this slow process of operationalisation is financial resources. For instance, the African Union Mission in Burundi (AMIB) had an approximate amount of US \$130 million per year while the integral AU's budget was US \$32 million. The African Union Mission in Somalia (AMIS)

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<sup>142</sup> It is ridiculous, indeed suicidal, for each state separately and individually to assume such a heavy burden of self-defence – Kwame Nkrumah, Africa must unite.

<sup>143</sup> See T Murithi *The AU, Pan-Africanism, Peace building and Development* (2005) 83.

<sup>144</sup> See J Cilliers 'The ASF-An update on progress' Institute for Security Studies Paper no. 160 March 2008 p 16.

<sup>145</sup> See E Petruczynik 'The responsibility to protect and ASF' (2006) 36 *Africa Insight* 26.

<sup>146</sup> See N Mlambo 'Evolution of the PSC of AU and the ASF, up to 2006' (2006) 36 *Africa Insight* 45.

<sup>147</sup> See R Tavares *Global Institutions: Regional security* (2009) 24.

was estimated to be about US \$466 million which again indicates that AU does not have the financial resources.<sup>148</sup> Again here, the political will of African leaders to do so have been questioned. It is reported that African troops contributors are not on the same wavelength with AU's idea of mobilization of additional funds within Africa.<sup>149</sup> So far, the AU has relied heavily on external donor funding for its peacekeeping missions in various countries in Africa. The EU donated around 300 million Euros through the Africa Peace Facility which was used to fund peacekeeping missions in Burundi, Darfur, Central African Republic and Comoros. Cilliers argues that without the Africa Peace Facility, it would have been impossible for AU to conduct any of the above mentioned intervention. The danger of dependence on external donor funding is that it prevents the AU from developing its own financial system for defence. This allows countries like UK and France to engage with African countries on bilateral basis to provide funds for military capacity building. This undoubtedly creates dependency and the need to remain grateful and on their side.

Intervention in Libya would have been more complicated in the sense of who would have been ready to intervene.<sup>150</sup> Algeria is known for not being involved militarily in other countries but to concentrate and control only along its borders. Reliance on the Arab Maghreb Union (AMU) would possibly not have yielded much because of the spring revolution which was taking place already and also by the fact that Egypt is not an AMU member. In addition, deployment of troops is also subject to national and personal agendas. For example, Ethiopia was ready to send troops to Burundi because of the importance of the Great Lake Region to it. The reason for Mozambique to be active in Burundi was the need for it to project an image of a country that has stabilized and progressing after the devastating civil war from 1975 to 1992. Libya had economic and political ties with many African nations which would have made it difficult to gather troops against it. Also, the Libyan army is known to be robust and powerful and engaging in war with them would not be a good idea for many African leaders.<sup>151</sup> These dynamics cannot be overlooked while assessing how far intervening in Libya would be an intelligent move by the AU.

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<sup>148</sup> See Background and Concept Paper for brainstorming retreat between the AU and the regional mechanisms for conflict prevention, management and resolution (5 January 2008) Algeria.

<sup>149</sup> J Cilliers n 144 above p 12.

<sup>150</sup> n 127 above.

<sup>151</sup> See The Globe and Mail 'Libya's military: how strong are Qaddafi's forces' available at <http://www.theglobeandmail.com/news/world/libyas-military-how-strong-are-gadhafis-forces/article1931552/> (accessed 12 October 2011).

#### 4.4 Consequences of intervention

It is voiced out at the AU that the AU was not for intervention as a solution to the Libyan crisis because of the consequences it entailed.<sup>152</sup> The AU was concerned about the consequences that could result from an intervention. The particular concern was the fragmented society of Libya along ethnic lines as well as the danger of spreading instability coupled with free flow of arms. These are the reasons advanced as to why the AU was not in agreement with the West on intervention and also there was no possibility of any sort of hybrid mission in Libya.

The policy of Libya has been the exclusion from political activity and the official repression of civil society since the revolution in 1969.<sup>153</sup> This has given way to kinship as the primary mechanism of political and social organisation. Discrimination based on ethnic lines was rampant during Colonel Qaddafi's era. People coming from his tribe was protected and given the better jobs in military and government while other ethnic groups were marginalized.<sup>154</sup> Ethnic affiliation is regarded as an obstacle to social mobility, equal opportunity and development of civil society in Libya.<sup>155</sup> On coming into power in 1969, Colonel Qaddafi vowed to eliminate ethnicity and 'tribalism'. However, when his power started to decrease among his colleagues in the Free Unionist officers corps, he began to heavily rely on ethnicity and ethnic rivalry to remain in power.<sup>156</sup>

It was therefore a preoccupation of the AU of how a military intervention would solve the problem of ethnic rivalry which was a strong cause of protest in Benghazi indeed. According to an officer in the PSC, the policy of AU on intervention is not only intervening and protecting the people from any danger, but also includes the social, political and economic stability of the country after any intervention.<sup>157</sup> The Libyan society is very divided along ethnic lines which makes it difficult to know for whom the NTC and the rebels force are fighting. There is always the fear that ethnic marginalization and discrimination will continue to exist even after a regime change. This explains why the AU has urged the NTC to come up with an all-inclusive transitional government in Libya for it to be recognized by the AU.<sup>158</sup> The AU has said that it would not recognize a government consisting of rebel forces only, but Colonel Qaddafi's

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<sup>152</sup> Interviewed on the 13<sup>th</sup> of October 2011 at the PSC in Addis Ababa. Anonymity requested.

<sup>153</sup> See newnations.com 'Libya' available at <http://www.newnations.com/headlines/ly.php> (accessed 12 October 2011).

<sup>154</sup> See The Washington Post 'Qaddafi is eccentric but the firm master of his regime' available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/22/AR2011022207298.html> (accessed 12 October 2011).

<sup>155</sup> See BBC News 'Libya crisis: What role do tribal loyalties play?' available at <http://www.bbc.co.uk/news/world-middle-east-12528996> (accessed 10 October 2011).

<sup>156</sup> As above.

<sup>157</sup> Interviewed on the 13<sup>th</sup> of October 2011 at the PSC in Addis Ababa. Anonymity requested.

<sup>158</sup> See Reuters 'AU urges inclusive Libya government, setback to rebels' available at <http://www.reuters.com/article/2011/08/26/us-libya-au-repeat-idUSTRE77P1R220110826> (accessed 10 October 2011).

supporters should be included too with the goal of dealing with the problem of ethnicity in Libya. It is true that during the civil war, the NTC managed to bring together people from different tribes who put aside their local interests and fought as one for their country. But this unifying attempt should not stop after the war. The NTC will have to work hard to give adequate representation to local organizers and militia leaders from Western Libya who have been previously marginalized and discriminated against.<sup>159</sup>

Another consequence that discouraged the AU to intervene in Libya was regional and local instability that it was predicted to cause in terms of arms flow and transportation as well as refugee problem. The AU was concerned about the implications on the security for the wider region extending south through the Sahel to Nigeria.<sup>160</sup> It has been reported that several arms depots which contained dangerous weapons such as the SA-7b heat-seeking missiles have been looted and there is a possibility that such arms are now in the hands of terrorist groups including the Al-Qaeda in the Islamic Maghreb (AQIM).<sup>161</sup> The security of Niger, Mali, Mauritania and Senegal are endangered by the looting of arms. An outflow of pro-Qaddafi Touareg fighter from Libya is also another major security issue. The Touareg is a nomadic Muslim Berber group which was supported by Colonel Qaddafi during their insurgency campaigns against the government of Chad, Mali and Niger.<sup>162</sup> Having found themselves on the losing side with the overthrown Qaddafi regime, there is a danger of the Touareg to develop ties with the AQIM which would be harmful to many countries of North Africa.<sup>163</sup> AQIM has also established financial links with a Nigeria based Islamist Group called Boko Haram and there is the danger of arms stolen by AQIM from Libya being given to Boko Haram which would mean security threat to Nigeria.<sup>164</sup>

The issue of refugee was also another point that had to be taken into account by the AU. It is common knowledge that African refugees pose today the largest refugee problem the world has to face.<sup>165</sup> The

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<sup>159</sup> See Wall Street Journal 'First revolution, now democracy' available at <http://online.wsj.com/article/SB10001424052970204138204576598451814513960.html> (accessed 30 September 2011).

<sup>160</sup> See Aljazeera 'Instability spreading' available at <http://english.aljazeera.net/indepth/opinion/2011/03/201132093458329910.html> (accessed 14 October 2011).

<sup>161</sup> See Human Rights Watch 'Libya: Secure unguarded arms depots' available at <http://www.hrw.org/news/2011/09/09/libya-secure-unguarded-arms-depots> (accessed 13 October 2011).

<sup>162</sup> See Monocle 'The Touareg forced to fight for Qaddafi' available at <http://www.monocle.com/monocolumn/2011/03/23/lesser-of-two-of-evils-the-touareg-fighting-for-gaddafi/> (accessed 12 October 2011).

<sup>163</sup> See Yahoo News 'EU official warns of spreading of al-Qaeda offshoot' available at <http://news.yahoo.com/eu-official-warns-spreading-al-qaida-offshoot-220317057.html> (accessed 13 October 2011).

<sup>164</sup> See Worldwatch 'Post-Qaddafi West and Central Africa a powder keg' available at [http://www.cbsnews.com/8301-503543\\_162-20104517-503543.html](http://www.cbsnews.com/8301-503543_162-20104517-503543.html) (accessed 10 October 2011).

