

The African Union and the Responsibility to Protect: Lessons learnt from the 2011 United Nations Security Council intervention in Libya

by

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Declaration

I hereby declare that the dissertation submitted for the *Magister Artium* degree in International Relations at the University of Pretoria, apart from the help of the recognized, is my own work and has not been formerly submitted to another university for a degree.

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ABSTRACT

This study examines the extent to which Responsibility to Protect (R2P) principles are embedded in the African Union's interventionist framework. The AU has been heralded as a trailblazer of R2P, enshrining its attendant principles in the Union's 2000 Constitutive Act, five years before the emerging norm's adoption by world leaders at the 2005 World Summit. However, in the case of the recent humanitarian crisis in Libya, and the UN Security Council's subsequent intervention during 2011, the AU failed to invoke R2P, jettisoning Article 4(h) of its own Constitutive Act and insisting on a negotiated solution to the crisis. This position placed the Union on a collision course with several other regional organisations, notably the North Atlantic Treaty Organisation which assumed a leading role in the implementation of the UNSC mandate to intervene. The AU's actions also placed into question the rhetoric-reality nexus of its responsibility to protect. At issue is thus the matter of norm localisation, and whether lack thereof and/or other challenges are inhibiting consolidation of R2P within the AU's security culture.

The study therefore traces the institutionalisation of the guiding tenets of R2P within the evolving AU Peace and Security Architecture, and investigates the operationalisation thereof (arguably the most contentious dimension to the global discourse on R2P) in the case of the 2011 UNSC intervention in Libya.

Key terms: R2P, African Union, Africa, Libya, UNSC, humanitarian intervention, human security, norm localization.

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TABLE OF CONTENTS

	Page
Declaration	i
Abstract	ii
Acknowledgements	iii
List of abbreviations and acronyms	vii
List of tables	xi
Chapter 1: Introduction	
1.1. Identification of the research theme	1
1.2. Literature overview	4
1.2.1. General conceptual discourse on R2P	5
1.2.2. Theoretical accommodation of R2P within the AU	8
1.2.3. The UNSC’s 2011 intervention in Libya	12
1.3. Formulation and demarcation of the research problem	14
1.4. Research design and methodology	16
1.5. The structure of the research	17
Chapter 2: Conceptual Framework and Normative Evolution of the Responsibility to Protect	
2.1. Introduction	19
2.2. Theoretical evolution of R2P	19
2.3. Positioning R2P within the human security paradigm	33
2.3.1. Overview of the human security paradigm	33
2.3.2. Interface between Human Security and R2P	33
2.4. R2P and the concept of Security Culture	36
2.5. R2P within the framework of norm diffusion and localization	40
2.5.1. Overview of perspectives on norm diffusion	40
2.5.2. Norm localization	41
2.5.3. Contextualizing R2P within norm localization	44
2.6. Conclusion	49

Chapter 3: The African Union and the Responsibility to Protect

3.1.	Introduction	51
3.2.	Overview of the nexus between the AU and R2P	51
3.3.	The African Peace and Security Architecture (APSA)	58
	3.3.1. Congruence between R2P and Article 4(h) and status of R2P in the AU	58
	3.3.2. Operationalization of R2P: reality, challenges and future prospects	64
3.4.	Conclusion	79

Chapter 4: The Uprising in Libya and the International Response to the Crisis

4.1.	Introduction	81
4.2.	Background to the crisis: a history of Libya	81
	4.2.1. Libya, pre-Gaddafi	82
	4.2.2. Libya under colonel Muammar al-Gaddafi	83
4.3.	The 2011 Libyan uprising	87
4.4.	International response to the Libyan uprising	89
4.5.	Rationale for, and critique of, the International Response to the Libyan uprising	91
	4.5.1. Build-up to the UNSC Resolution 1973	91
	4.5.2. Resolution 1973, R2P and NATO's involvement	95
4.6.	UNSC deliberation on Resolution 1973 (2011) and normative implications for R2P	102
4.7.	Conclusion	104

Chapter 5: The African Union's Response to the 2011 Libya Crisis

5.1	Introduction	106
5.2	Intra-AU dialogue on Libya	106
	5.2.1. Libya enters the APSA agenda	108
	5.2.2. The AU High Level <i>ad-hoc</i> committee on Libya	112
	5.2.3. Dialogue on Libya within the wider AU body	118

5.3.	Non-permanent African member states on the UNSC during 2011 and the debate about intervention in Libya	122
5.3.1.	South Africa's, Nigeria's and Gabon's voting on Resolution 1973	123
5.3.2.	Holistic perspective on the AU members' UNSC behaviour	123
5.4	Accounting for the AU's response to the Libyan crisis	130
5.5	Conclusion	139

Chapter 6: Conclusion and Recommendations

6.1.	Introduction	140
6.2.	Overview of the Research	140
6.3.	Lessons learnt from the AU's handling of the 2011 Libyan crisis: implications for norm localization of R2P	149
6.4.	Summative Research Findings	163
6.5.	Challenges experienced in the course of research	166
6.6.	Recommendations for future research	166
6.7.	Conclusion	167