<sup>165</sup> See A Adepoju 'The dimension of the refugee problem in Africa' available at <http://afraf.oxfordjournals.org/content/81/322/21.full.pdf> (accessed 12 October 2011).

UN High Commissioner for Refugee (UNHCR) has recently expressed concerned about the situation of third country nationals in Libya including refugees.<sup>166</sup> Internal displacement is also a major issue that resulted from the civil war in Libya. The rebel forces have forced the entire population of the Taworgha town consisting of 10 000 inhabitants and they were subjected to racist treatment because of their support for Colonel Qaddafi.<sup>167</sup> According to Abdelhamid al-Mendi, a Red Cross official, 50 000 Libyans have left their homes since the war began in February.<sup>168</sup> Aware of the crisis of refugee and internally displaced persons in Africa, the AU was seemingly concerned about another war deteriorating the situation in North Africa. AU's commitment towards internally displaced persons was embodied in the adoption of the AU Convention for the Protection and Assistance of Internally Displaced Persons In Africa. It was thought that intervention in Libya would undermine the efforts given to redress the situation in Africa.

#### 4.5 The Qaddafi factor

The AU has not been as vocal and clear as it was in the Gbagbo case against Colonel Qaddafi. Whereas it is true that the Ivorian case consisted of an unconstitutional change in regime unlike the Libyan case, the common denominator was definitely massive human rights violations with even speeches similar to hate speeches in the Libyan case. Being a major contributor to the AU budget, it was natural for the world to accuse the AU of being ineffective because of the personality of Colonel Qaddafi, a leader not similar to other African ones. The influence of Colonel Qaddafi has been cited as the main reason for AU not to intervene in Libya. Therefore, it is important to look at Colonel Qaddafi relationship with the AU and with other African countries. This will permit an assessment of whether the AU was intimidated by Colonel Qaddafi's personality or not.

To use the words of a legal officer in AU, Qaddafi was more hated than loved in Africa.<sup>169</sup> It is not disputed that Colonel Qaddafi was popular in Africa, but it has to be said that he was also widely regarded with suspicion. For instance, in 1980, after he militarily intervened in Chad, his country was isolated at the Organisation of the African Unity (OAU) and in 1982, most African countries decided to

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<sup>166</sup> See UNHCR 'Libya: Continuing concern about the situation of third country nationals and Libyan displaced' available at <http://www.unhcr.org/4e732df39.html> (accessed 10 October 2011).

<sup>167</sup> See The Telegraph 'Qaddafi's ghost town after the loyalists retreat' available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8754375/Gaddafis-ghost-town-after-the-loyalists-retreat.html> (accessed 10 October 2011).

<sup>168</sup> See Migration Crisis from Libya 'Cross Border Movement from Libya' available at <http://www.migration-crisis.com/libya/page/index/1> (accessed 12 October 2011).

<sup>169</sup> Interviewed on the 13<sup>th</sup> of October 2011 at the PSC in Addis Ababa. Anonymity requested

absent themselves from an OAU summit in Tripoli.<sup>170</sup> His military actions such as sending of troops to help Idi Amin's regime in Uganda and his call for Muslim Congolese to engage in holy war with Mobutu Sese Seko was not appreciated by African leaders. His support to rebel groups in Sierra Leone and Liberia in terms of military training was not regarded positively either. His famous comment of partition of Nigeria into Muslim and Christian states also cast doubt on his dream of uniting Africa.<sup>171</sup> It is argued that the fact that his dream of a United States of Africa, an all African Army as well as common currency was massively rejected by African countries shows that he did not have much influence in the AU as has been widely reported. In addition, his attempt to be chairman of the AU for the second time was rejected.<sup>172</sup>

Friend with Colonel Qaddafi or not, one thing that is hard for the AU to deny is that the contribution of Libya to the AU budget was very significant. The toppling of the Colonel Qaddafi's regime results in the AU budget being decreased by around US \$40 million. It is true that there are five major contributors in AU namely Algeria, Egypt, Libya, Nigeria and South Africa and that all of them contributed equally, amounting to 75% of AU's budget. However, engaging war with Libya would have meant the AU decreasing its own budget by one fifth. What was unique with Libya was that Colonel Qaddafi was also contributing for several countries which were not able to make funds available for their contribution. In sum, Libya's contribution amounted to nearly one third of AU's budget.<sup>173</sup> This change of regime leaves AU in doubt about whether the new regime in Libya would be as generous as Colonel Qaddafi was. The chances of the new regime being generous look slim since the AU has not yet recognized the NTC as the new government. While it cannot be said that the AU were intimidated by the personality of Colonel Qaddafi to intervene in Libya because of the latter's influence, it would not be unrealistic to say that they might have thought twice, at least financially.

#### **4.6 The Behaviour of the West**

The behaviour of the West has been severely criticized by many African leaders and scholars. Some have even claimed that the West wants to re-colonize the African continent.<sup>174</sup> Indeed, it has to be said that the AU was somewhat marginalized by the West (UN, NATO, US, UK and France mainly) by not

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<sup>170</sup> See The Guardian 'Qaddafi: the man who would be king of Africa' available at <http://www.guardian.co.uk/commentisfree/2011/aug/26/gaddafi-legacy-meddling-africa> (accessed 10 October 2011).

<sup>171</sup> See BBC News 'Divide Nigeria into two, says Muammar Gaddafi' available at <http://news.bbc.co.uk/2/hi/8570350.stm> (accessed 10 October 2011).

<sup>172</sup> See Centre for Strategic and International Studies 'Autocrats United? The PSC of AU' available at <http://csis.org/publication/autocrats-united-peace-and-security-council-african-union> (accessed 10 October 2011).

<sup>173</sup> See Daily Maverick 'After Qaddafi, who will fund the AU' available at <http://csis.org/publication/autocrats-united-peace-and-security-council-african-union> (accessed 09 October 2011).

<sup>174</sup> See Journal Afrique Expansion n 17 above.



considering AU's approach to the Libyan crisis and its Road Map advocating for political dialogue in Libya. A source from the AU even said that the ad hoc Committee on Libya was even considering to visit Libya and to issue a recommendation to the PSC for further action which could even be coercive ones.<sup>175</sup> However, the no-fly zone prohibits any visit and the UN even refused special permission for the Committee to fly to Libya. Important African figures such as Thabo Mbeki were involved in a vocal campaign against NATO's intervention and for the sidelining of AU with some 200 African personalities.<sup>176</sup>

Jean-Paul Pougala argues that the real reason for western countries to wage war in Libya is because of the threat that Colonel Qaddafi poses to them.<sup>177</sup> He cites the establishment of the RASCOM (Regional African Satellite Communication Organisation) pioneered by Colonel Qaddafi who gave US \$300 million for this project. The project of Africa having its own satellite for communication purposes meant that Europe lost US \$500 million annually for the lease of its satellite by Africa for communication. He further argues that Colonel Qaddafi's project of a United States of Africa was a threat for western countries to exploit Africa as it would then be united and strengthened. In addition, Colonel Qaddafi opposed EU's dream of a Union for Mediterranean (UPM), a plot to make the northern Arab African countries to detach themselves from the main African continent. Colonel Qaddafi also became a thorn to western eyes when he financially and militarily aided South Africa to fight against the racist apartheid regime. Jean-Paul Pougala even proposes for all African countries to quit the UN and to come back only on terms spelt out by African countries as China did and was admitted on its own terms on 25 October 1971 via Resolution 2758.

It has to be noted that even Europeans were not in agreement with the way western countries primarily UK and France have intervened in Libya. Simon Jenkins argues that the downfall of Colonel Qaddafi was most welcome but it does not justify the means.<sup>178</sup> He criticizes how Britain and France advocated for a no-fly zone to protect civilians only to later taking part in the war and even plotting the assassination of Colonel Qaddafi for democracy in Libya. Richard Norton-Taylor disapproves the way military intervention was carried out with notably high-level bombing and planning by low level ground

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<sup>175</sup> Anonymity requested.

<sup>176</sup> See Politicsweb 'NATO war of aggression in Libya should end immediately-Mbeki & Co' available at <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71656?oid=252537&sn=Detail&pid=71656> (accessed 12 October 2011).

<sup>177</sup> See Rights Monitoring 'Why the West wants the fall of Qaddafi' available at <http://www.rightsmonitoring.org/2011/04/why-the-west-wants-the-fall-of-gaddafi-an-analysis-in-defense-of-the-libyan-rajs/> (accessed 08 October 2011).

<sup>178</sup> See The Guardian 'The end of Qaddafi is welcome' available at <http://www.guardian.co.uk/commentisfree/2011/aug/23/gaddafi-downfall-britain-intervention> (accessed 07 October 2011).

forces.<sup>179</sup> The behaviour of the West in Libya also comes under scrutiny when western countries are inactive in cases such as Bahrain, Yemen and Syria especially where thousands of people have lost their lives. The West has invoked the responsibility to protect and has claim that the aim was to protect civilians. However, it is inevitable to hear arguments similar to the West waging war for oil contracts.

#### **4.7 Conclusion**

Western countries have been known to intervene in other countries for their own interests. While it is true that NATO has over-stretched the mandate given to it by Resolution 1973, it has to be admitted that it was the NTC themselves and even some members of the Arab league who demanded an intervention from the West. However, the aim of this dissertation is not to look at how legal or legitimate was NATO's intervention in Libya. In fact, the UN itself might assess this one day when it will realize that NATO intervention in Libya has proven to be a blow to the concept of responsibility to protect which took so long to be recognized. The responsibility to protect has definitely been negatively redefined by the actions of NATO. What this dissertation has inquired into is the capacity of AU itself to deal with human rights violations and autocratic leaderships.

The article 4(h) is not being implemented as it should if human rights violations and casualties are taken as barometers in Libya. AU's inaction to fulfil its responsibility to protect cannot be blamed on the unoperationalised ASF. According to Colonel Cheick Dembele,<sup>180</sup> the ASF is, in a sense, already operational. He explains that there cannot be a target for operationalisation as military objectives changes every year. For example, maritime countries now are concentrating on coastline protection and maritime safety, a concept which was not a military priority some years back according to Colonel Dembele. So what went wrong in the Libyan case?

Poor political will of African leaders seems to have prevented the AU from intervening in Libya. Colonel Dembele explains that the war school in military training emphasized on the DIEM concept, short form for diplomacy, information, economy and military. Therefore, military intervention cannot work on its own. It is only a component of the mechanism with diplomacy weighing the heaviest on the balance. Poor political will has prevented the AU from having consensus on the Libyan case and prevented in from invoking article 4(h) of the Constitutive Act of the AU. Poor political will has made it that AU is heavily depended on external donor funding for its budget. In 2010, 26 countries out of 53

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<sup>179</sup> See The Guardian 'Libya: a new breed of military intervention' available at <http://www.guardian.co.uk/commentisfree/2011/aug/25/libya-military-intervention> (accessed 07 October 2011).

<sup>180</sup> Interviewed on the 18<sup>th</sup> October 2011 at Peace and Support Operations Division Addis Ababa. Colonel Dembele is the Training Officer of the African Standby Force.

did not pay their annual contribution to the AU. It is therefore evident that some African countries do not take the important role of the AU seriously and they do not share the belief that the continental organisation can contribute to security, peace and development in Africa. And if it has not as it should, it is those very countries which must take the blame.

It is not being advocated that AU should have got involved in bombardment as NATO has been doing. Sufficient political will to send troops in Libya for general policing and to make civilians feel protected coupled with political dialogue could have yielded a different outcome. However, even among the 15 member states of the PSC, a consensus could not be obtained to send troops with a humanitarian mandate as was being considered by the PSC.<sup>181</sup> African leaders had divided opinion over Libya when the aim should have been similar: - alleviation of the plight and pain of Libyans. The AU should also share part of the responsibility for not educating African leaders enough on the responsibility to protect and for not vulgarizing article 4(h) enough. PSC and Department of Political Affairs of the AU must play a role similar to the one played by Kofi Annan for making the responsibility to protect an acceptable international norm and get countries on board to implement it. Article 4(h) should not be in the Constitutive Act only for show case. It should be made completely operational not only by intervention as peace-keeping. The AU must be able to be present on the ground as soon as there is even mere suspicion of human rights violations. The Panel of the Wise is not fully involved in conflict resolution efforts and the Continental Early Warning System of the AU lacks capacity in terms of logistics and man power.

Unless African leaders genuinely unite and speak with one voice, the AU would not be able to perform its tasks as a continental organisation. The AU has a responsibility to educate African leaders on the importance of a united Africa. Only a harmonized aim towards a better protection of human rights in Africa will bring about stability, growth and development. It is high time to stop judging western countries even if their modus operandi is known to be biased and heavily interest-based. We Africans should look at our lacunas and incapacities first. Once that is solved, then we will be able to stand united against frivolous interveners.

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<sup>181</sup> n 179 above.

## 5. STEPS TO BE TAKEN TO AVOID ANOTHER LIBYAN SITUATION

Lack of political will has been identified as the main factor that contributed in the failure of the AU in the Libya. Political will primarily depends on the will of the African leaders. They have to realize that a divided Africa will not be beneficial to African people and that the case scenario in Libya can reiterate itself in their own countries. Debates, legal enforcement and information can be a tool to raise public awareness among Africans and consequently force out the political will of African leaders if it does not come voluntarily. For that purpose, this chapter proposes some recommendations which may be pivotal to empower the AU to better deal with cases like the Libyan one. A strong legislative body, a progressive judiciary and a sound financial structure for AU may be the way to go. Debates have been on going about an African government, the United States of Africa or the AU Authority. These institutional amendments will yield no better results. The major problem for now is political will. Transforming the AU into a different institution without changing political mentality will be a waste of time and resources. Even the Union Government is an idea which has been debated for decades now. However, while African states agree with the final product, consensus on the procedures to reach there is very improbable to reach.<sup>182</sup> Further institutionalization is not the immediate remedy. This chapter proposes three steps to remedy the situation for the immediate future while believing that long run projects such as United States of Africa and Union government will equally be important in parallel.

### 5.1 Giving immediate full power to the Pan-African Parliament (PAP)

The AU has a plethora of human rights instruments and also scores of institutions within itself. However, their effectiveness is highly questionable. One of them is the PAP. The mandate of the PAP is only consultative and advisory. The primary objective is to allow Africans to take part in the affairs of the AU and to know what is happening on the African continent through their parliamentary representatives. This will allow participation to every African. It is humbly recommended that the PAP should be given full legislative power and should become a forum where the implementation of the responsibility to protect can be debated. The PAP should be empowered to legislate on the essential components of the responsibility to protect such as the ASF and the Early Warning systems. Those legislations should then be followed by states and their laws should be harmonized accordingly. The PAP will give a platform for immediate and formal discussions on instable situations such as the Libyan one and there will be more organisation in the response of the AU through the member states. The operationalisation and genuine application of article 4(h) should be legislated by the PAP.

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<sup>182</sup> See D Lecoutre 'Towards a government of the AU' Institute for Security Studies Paper No 147 p 1.

## **5.2 The role of the African Court of Justice and Human Rights (ACJHR)**

The ACJHR is mandated to interpret the Constitutive Act of the AU.<sup>183</sup> The ACJHR should be empowered to deliberate on situations such as Libya and pronounce whether the responsibility to protect should apply or not. In this way, the application of article 4(h) will be a legal enforcement as opposed to the diplomatic one at the mercy of political interests. The PSC should be given legal standing to apply to the ACJHR. The ACJHR should primarily interpret article 4(h) in accordance to human rights violations happening on the African continent. It is already mandated to collect documents and undertake studies and researches on human and peoples' rights matters in Africa.<sup>184</sup> One of the limitations of this recommendation can be non-implementation of the decisions of the ACJHR. However, it can be learnt from the experience of the African Commission on Human and Peoples' Rights that with time and especially concerned about their reputation, states usually agree to abide by the decisions of an international court.

## **5.3 Alternative sources of finance**

Financial dependence on external donors has a crippling effect on the function of the AU. For the latter to carry out its mandates and to function without any interference, it is mandatory that it enjoys financial independence. Various African states have failed in fulfilling their obligation of availing their contributions towards the AU budget which has resulted in arrears. This has resulted in the AU experiencing difficulties to operate its various organs and also to implement its continental programmes and activities. In 2005, at the Sirte summit, the AU decided that 5 states would contribute for 75% of AU's operational budget. However, such an idea is not considered to be sustainable and the need for alternative sources of finance is crucial.<sup>185</sup> African Leaders such as President Wade of Senegal proposed the imposition of an import levy and tax on insurance and the Pan-African Resource Solidarity put forward the idea of taxes on airline tickets by the African Organisation of Civil Societies.<sup>186</sup> Mobilization of resources through the private sector was also proposed.

It has to be highlighted that the AU has been very slow in materializing these proposals. It is only in 2011, after a decade of discussions on alternative sources of finance, that the AU has appointed Dr. Luisa Diogo, former Prime Minister and Minister of Finance of Mozambique and Olusegun Obasanjo, former President of Nigeria to form the High Level Panel on Alternative Sources of Financing the

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<sup>183</sup> Article 28 & 31 of the Protocol on the Statute of the African Court of Justice and Human Rights.

<sup>184</sup> See African Union 'African Court of Justice' available at <http://www.au.int/en/organs/cj> (accessed 15 October 2011).

<sup>185</sup> See the Statement of the Commissioner for Economic Affairs at the meeting of Governmental Experts on Alternative Sources of Financing the AU (26 May 2006).

<sup>186</sup> As above p 4

AU.<sup>187</sup> The AU has to accept that alternative sources of finance is an urgency and should react more concretely in addition to the seemingly endless task of the AU to set high level panels. Also the civil society and every African in general should recognize their duty towards contributing to the AU's budget and the AU should be representing them and working for their betterment. In this way, the AU will have to show more transparency in their works and this would promote a culture of accountability. Economic sanctions and well as diplomatic penalties should also be imposed on African states which do not pay their contribution to the AU.

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<sup>187</sup> See African Union Press Release N 83/2011 (03 August 2011).