7.	Bibliography	169
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Appendix 1:	UNSC Resolution 1973 (Libya) 17 March 2011	213
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Appendix 2:	AU PSC Communiqué PSC/PR/COMM.2(CCLXV) 10 March 2011	220
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Appendix 3:	UNSC Resolution 1970 (Libya) 26 February 2011	223
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ABBREVIATIONS/ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
ACIRC	African Capacity for Immediate Response to Crises
AHSG	Assembly of Heads of State and Government
ALF	Africa Leadership Forum
AMIB	African Union Mission in Burundi
AMIS	African Union Mission in Sudan
AMISOM	African Union Mission in Somalia
ANC	African National Congress
APF	Africa Peace Facility
APR2P	Asia Pacific Centre for the Responsibility to Protect
APRM	African Peer Review Mechanism
APSA	African Peace and Security Architecture
ASF	African Standby Force
AU	African Union
AUC	African Union Commission
BBC	British Broadcasting Corporation
BPC	Basic People's Congress
BRICS	Brazil, Russia, India, China and South Africa
CA	Constitutive Act
CADSP	Common African Defence and Security Policy
CAR	Central African Republic
CCR	Centre for Conflict Resolution
CEWS	Continental Early Warning System
CHS	Commission on Human Security

CIA	Central Intelligence Agency
CMD	Conflict Management Division
COMESA	Common Market for Eastern and Southern Africa
CSF	ECCAS Standby Force
CSSDCA	Conference on Security, Stability, Development and Co-operation in Africa
DAs	Defence Attachés
EASBRIGCOM	Eastern African Standby Brigade Coordination Mechanism
ECCAS	Economic Community of Central African States
ECOMOG	ECOWAS Ceasefire Monitoring Group
ECOWAS	Economic Community of West African States
ESCE	Economic and Security Cooperation in Europe
ESF	ECOWAS Standby Force
EU	European Union
FEWER	Forum on Early Warning and Early Response
GCC	Gulf Cooperation Council
GCR2P	Global Centre for the Responsibility to Protect
GPC	General People's Congress
HIV	human immunodeficiency virus
HLP	High Level Panel
HRC	Human Rights Council
HRW	Human Rights Watch
IBSA	India, Brazil and South Africa
ICC	International Criminal Court
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICRtoP	International Coalition for the Responsibility to Protect

IGAD	Intergovernmental Authority for Development
IGD	Institute for Global Dialogue
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IISS	International Institute for Strategic Studies
IR	International Relations
ISS	Institute for Security Studies
JEM	Justice and Equality Movement
LAAICO	Libyan Arab African Investment Company
LAS	League of Arab States
LCG	Libya Contact Group
LRA	Lord's Resistance Army
MINURCA	United Nations Peacekeeping Mission to the Central African Republic
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MoU	Memorandum of Understanding
MSC	Military Staff Committee
NARC	North Africa Regional Capability
NATO	North Atlantic Treaty Organisation
NEPAD	New Partnership for Africa's Development
NPFL	National Patriotic Front of Liberia
NTC	National Transitional Council
OAU	Organisation of African Unity

OIC	Organisation of Islamic Conference
OSCE	Organisation for Security and Co-operation in Europe
PAP	Pan-African Parliament
PoC	Protection of Civilians
PSC	Peace and Security Council
PSD	Department of Peace and Security
R2P	Responsibility To Protect
RDC	Rapid Deployment Capacity
RECs	Regional Economic Communities
RGC	Revolutionary Guard Corps
RM	Regional Mechanisms
RwP	Responsibility While Protecting
SADC	Southern African Development Community
SCA	Strategic Conflict Assessment
SCR	Security Council Report
SSF	SADC Standby Force
SSR	Security Sector Reform
UN	United Nations
UNAMID	United Nations/African Union Hybrid Mission in Darfur
UNAMIS	United Nations Mission in Sudan
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
US	United States
WMD	Weapons of Mass Destruction
WSOD	World Summit Outcome Document

LIST OF TABLES

	Page
Table 1. Various stages of the norm localization process and respective conditions for progress	43

CHAPTER 1: INTRODUCTION

1.1. Identification of the Research Theme

A salient feature of humanitarian discourse, the Responsibility to Protect (R2P) is an emerging international norm that enjoins states and the international community to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing. The central tenet of the R2P principle is the notion of sovereignty as responsibility, positing the sovereignty of a state as conditional on respect for a minimum standard of human rights. Should a state fail to protect the rights of a population within its territorial jurisdiction, the responsibility to protect the rights of its population falls on the international community (UNGA 2005).

At a conceptual level, R2P represents a normative shift from the controversial notion of humanitarian intervention towards an emerging norm that bridges the gap between non-intervention and protection of civilians. By underscoring the notion of sovereignty as responsibility, R2P offered a way out of the intervention conundrum that loomed large in the 1990s (Badescu 2011: 168). Consequently, the concept spans a spectrum of responsibilities ranging from prevention to intervention to reconstruction. The landmark 2001 report by the International Commission on Intervention and State Sovereignty (ICISS) depicts R2P as three sets of responsibilities: the responsibility to prevent, the responsibility to react and the responsibility to rebuild.