## BIBLIOGRAPHY

### Books

1. Anton, B & Joseph, D (2009) *Human Rights in Africa: legal perspectives on their protection and promotion* Macmillan Education Namibia
2. Bettati, M & Kouchner, B *Le devoir d'ingérence* (1987) Deno Paris
3. Blokker, N & Schrijren, N (2005) *The UNSC and the use of force* Martinus Nijhoff Publishers
4. Deng, FM (1996) *Sovereignty as responsibility: conflict management in Africa* Brookings Institution Press
5. Dupuy, P (1997) *The constitutional dimension of the Charter of the United Nations revisited* Max Planck UNYB
6. Furley, O & May, R (2006) *Ending Africa's wars: Progressing to Peace* Ashgate Publishers Limited
7. Heyns, C & Viljoen, F 'The regional protection of human rights in Africa: An overview and evaluation' in Zeleza, PT & McConnaughay, PJ (2004) *Human Rights, the rule of law, and development in Africa* University of Pennsylvania Press
8. Kochler, H (2005) *The use of force in international relations* Martinus Nijhoff Publishers
9. Murithi, T (2005) *The AU, Pan-Africanism, Peace building and Development* Ashgate Publishing Limited
10. Tavares, R (2009) *Global Institutions: Regional security* Routledge Global Institution
11. Weiss, T (2007) *Humanitarian intervention: Ideas in action* Polity Press
12. Weiss, T (2006) *Multilateralism Under Challenge: Power International Order, and Structural Change* Tokyo United Nations University Press
13. Wheeler, N (2000) *Saving strangers: Humanitarian intervention in international society* Oxford University Press

14. Wight, M (1966) *Diplomatic investigations: Essays in the theory of international politics*  
Harvard University Press

### **Journals**

1. Abass, A 'The Darfur Crisis: The role of the AU in Darfur' (2007) 65 *Utrecht Journal of International and European Law* 47
2. Acheson-Brown, DG 'The Tanzanian invasion of Uganda: a just war?' (2001) 12 *International Third World Studies and Review* 6
3. Gumedze, S 'The African Union and the responsibility to Protect' (2010) 10 *African Human Rights Law Journal* 136
4. Kindiki, K 'The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: A critical appraisal' (2003) 3 *African Human Rights Law Journal* 107
5. Kioko, B 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention' (2003) 85 *International Review of the Red Cross* 811
6. Kuwali, D 'Protect responsibility: The AU's implementation of article 4(h) intervention' (2008) 11 *Yearbook of International Humanitarian Law* 81
7. Macfarlane, SN 'The responsibility to protect: is anyone interested in humanitarian intervention?' (2004) 25 *Third World Quarterly* 979
8. Mlambo, N 'Evolution of the PSC of AU and the ASF, up to 2006' (2006) 36 *Africa Insight* 45
9. Patrick, E 'The genocidal impact of forced migration in Sudan' (2005) 18 *Journal of Refugee Studies* 410
10. Patrik, J 'The humdrum use of ultimate authority: Defining and analysing chapter vii resolutions' (2009) 78 *Nordic Journal of International Law* 309-342
11. Petruczynik, E 'The responsibility to protect and ASF' (2006) 36 *Africa Insight* 26



12. Pieterse, JN 'Sociology of humanitarian intervention: Bosnia, Rwanda and Somalia compared' (1997) 18 *International Political Science Review* 71-93
13. Roberts, A 'Humanitarian War: Military intervention and human rights' (1993) 69 *International Affairs* 3
14. Taylor, MB 'humanitarianism or Counterinsurgency? R2P at the crossroads' (2006) 61 *International Journal* 146

### **International legal framework**

1. ACHPR Resolution 117 (XXXII) 07 'Resolution on Strengthening the Responsibility to Protect in Africa' available at <[http://www.achpr.org/english/resolutions/resolution117\\_en.htm](http://www.achpr.org/english/resolutions/resolution117_en.htm)> (accessed 19 August 2011)
2. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* International Development Research Centre, Ottawa 2001 available at <[www.iciss.ca/menu-en.asp](http://www.iciss.ca/menu-en.asp)> (accessed 12 August 2011)
3. PSC Communiqué 'Communiqué of the 259<sup>th</sup> meeting of the PSC' PSC/AHG/COMM (CCLIX) available at <[http://au.int/en/dp/ps/sites/default/files/2011\\_jan\\_28\\_psc\\_259thmeeting\\_cotedivoire\\_communique\\_en.pdf](http://au.int/en/dp/ps/sites/default/files/2011_jan_28_psc_259thmeeting_cotedivoire_communique_en.pdf)> (accessed 12 September 2011)
4. PSC Communiqué 'The High Level Panel for the resolution of the crisis in Cote d'Ivoire concludes its 3<sup>rd</sup> meeting in Nouajchott' available at <[http://au.int/en/dp/ps/sites/default/files/COMMUNIQUE\\_EN\\_4\\_MARCH\\_2011\\_PSD\\_THE\\_HIGH\\_LEVEL\\_PANEL\\_INVITES\\_THE\\_IVORIAN\\_PARTIES\\_TO\\_ITS\\_NEXT\\_MEETING.pdf](http://au.int/en/dp/ps/sites/default/files/COMMUNIQUE_EN_4_MARCH_2011_PSD_THE_HIGH_LEVEL_PANEL_INVITES_THE_IVORIAN_PARTIES_TO_ITS_NEXT_MEETING.pdf)> (accessed 12 September 2011)
5. 'African Court of Justice' available at <<http://www.au.int/en/organs/cj>> (accessed 15 October 2011)
6. The Secretary-General, *We the Peoples: The Role of the United Nations in the Twenty-First Century*, chap 4, at 48, delivered to the General Assembly, (3 April 2000) UN Doc

- No A/54/2000, available at <[www.un.org/millennium/sg/report/full.htm](http://www.un.org/millennium/sg/report/full.htm)> (accessed 15 August 2011)
7. The Common African Position on the Proposed Reform of the United Nations' African Union Executive Council 7<sup>th</sup> Extraordinary Session Addis Ababa, Ethiopia (7-8 March 2005)
  8. United Nations Charter
  9. United Nations General Assembly *A more secure world: our shared responsibility* Report of the High-level Panel on Threats, Challenges and Change (2 December 2004) 59th Session (2004) UN Doc A/59/565 para 203 available at <[www.un.org/secureworld](http://www.un.org/secureworld)> (accessed 15 August 2011)
  10. UNGA *In larger freedom: towards development, security and human rights for all* Report of the Secretary-General (21 March 2005) 59th Session (2005) UN Doc A/59/2005 para 135 available at <[www.un.org/largerfreedom](http://www.un.org/largerfreedom)> (accessed 17 August 2011)
  11. UNGA *Implementing the Responsibility to Protect* Report of the Secretary General (12 January 2009) 63<sup>rd</sup> Session (2009) UN Doc A/63/677 available at <[www.unhcr.org/refworld/docid/4989924d2.html](http://www.unhcr.org/refworld/docid/4989924d2.html)> (accessed 12 August 2011)
  12. UNGA *The role of regional and sub regional arrangements in implementing the responsibility to protect* Report of the Secretary General (28 June 2011) 65<sup>th</sup> Session (2011) Un Doc A/65/877 para 11 available at <<http://www.un.org/en/ga/65/index.shtml>> (accessed 16 August 2011)
  13. UN SC *Report of the Secretary-General and the Chairperson of the African Union Commission on the hybrid operation in Darfur* (5 June 2007) UN Doc S/2007/307/Rev.1 para 40 available at <<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Sudan%20S2007%20307%20Rev%201.pdf>> (accessed 12 October 2011)
  14. UN SC 'Resolution 1564 (2004) adopted by the SC at its 5040<sup>th</sup> meeting' (18 September 2004) UN Doc S/RES/1564 (2004) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/515/47/PDF/N0451547.pdf?OpenElement> (accessed 14 September 2011)

15. UN SC 'Resolution 1706 (2006) adopted by the SC at its 5519<sup>th</sup> meeting' (31 August 2006) UN Doc S/RES/1706 (2006) available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/484/64/PDF/N0648464.pdf?OpenElement>>
16. UN SC 'Resolution 1769 (2007) adopted by the SC at its 5727<sup>th</sup> meeting' (31 July 2007) UN Doc S/RES/1769 (2007) available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/445/52/PDF/N0744552.pdf?OpenElement>>
17. UN SC Resolution 1674 'adopted by the SC at its 5430<sup>th</sup> meeting' (28 April 2006) 5430<sup>th</sup> meeting UN Doc S/RES/1674 (2006)
18. World Summit Outcome Document

### **Case law**

1. *Case Bosnia and Herzegovina v Serbia and Montenegro* ICJ (26 February 2007) (2007) Reports 91
2. *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 44-47

### **Reports and Papers**

1. Background and Concept Paper for brainstorming retreat between the AU and the regional mechanisms for conflict prevention, management and resolution (5 January 2008) Algeria
2. Brookings Institution *Libya and the responsibility to protect* (16<sup>th</sup> June 2011)
3. Cilliers, J 'The ASF-An update on progress' Institute for Security Studies Paper no. 160 March 2008
4. 'Ending mass Atrocity Crimes: The responsibility to protect balance sheet after libya' speech delivered by Professor Gareth Evans at Leo Baeck Centre, Melbourne (31 July 2011) available at <<http://www.gevans.org/speeches/speech443.html>> (accessed 17 September 2011)

5. Evans, G “The responsibility to Protect and the use of military force’ paper presented to Seminar on International Use of Force, World League Forum, The Hague (11 December 2011).
6. Garrigues, J ‘The responsibility to protect: from an ethical principle to an effective policy’ FRIDE Peace, Security and Human Rights Programme (November 2007)
7. General Assembly and UNSC, Report of the Panel on UN Peace Operations, <[http://www.un.org/spanish/peace/operations\\_report/](http://www.un.org/spanish/peace/operations_report/)> (accessed 13 August 2011)
8. International Development Research Centre ‘Redefining sovereignty and intervention’ available at [www.idrc.ca](http://www.idrc.ca). (accessed 14 August 2011)
9. Kuwali, D ‘The end of humanitarian intervention: Evaluation of the African Union’s right of intervention’ available at <[http://www.humansecuritygateway.com/documents/AJCR\\_EndOfHumanitarianIntervention\\_EvaluationAUsRightOfIntervention.pdf](http://www.humansecuritygateway.com/documents/AJCR_EndOfHumanitarianIntervention_EvaluationAUsRightOfIntervention.pdf)> (accessed 16 August 2011)
10. Lecoutre, D ‘Towards a government of the AU’ Institute for Security Studies Paper No 147
11. Nathan, L Crisis States Research Centre, LSE *Mediation and the African Union’s Panel of the Wise* Discussion Paper No 10
12. Nathan, L ‘No ownership, no peace: The Darfur Peace Agreement’ Crisis States Research Centre working paper
13. Puley, G ‘The responsibility to protect: East, West and Southern African perspectives on preventing and responding to humanitarian crises’ available at <<http://www.responsibilitytoprotect.org/files/ploughshares.pdf>> (accessed 20 August 2011)
14. Report of the International Commission on Intervention and State Sovereignty 2001
15. The Global Voice of Legal Profession ‘the responsibility to protect in the case of humanitarian crisis: an emerging norm of international law?’ available at <[http://www.ibanet.org/Human\\_Rights\\_Institute/About\\_the\\_HRI/HRI\\_Activities/Responsibility\\_to\\_Protect.aspx](http://www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/Responsibility_to_Protect.aspx)> (accessed 15 August 2011)

16. United Nations Human Rights Council Situation of human rights in the Libyan Arab Jamahiriya: statement by Navya Pillay, UN High Commissioner for Human Rights 15<sup>th</sup> Special Session Geneva, 25 February 2011
17. Williams, P 'Enhancing civilians protection in peace operations: insights from Africa' research paper from the Africa Centre for Strategic Studies September 2010

#### **Internet articles**

1. Adepoju, A 'The dimension of the refugee problem in Africa' available at <<http://afraf.oxfordjournals.org/content/81/322/21.full.pdf>> (accessed 12 October 2011)
2. 'African Court of Justice' available at <<http://www.au.int/en/organs/cj>> (accessed 15 October 2011)
3. 'African leaders divided over Libya-UN' available at <<http://www.punchng.com/Articl.aspx?theartic=Art201106021562443>> (accessed 13 October 2011)
4. 'African Union Mission in Darfur' available at <[http://archive1.globalsolutions.org/programs/peace\\_security/news/au\\_force\\_darfur\\_analysis.html](http://archive1.globalsolutions.org/programs/peace_security/news/au_force_darfur_analysis.html)> (accessed 15 September 2011)
5. 'After Qaddafi, who will fund the AU' available at <<http://csis.org/publication/autocrats-united-peace-and-security-council-african-union>> (accessed 09 October 2011).
6. 'Autocrats United? The PSC of AU' available at <<http://csis.org/publication/autocrats-united-peace-and-security-council-african-union>> (accessed 10 October 2011)
7. Banda, M 'The Responsibility to Protect: Moving the agenda forward' (March 2007) available at <[http://www.unac.org/en/get\\_involved/donate/index.asp](http://www.unac.org/en/get_involved/donate/index.asp)> (accessed 14 August 2011)
8. 'Call for AU intervention in Zimbabwe' available at <<http://internationallawobserver.eu/2008/12/09/call-for-the-african-union-intervention-in-zimbabwe/>> (accessed 13 October 2011)

9. 'Crisis in Cote D'Ivoire' available at [http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-ivory-coast#p\\_h\\_crisis](http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-ivory-coast#p_h_crisis) (accessed 05 October 2011)
10. 'Cross Border Movement from Libya' available at <http://www.migration-crisis.com/libya/page/index/1> (accessed 12 October 2011)
11. 'Cote D'Ivoire: Why we suspended option of force-AU' available at <http://allafrica.com/stories/201101310160.html> (accessed 12 September 2011)
12. 'Darfur: A case study' available at [http://www.globalization101.org/news1/Darfur\\_globalization](http://www.globalization101.org/news1/Darfur_globalization) (accessed 13 September 2011)
13. 'Darfur Crisis' available at [http://www.darfurconsortium.org/darfur\\_crisis/background.html](http://www.darfurconsortium.org/darfur_crisis/background.html) (accessed 12 September 2011)
14. Dhanapala, J 'United Nations Institute for Disarmament Research Special Comment' available at <http://www.unidir.org/pdf/articles/pdf-art255.pdf> (accessed 15 September 2011)
15. 'Escalating violence in Cote D'Ivoire sees dramatic rise in displacement' (25 March 2011) available at <http://www.unhcr.org/4d8c88ab9.html> (accessed 05 March 2011)
16. 'EU official warns of spreading of al-Qaeda offshoot' available at <http://news.yahoo.com/eu-official-warns-spreading-al-qaida-offshoot-220317057.html> (accessed 13 October 2011)
17. 'Fundamental Issues of Peace, Security at stake, Secretary-General warns as he briefs SC on situation in Libya' available at <http://www.un.org/News/Press/docs/2011/sc10185.doc.htm> (accessed 15 September 2011)
18. Hengari, A 'The AU Struggles to exist on Libya' available at [http://www.namibian.com.na/index.php?id=28&tx\\_ttnews%5Btt\\_news%5D=79586&no\\_cache=1](http://www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=79586&no_cache=1) (accessed 10 October 2011)

19. 'Human Security Brief 2006' available at <<http://www.hsrgroup.org/human-security-reports/2006/text.aspx>> (accessed 12 October 2011)
20. 'Libya: A wake up call for African leaders' available at <<http://www.punchng.com/Articl.aspx?theartic=Art201106021562443>> (accessed 12 October 2011)
21. 'Libya: Continuing concern about the situation of third country nationals and Libyan displaced' available at <<http://www.unhcr.org/4e732df39.html>> (accessed 10 October 2011).
22. 'Libya: NATO must stick to the R2P script' available at <[www.globalr2p.org](http://www.globalr2p.org)> (accessed 25<sup>th</sup> August 2011)
23. 'Libya: The African leaders remain divided over the case Muammar Qaddafi' available at <<http://www.african-bulletin.com/watch/874-libya-the-african-leaders-remain-divided-over-the-case-muammar-gaddafi.html>> (accessed 10 October 2011)
24. 'Libya: Secure unguarded arms depots' available at <<http://www.hrw.org/news/2011/09/09/libya-secure-unguarded-arms-depots>> (accessed 13 October 2011)
25. 'NATO war of aggression in Libya should end immediately-Mbeki & Co' available at <<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71656?oid=252537&sn=Detail&pid=71656>> (accessed 12 October 2011)
26. Obasanjo, O Africa, rise to challenge: Towards a Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) available at <[http://www.africa-union.org/Special\\_Programs/CSSDCA/CSSDCA%A0.htm](http://www.africa-union.org/Special_Programs/CSSDCA/CSSDCA%A0.htm)> (accessed 13 September 2011)
27. Okoampa, K 'On Libya, African Union does not get it' available at <<http://www.modernghana.com/news/341364/1/on-libya-african-union-does-not-get-it.html>> (accessed 25th August 2011)

28. 'On the African Union and Libya' Sahel Blog covering politics and religion in the Sahel and the Horn of Africa available at <<http://sahelblog.wordpress.com/2011/04/12/on-the-african-union-and-libya/>> (accessed 25<sup>th</sup> August 2011)
29. Posada, E 'The responsibility to protect' available at <[http://www.ideaspaz.org/articulos/download/24responsibility\\_to\\_protect.pdf](http://www.ideaspaz.org/articulos/download/24responsibility_to_protect.pdf)> (accessed 16 August 2011)
30. 'Post-Qaddafi West and Central Africa a powder keg' available at [http://www.cbsnews.com/8301-503543\\_162-20104517-503543.html](http://www.cbsnews.com/8301-503543_162-20104517-503543.html) (accessed 10 October 2011)
31. 'Protests in Libya starts early' available at <<http://www.worldthreats.com/?p=6291>> (accessed 25<sup>th</sup> August 2011)
32. Ramsbotham, A 'Safeguarding Civilians' available at <[http://www.responsibilitytoprotect.org/files/safeguarding\\_civilians\[1\].pdf](http://www.responsibilitytoprotect.org/files/safeguarding_civilians[1].pdf)> (accessed 10 October 2011)
33. Reeves, E 'The Failure of the AU in Darfur' available at <<http://www.sudantribune.com/The-Failure-of-the-African-Union,11547>> (accessed 31 August 2011)
34. 'Responding to the Libyan Crisis' available at <<http://www.unhcr.org/pages/4d7755246.html>> (accessed 17 September 2011)
35. 'RtoP alive and well after Libya' (2011) available at <[www.globalr2p.org](http://www.globalr2p.org)> (accessed 25<sup>th</sup> August 2011)
36. 'Sudan signs ceasefire with Darfur JEM rebels' available at <<http://www.reuters.com/article/2010/02/20/us-sudan-darfur-idUSTRE61J2DJ20100220>> (accessed 12 September 2011)
37. 'The AU condemned the use of force by France and the UN' available at <<http://directscoop-en.net/2011/04/05/cote-divoire-the-african-union-condemned-the-use-of-force-by-france-and-the-un/>> (accessed 12 September 2011)



38. 'The Darfur Peace Agreement: Expectations unfulfilled' available at <<http://www.c-r.org/our-work/accord/sudan/dpa-unfulfilled.php>> (accessed 12 September 2011)
39. 'The Georgia-Russia Crisis and R2P' available at <<http://globalr2p.org/media/pdf/GeorgiaRussia.pdf>> (accessed 13 August 2011)
40. 'The Touareg forced to fight for Qaddafi' available at <<http://www.monocle.com/monocolumn/2011/03/23/lesser-of-two-of-evils-the-touareg-fighting-for-gaddafi/>> (accessed 12 October 2011)
41. 'The UN Report on Darfur: What role for the AU?' available at <[http://www.newsfromafrica.org/newsfromafrica/articles/art\\_9628.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_9628.html)> (accessed 14 September 2011)
42. 'Top UN officials call for urgent access to Libyan areas affected by violence', available at <<http://www.un.org/apps/news/story.asp?NewsID=37692&Cr=Libya&Cr1>> (accessed 20 September 2011)
43. 'UN and African blocs must remain united to ensure respect of poll results' available at <<http://www.un.org/apps/news/story.asp?NewsID=37417&Cr=Ivoire>> (accessed 14 September 2011)
44. 'UNHCR concerned as sub-Saharan Africans targeted in Libya' available at <<http://www.unhcr.org/4e57d1cb9.html>> (accessed 17 August 2011)
45. 'UN SC Resolution 1973 in favour of a no-fly zone in Libya' available at <<http://www.voltairenet.org/UN-security-council-resolution>> (accessed 15 October 2011)
46. 'Vietnam: was it liberation or invasion' available at <<http://www.mekong.net/cambodia/jan7.htm>> (accessed 17 September 2011)
47. Valladares, GP 'Somalia humanitarian intervention' available at <[http://www.luisedruke.com/luise/book\\_thess/valladares\\_621\\_667.pdf](http://www.luisedruke.com/luise/book_thess/valladares_621_667.pdf)> (accessed 10 September 2011)
48. 'What the World got wrong in Cote D'Ivoire' available at <[http://www.foreignpolicy.com/articles/2011/04/29/what\\_the\\_world\\_got\\_wrong\\_in\\_cote\\_d\\_ivoire?page=0.3](http://www.foreignpolicy.com/articles/2011/04/29/what_the_world_got_wrong_in_cote_d_ivoire?page=0.3)> (accessed 14 September 2011)

49. Why the West wants the fall of Qaddafi' available at <http://www.rightsmonitoring.org/2011/04/why-the-west-wants-the-fall-of-gaddafi-an-analysis-in-defense-of-the-libyan-rai/>> (accessed 08 October 2011)

#### News channel websites

1. ALJAZEERA 'Instability spreading' available at <http://english.aljazeera.net/indepth/opinion/2011/03/201132093458329910.html>> (accessed 14 October 2011).
2. ALJAZEERA 'Mugabe avoids criticism at AU talks' available at <http://english.aljazeera.net/news/africa/2008/06/200863013246676180.html>> (accessed 13 October 2011)
3. BBC News 'African call for Zimbabwe Unity' available at <http://news.bbc.co.uk/2/hi/africa/7484165.stm>> (accessed 13 October 2011)
4. BBC News 'Divide Nigeria into two, says Muammar Gaddafi' available at <http://news.bbc.co.uk/2/hi/8570350.stm>> (accessed 10 October 2011).
5. BBC News 'Kenya urges AU to suspend Mugabe' available at <http://news.bbc.co.uk/2/hi/africa/7481857.stm>> (accessed 13 October 2011)
6. BBC News 'Libya crisis: What role do tribal loyalties play?' available at <http://www.bbc.co.uk/news/world-middle-east-12528996>> (accessed 10 October 2011)
7. CNN World 'Can African Union broker a Libya peace plan?' available at <http://www.cnn.com/2011/WORLD/africa/04/11/libya.war.african.union/>> (accessed 25<sup>th</sup> August 2011)
8. Reuters 'AU urges inclusive Libya government, setback to rebels' available at <http://www.reuters.com/article/2011/08/26/us-libya-au-repeat-idUSTRE77P1R220110826> (accessed 10 October 2011)
9. Wall Street Journal 'First revolution, now democracy' available at <http://online.wsj.com/article/SB10001424052970204138204576598451814513960.html> (accessed 30 September 2011).

## Newspaper articles

1. 'Africa must support Libya intervention' *Mail and Guardian* available at <http://mg.co.za/article/2011-04-01-africa-must-support-libya-intervention> (accessed 07 September 2011)
2. 'African Traditional Chiefs to the rescue of Colonel Qaddafi' *Journal Afrique Expansion* (September 2011) 202
3. Camara, S 'La communauté internationale veut-elle recoloniser l'Afrique' *Journal Afrique Expansion* (September 2011) 256
4. 'Inside Mugabe's violent crackdown' *The Washington Post* available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/04/AR2008070402771.html> (accessed 13 October 2011)
5. 'Libya: a new breed of military intervention' *The Guardian* available at <http://www.guardian.co.uk/commentisfree/2011/aug/25/libya-military-intervention> (accessed 07 October 2011)
6. 'Libya's agony' *News Africa* 31 July 2011 13
7. 'Libya's military: how strong are Qaddafi's forces' *The Globe and Mail* available at <http://www.theglobeandmail.com/news/world/libyas-military-how-strong-are-gadhafis-forces/article1931552/> (accessed 12 October 2011)
8. Mbak, H 'L'Afrique face a l'intervention armée' *Journal Afrique Expansion* (September 2011) 200
9. 'Qaddafi's ghost town after the loyalists retreat' *The Telegraph* available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8754375/Gaddafi-ghost-town-after-the-loyalists-retreat.html> (accessed 10 October 2011).
10. 'Qaddafi is eccentric but the firm master of his regime' *The Washington Post* available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/22/AR2011022207298.html> (accessed 12 October 2011)

11. 'Qaddafi: the man who would be king of Africa' *The Guardian* available at <<http://www.guardian.co.uk/commentisfree/2011/aug/26/gaddafi-legacy-meddling-africa>> (accessed 10 October 2011)
12. 'The end of Qaddafi is welcome' *The Guardian* available at <<http://www.guardian.co.uk/commentisfree/2011/aug/23/gaddafi-downfall-britain-intervention>> (accessed 07 October 2011)

**List of interviewees**

<b>Name</b>	<b>Place of interview</b>	<b>Date</b>
Ms Nasser Roguiai	Peace and Security Department African Union Commission Addis Ababa, Ethiopia	14 October 2011
Mr. Ben Kioko	Legal Department African Union Commission Addis Ababa, Ethiopia	10 October 2011
Col. Cheick Dembele	Peace and Support Operation Division African Union Commission Addis Ababa, Ethiopia	18 October 2011

Dr. Tarek A. Sharif	Defence and Security Peace and Security Department African Union Commission Addis Ababa, Ethiopia	26 October 2011
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## ANNEXURE

### ANNEX A

#### CHRONOLOGY OF EVENTS AT THE INTERNATIONAL COMMUNITY

- 21 February 2011: The Libyan deputy Permanent Representative to the UN Ambassador Ibrahim Dabbashi made an appeal to the international community to shoulder its responsibility to protect after the declaration of war by Colonel Qaddafi in Benghazi. He called on the UN Security Council to impose a no-fly zone to cut off provision of arms and weapons to Colonel Qaddafi's forces and the prosecutor of the International Criminal Court to investigate the crimes committed by Colonel Qaddafi.<sup>188</sup>
- 23 February 2011: French President Nicolas Sarkozy calls on the European Union to sanction Colonel Qaddafi's atrocities on Libyan people by imposing Colonel Qaddafi's family assets abroad.
- 25 February 2011: The Human Rights Council adopts a resolution on the human rights situation in Libya and urged the government to 'immediately release all arbitrarily detained persons, stop attacks against civilians, cease intimidation, cease blocking internet and telecommunications networks and to respect the popular will, aspirations and demands of the people'.<sup>189</sup> The AU representative at the Human Rights Council responded positively for the adoption of the resolution but warns against the use of it as a basis for future action by the Council or the United Nations.<sup>190</sup>
- 26 February 2011: The UN Security Council unanimously adopts resolution 1970 (2011) after assessing that the situation in Libya was one of 'gross and systematic human rights violations'.<sup>191</sup> An arm embargo, assets freeze and travel bans on Colonel Qaddafi, his family and members of his government were the highlights of the resolution. The Security Council also referred Libya to the ICC to investigate in alleged crimes against humanity committed by Colonel Qaddafi. Pursuant to Resolution 1970, a committee was

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<sup>188</sup> See Global Arab Network 'Libyan ambassador to UN urges international community to stop genocide' (21 February 2011) available at <http://www.english.globalarabnetwork.com/201102219941/Libya-Politics/libyan-ambassador-to-un-urges-international-community-to-stop-genocide.html> (accessed 27th August 2011).

<sup>189</sup> 'Human Rights Council passes resolution on Libya in Special Session', 25 February 2011.

<sup>190</sup> As above.

<sup>191</sup> Resolution 1970 (2011) 'Peace and Security in Africa', 26 February 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/245/58/PDF/N1124558.pdf?OpenElement>.

also established to oversee the application of the sanctions and monitor the situation. It was chaired by His Excellency Mr. Jose Filipe Moraes Cabral of Portugal.<sup>192</sup>

- 28 February 2011: British Prime Minister David Cameron makes it public that his country does not rule out the possibility of using force to confront the Libyan leader. He said that UK will not tolerate a regime that is using military forces against its own people.<sup>193</sup>
- 1 March 2011: The United Nations General Assembly suspends Libya from the Human Rights Council. According to the General Assembly's President, Joseph Deiss, 'the credibility of the international community, the United Nations General Assembly, the Security Council and the Human Rights Council is at stake in ensuring that these rights are respected and that human rights violations are punished.'<sup>194</sup> Meanwhile, a non-binding Senate resolution S.RES.85 is passed unanimously by the US Senate urging the UN Security Council to impose a no-fly zone on Libya and to encourage Colonel Qaddafi to step down. US and Canada have naval forces dispatch on the coast of Libya.<sup>195</sup>
- 6 March 2011: Special Envoy Abdelilah Al-Khatib, former foreign minister of Jordan, is appointed by UN Secretary-General in view of undertaking immediate consultation with Tripoli and the region on the humanitarian situation in and around Libya.<sup>196</sup>
- 7 March 2011: According to US Ambassador to NATO, Ivo Daalder, NATO decided to step up E-3 AWACS aircraft surveillance to twenty four hours a day. Agence France Presse also confirmed that Britain and France were already working on a no-fly zone resolution. The Gulf Cooperation Council also calls on Security Council to take all necessary measures to protect civilians in Libya.<sup>197</sup>

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<sup>192</sup> 'Security Council Committee established pursuant to resolution 1970 (2011) concerning the Libyan Arab Jamahiriya', <http://www.un.org/sc/committees/1970/>.

<sup>193</sup> See Wall Street Journal Online 'Cameron does not rule out military force for Libya' (28 February 2011) available at [http://online.wsj.com/article/SB10001424052748704615504576172383796304482.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB10001424052748704615504576172383796304482.html?mod=googlenews_wsj) (accessed 27 August 2011).

<sup>194</sup> General Assembly suspends Libya from rights body; Ban says regional change must come 'from within', 1 March 2011

<sup>195</sup> Check reference

<sup>196</sup> 'Top UN officials call for urgent access to Libyan areas affected by violence', 6 March 2011, <http://www.un.org/apps/news/story.asp?NewsID=37692&Cr=Libya&Cr1=>

<sup>197</sup> See Agence France Presse 'Britain, France ready Libya no-fly zone' (7 March 2011) available at <http://www.google.com/hostednews/afp/article/ALeqM5gjKuTaUi4eIZffTsS13LCaFVYQw?docId=CNG.49104d077a72cbffefe9d3689e92793.af1> (accessed 27<sup>th</sup> August 2011).

- 9 March 2011: Mustafa Abdul Jalil, head of the Libyan National Transitional Council pleads to the international community to impose a no-fly zone to prevent the death of half a million of people in Benghazi. This pleading came after Colonel Qaddafi announced a reward for the capture of Jalil.<sup>198</sup>
- 10 March 2011: Libyan National Transitional Council is recognized as the legitimate government of Libya by France. French President meets with the members of the Council in Paris.<sup>199</sup>
- 11 March 2011: British Prime Minister David Cameron joins his French homologue to demand immediate action by the international community and to impose a no-fly zone immediately on Libya. They write a joint letter to NATO and call on NATO to draw up plans for a no-fly zone and other options against air attacks by Colonel Qaddafi.<sup>200</sup>
- 12 March 2011: Nine members of the Arab League call on Security Council to impose a no-fly zone in view of protecting civilians from air strikes by Colonel Qaddafi. Officials from the Arab league also reveal that they are in contact with members of the National Transitional Council to have updates about the ground situation in Libya.<sup>201</sup>
- 14 March 2011: French President Sarkozy and French Foreign Minister Juppe meet US Secretary of State Hillary Clinton before the G8 Summit in Paris to convince her and push for intervention in Libya.
- 15 March 2011: Nawaf Salam, Lebanon's Ambassador to the UN, tables a resolution to the Security Council for a no-fly zone against Libya backed by France and UK. Salam

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<sup>198</sup> See CNN 'The head of the interim government in eastern Libya pleaded Wednesday for the international community to move quickly to impose a no-fly zone over Libya, declaring that any delay would result in more casualties' (9 March 2011) available at <http://edition.cnn.com/2011/WORLD/africa/03/09/libya.civil.war/> (accessed 27<sup>th</sup> August 2011).

<sup>199</sup> See CS Monitor 'how a philosopher swayed France's response on Libya' (10 March 2011) available at [http://www.csmonitor.com/World/Europe/2011/0328/How-a-philosopher-swayed-France-s-response-onLibya?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+feeds%2Fworld+%28Christian+Science+Monitor+](http://www.csmonitor.com/World/Europe/2011/0328/How-a-philosopher-swayed-France-s-response-onLibya?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+feeds%2Fworld+%28Christian+Science+Monitor+) (accessed 28<sup>th</sup> August 2011).

<sup>200</sup> See Dailymail 'David Cameron backs Sarkozy calls for Libya air strikes' (11 March 2011) available at <http://www.dailymail.co.uk/news/article-1365165/David-Cameron-backs-Nicolas-Sarkozy-calls-Libya-air-strikes.html#ixzz1XB6dL100> (accessed 28<sup>th</sup> August 2011).

<sup>201</sup> See Reuters 'Arab League calls for Libya no-fly zone-state TV' (12 March 2011) available at <http://af.reuters.com/article/energyOilNews/idAFLDE72B0DW20110312> (accessed 26<sup>th</sup> August 2011).



tells reporters that ‘measures ought to be taken to stop the violence, to put an end to the situation in Libya, to protect the civilians there.’<sup>202</sup>

- 17 March 2011: UN Security Council approves a no-fly zone against Libya through Resolution 1973, acting under chapter VII of the UN Charter. 10 members vote in favour, none against and five abstentions. Brazil, India, China, Russia and Germany abstain and voice out their concern on the implementation of the resolution.<sup>203</sup> Three African countries vote for namely South Africa, Nigeria and Gabon. According to Mr. Sangqu, representative of South Africa at the Security Council, South Africa votes for because of the deteriorating situation in Libya and echoes the sentiments of the AU to preserve sovereignty and territorial integrity of Libya and reject foreign military intervention. Nigeria expresses similar opinion as South Africa.
- 18 March 2011: Moussa Koussa, Libyan foreign minister, declares a ceasefire in pursuance of Resolution 1973. However, it is reported that violence continues and Misrata and Ajdabiya are attacked by Colonel Qaddafi’s forces.<sup>204</sup>
- 19 March 2011: Based on Resolution 1973 which provides for ‘all necessary measures’, France begins military intervention in Libya. They are joined by coalition forces to attack Libyan air defence system. British Prime Minister confirms that British fighter planes are in action and US reports that missiles have been fired.<sup>205</sup>
- 25 March 2011: NATO Allied Joint Force Command in Naples takes complete charge of the no-fly zone and arms embargo under the name Operation Unified Protector.

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<sup>202</sup> See The Guardian ‘Libya and Lebanon-a troubled relationship’ (15 March 2011) available at <http://www.guardian.co.uk/commentisfree/2011/mar/16/libya-lebanon-un-security-council-resolution> (accessed 26th August 2011).

<sup>203</sup> See ‘No consensus after U.N. talks on Libya no-fly zone’, 15 March 2011, <http://au.news.yahoo.com/thewest/a/-/world/9010138/no-consensus-after-un-talks-on-libya-no-fly-zone/> (accessed 24<sup>th</sup> August 2011).

<sup>204</sup> See BBC News ‘Libya: foreign minister announces ceasefire’ (18 March 2011) available at <http://www.bbc.co.uk/news/world-middle-east-12787056> (accessed 24th August 2011).

<sup>205</sup> See BBC News ‘French planes fire on military vehicles’ (19 March 2011) available at <http://www.bbc.co.uk/news/world-africa-12795971> (accessed 24th August 2011).

## ANNEX B

### CHRONOLOGY OF EVENTS AT THE AU

- 23 February 2011: The Chairman of the Commission of the African Union, Jean Ping, condemns the disproportionate use of force against civilians in Libya by Colonel Qaddafi's regime. He appeals for an immediate end of repression and violence in Libya. He reiterates that only dialogue and consultation will enable Libyans to achieve their inspirations about peace, security and democracy.<sup>206</sup> The Peace and Security Council also adopts a decision condemning human rights violations and appealing for political dialogue to resolve the problem. It also decides to urgently dispatch a mission of Council to Libya to assess the situation on the ground.<sup>207</sup>
- 7 March 2011: AU Commission's Deputy Chairperson Mr. Erastus Mwencha meets the Director for Africa in the Foreign and Commonwealth Office, Mr. Tim Hitchens and discusses about the Libyan situation inter alia. Mr. Mwencha talked about the new scenarios in peace and security occurring in Africa and posing new challenges that the AU is facing such as financial and human resources needs.<sup>208</sup>
- 10 March 2011: The Peace and Security Council reaffirms its commitment to the respect of the unity and territorial integrity of Libya, as well as its rejection of any foreign military intervention. It also decides to establish the AU ad-hoc High Level Committee on Libya comprising of five Heads of State and Government.<sup>209</sup> The AUC announces the composition of the ad-hoc High Level Committee on Libya composed of Heads of State from Islamic Republic of Mauritania, Republic of Congo, Republic of Mali, Republic of South Africa and Republic of Uganda. Jean Ping reiterates in the announcement that the

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<sup>206</sup> The African Union Commission Press Release 'The African Union deeply concerned about the situation in Libya' (23 February 2011) AU%20deeply%20concerned%20about%20the%20situation%20in%20Libya

<sup>207</sup> The Peace and Security Council Communique PSC/PR/COMM(CCLXI) 'Communique of the 261<sup>st</sup> meeting of the Peace and Security Council' (23<sup>rd</sup> February 2011) PSC%20Communique%20on%20the%20situation%20in%20Libya

<sup>208</sup> The African Union Commission Press Release No 013/2011 'AUC and British government in discussions on peace, security and development' (7 March 2011) PR\_NO\_013\_2011\_EN\_7\_MARCH\_2011\_DCP\_AUC\_AND\_BRITISH\_GOVERNMENT\_IN\_DISCUSSIONS\_ON\_PEACE\_SECURITY\_AND\_DEVELOPMENT

<sup>209</sup> The Peace and Security Council Communique PSC/PR/COMM.2(CCLXV) 'Communique of the 265<sup>th</sup> meeting of the Peace and Security Council' (10 March 2011) COMMUNIQUE\_EN\_10\_MARCH\_2011\_PSD\_THE\_265TH\_MEETING\_OF\_THE\_PEACE\_AND\_SECURITY\_COUNCIL\_ADOPTED\_FOLLOWING\_DECISION\_SITUATION\_LIBYA

purpose of the Committee is to facilitate an inclusive dialogue between all parties in Libya.<sup>210</sup>

- 23 March 2011: The mission of the ad-hoc High Level Committee to Libya was not authorized by the United Nations. However, the Council noted with satisfaction the announcement of the Libyan Government to accept the AU roadmap articulating a peaceful solution. The press release also reveals that the Council are planning to hold meeting with the AU and the Libyan parties consisting of the Libyan Government and the Transitional National Council, to pave the way for negotiations on all aspects of the current crisis and the establishment of an inclusive transition, as well as the adoption and implementation of political reforms necessary to address the causes of the current crisis.<sup>211</sup>
- 25 March 2011: The ad-hoc High Level Committee on Libya meets with Libyan Government representatives while it notes the absence of the National Transitional Council. The Libyan Government representatives accept unconditionally the AU roadmap and agree to declare a ceasefire. They also accept to adopt and implement political reforms in line with the aspiration of Libyan people to democracy. The Committee also reiterates to take steps to engage the National Transitional Council in future negotiations.<sup>212</sup>
- 25 March 2011: The African Union holds a consultative meeting on the situation in Libya in the presence of the United Nations. The participants which include members of the Peace and security Council, African members at the UN Security Council and States neighbouring Libya, are briefed about the outcome of the Nouakchott meeting and AU efforts on Libya. Views are exchanged about the AU roadmap which includes the protection of civilians and cessation of hostilities, humanitarian assistance to affected populations, initiation of a political dialogue between Libyan parties in order to arrive at an agreement on the modalities for ending the crisis, establishment and management of

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<sup>210</sup> The African Union Announcement 'The African Union announces the composition of the ad-hoc High Level Committee on Libya' (10 March 2011) ANN\_EN\_10\_MARCH\_2011\_PSD\_THE\_AFRICAN\_UNION\_ANNOUNCES\_COMPOSITION\_AD\_HOC\_HIGH\_LEVEL\_COMMITTEE\_LIBYA

<sup>211</sup> The Peace and Security Council Press Statement PSC/PR/BR.1(CCLXVII) 'Press statement of the 268<sup>th</sup> meeting of the Peace and Security Council' (23 March 2011) 268th\_FINAL\_Press\_Statement\_-\_Libya\_\_EN

<sup>212</sup> The African Union Press Release 'The African Union ad-hoc High Level Committee on Libya convenes its second meeting in Addis Ababa' (25 March 2011) Press\_release\_-\_Libya\_\_eng\_\_0

an inclusive transitional period and adoption and implementation of political reforms necessary to meet the aspirations of the Libyan people.<sup>213</sup>

- 3 April 2011: Jean Ping, Chairperson of the AU Commission travels to Europe to discuss with UK Foreign Minister, William Hague and leadership of the European Union and NATO. His aim is to mobilize support for AU's efforts and roadmap.<sup>214</sup> Views are exchanged on the future activities of the Libya Contact Group, which was created at the London Conference, as well as the initiatives of the African Union High-Level *Ad Hoc* Committee on Libya, and agreed to keep in close contact to continue exchanging views and working together towards a political resolution of the Libyan crisis.
- 10 April 2011: Ad-hoc High Level Committee on Libya undertakes visit to Libya. Colonel Qaddafi confirms the acceptance of the AU roadmap.<sup>215</sup>
- 11 April 2011: The ad-hoc Committee visits Benghazi and have extensive discussions with the Chairman and members of the National Transitional Council.<sup>216</sup>
- 20 April 2011: AU and United States meet in Washington for the annual US-AU High Level Meeting. US acknowledge AU's efforts in negotiating a ceasefire in Libya but reiterate a greater need for coordination with the international community.<sup>217</sup>
- 26 April 2011: The Peace and Security Council welcomes the engagement of the National Transitional Council with the ad-hoc Committee and the information provided on its vision for the future of Libya and its position on the ongoing efforts by the AU to facilitate an early solution to the crisis in Libya, including the need for an urgent ceasefire, to be monitored by a credible and effective international mechanism, as well as an inclusive and consensual transition leading to the adoption and implementation of the

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<sup>213</sup> The African Union Communique 'Consultative meeting on the situation in Libya' (25 March 2011) [communique\\_-\\_Libya\\_eng\\_\[1\]\\_0](#)

<sup>214</sup> The African Union Press Release 'Chairperson travels to Europe to discuss the situation in Libya' (3 April 2011) [Communique%20on%20Meeting%20in%20Benghazi%2011%20April%20FR](#)

<sup>215</sup> The Peace and Security Council Report PSC/PR/2(CCLXXV) 'Report of the Chairperson of the Commission on the activities of the AU High Level ad hoc Committee on the situation in Libya' (26 April 2011) [275%20-%20Report%20on%20Libya%20\\_Eng%20\\_%20\(3\)](#)

<sup>216</sup> As above.

<sup>217</sup> The African Union Statement 'Joint statement on the second annual US-AU High Level meeting' (20 April 2011) [Joint%20Statement%20on%20the%20Second%20Annual%20U.S.%20-%20AU%20High%20Level%20Meeting](#)

necessary political reforms to address the causes of the current crisis, including the holding of democratic elections to enable the Libyans to freely choose their leaders.<sup>218</sup>

- 26 April 2011: Jean Ping reveals that the NTC has rejected AU's roadmap as they are of the view that negotiations on a ceasefire and other related aspects can only start once certain preconditions would have been met, in particular the removal from power of Colonel Qaddafi and members of his family, and the withdrawal of the Libyan army from cities forcibly occupied after the breakout of hostilities.<sup>219</sup>
- 3 May 2011: The AU reaffirms its belief in finding a political solution based on the roadmap to the Libyan crisis. It also warned that with NATO-led operation in Libya, there is an increased risk of civilian casualties. It cited the death of Colonel Qaddafi's son and grandchildren and also the destruction of important socio-economic infrastructure.<sup>220</sup>
- 10 May 2011: Jean Ping meets Ban Ki-moon in Istanbul and they emphasized the importance of the UN and the AU to maintain close cooperation in addressing the peace and security challenges in the region.<sup>221</sup>
- 26 May 2011: The ad-hoc Committee agrees on the next steps of the implementation of their mandate on Libya which are a further visit to Libya to pursue the dialogue initiated with the parties, including on the urgent issue of the ceasefire, for which the ad-hoc Committee intends to table a detailed document, the dispatching of a ministerial delegation to New York to interact with the Security Council and its members and practical steps to engage AU bilateral partners on the roadmap and on the actions to be taken by the international community to facilitate an early resolution of the conflict in Libya.<sup>222</sup>

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<sup>218</sup> The Peace and Security Council Communique PSC/MIN/COMM.2(CCLXXV) 'Communique of the 275<sup>th</sup> meeting of the Peace and Security Council' (26 April 2011) PSC%20Communique%20-%20Libya%20\_Eng%20\_

<sup>219</sup> n 58 above para 45.

<sup>220</sup> The African Union Press Release 'The AU intensifies its efforts towards a political solution in Libya and stresses the importance of the respect of the letter and spirit of resolution 1973 (2011)' (3 May 2011) Press%20release%20on%20Libya%203%2005%2011.

<sup>221</sup> The African Union Press Release 'Chairperson holds consultations in Istanbul with UN Secretary-General Ban Ki-moon' (10 May 2011) Chairperson%20holds%20consultations%20in%20Istanbul%20with%20UNSG%20%20Ban%20Ki-moon%20-%2010May2011

<sup>222</sup> The African Union Press Release 'The AU ad-hoc High Level Committee on Libya convened its 5<sup>th</sup> meeting in Addis Ababa' (26 May 2011) Press%20Release%20ad%20hoc%20committee%205th%20Meeting%2026%20MAy%202011

- 26 June 2011: The ad-hoc High Level Committee on Libya welcomes Colonel Qaddafi's acceptance of not being part of the negotiation process.<sup>223</sup>
- 4 July 2011: Jean Ping briefed his interlocutors in London on the outcome of the AU Summit concluded in Malabo where the draft Framework Agreement on a Political Solution to the Libyan Crisis was endorsed.<sup>224</sup>

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<sup>223</sup> The African Union Communique 'Meeting of the AU High Level ad-hoc Committee on Libya In Pretoria' (26 June 2011) Communique%20on%20Libya%20-Pretoria%2026%20June%20-%20\_Eng%20\_[1]

<sup>224</sup> The African Union Press Release 'The AU chairperson holds important talks in London with UK Ministers and senior representatives' (4 July 2011) Press%20Release%20The%20AU%20Chairperson%20holds%20important%20talks%20in%20London%20with%20UK%20Ministers%20and%20senior%20representatives%20\_2\_