In addition to codification of the international responsibility to protect, R2P also harmonizes the rights of the individual with the rights and duties of the state and the international community affirming the dictum that ‘human security lies at the heart of national security’ (Pace & Deller 2005: 17). From a broad theoretical perspective, R2P is therefore situated within the human security paradigm which embodies the vertical and horizontal expansion of the orthodox understanding of national security thereby emphasizing the individual as the referent object of security. Although human security is an essentially contested concept, there is consensus that both broad and narrow definitions of the concept acknowledge the individual as the referent

object of security and both concede that a reconsideration of state sovereignty is crucial in the promotion of human security (Acharya 2008: 495, Pace & Deller 2005:20). Kerr (2010:118) connects the narrow definition of human security (captured as ‘freedom from fear’) with the three practical responsibilities inherent in R2P.

From a practical perspective, by encompassing a continuum of responsibilities and measures within a comprehensive framework, R2P marries political commitment with policy agenda. The UN Secretary-General’s 2009 report ‘Implementing the Responsibility to Protect’ (Ban 2009) depicts R2P as a broad-based policy agenda that focalizes on the ‘upstream’ prevention of mass atrocities through global partnerships; the establishment of effective institutions and capacities to bolster R2P objectives and the operationalization of R2P through timely and decisive responses within the existing normative framework (Bellamy 2010a: 158).

The defining moment for R2P was its endorsement by global leaders at the 2005 UN World Summit, as expressed in paragraphs 138-140 of the 2005 World Summit Outcome Document (WSOD). Amidst traditional concerns and debates raised around R2P, such as its potential misuse by powerful states as a pretext for regime change and the alleged dilution of the principle, the unanimous adoption of R2P by member states points to areas of broad consensus. When coupled with the pillar strategy clarified by Ban Ki-Moon in his 2009 report, Luck (2010a: 118) asserts that R2P has prevailed as an emerging norm that is ‘sustainable politically, flexible tactically and feasible operationally’.

Within the African context, R2P has been and continues to be a pertinent issue. In some respects, aspects of sovereignty as responsibility and the R2P emanated from Africa, with key conceptual development of the norm by scholars such as Francis Deng. Africa’s responsibility to protect served as a benchmark for the African Union’s rhetorical shift from ‘non-interference’ to ‘non-indifference’ in protection of populations from mass outrages (CCR 2007:16). Five years before the 2005 World Summit, African states had already enshrined the right of intervention in the Constitutive Act (CA) of the AU (2000) confirming:

‘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’.

The norms and principles of the AU (encapsulated by Article 4 of the CA) coupled with the AU's peace and security architecture (adherent to the Protocol Relating to the Establishment of the Peace and Security Council) resonate with the protection framework envisaged by R2P. Further demonstration of the AU's commitment to R2P was seen in the 2005 Ezulwini Consensus, in which the AU prescribed enforcement action by regional bodies with *ex-post facto* UN Security Council (UNSC) approval in urgent circumstances (Powell 2005: 11). Taken as a unit, Article 4(h) and the PSC Protocol which collectively provide for the AU peace and security architecture bestow the AU with significant powers of operationalization with respect to R2P. Thus the AU's actor-arena approach to R2P points to the notion that the AU's protection framework is the African tributary of the broader international stream of protection as far as R2P is concerned.

The NATO-led intervention in Libya in March 2011 presents a noteworthy case study for critical analysis of R2P implementation. The legal basis of UNSC Resolution 1973, which authorised a no-fly zone over Libya, was arguably incontestable, based on clear articulation of imminent mass atrocity crimes by the Gaddafi regime. Furthermore, Resolution 1973 represented the first time that the UNSC had authorized use of military force for humanitarian purposes against the wishes of a functioning government (APR2P 2011).

The Libyan situation was also pertinent in respect of the very short time frame, with Resolution 1973 adopted relatively speedily and then only a month lapsing before implementation of the no-fly zone operation. Moreover, there was rare demonstration of the international political will to implement R2P through coercive measures (Bellamy 2011b: 266). In this regard, the role played by the Gulf Cooperation Council (GCC), the Organization of Islamic Conference (OIC) and the League of Arab States (LAS) proved instrumental. The Libya case thus adds to the argument that regional organizations are the new gatekeepers of international humanitarian action: Resolution 1973 would not have been feasible without the support of the LAS, GCC and the OIC (Bellamy & Williams 2011:830).

However, absent from the debate that preceded adoption of Resolution 1973 was clear articulation of an AU position. The AU was set on a political solution to the Libyan crisis, explicitly rejecting foreign military intervention. Subsequently, the AU put forward a 'roadmap'

and established an *ad hoc* High Level Committee aimed at a political solution of the Libyan conflict (PSC 2011b). In spite of the AU's actions, its role in the resolution of the humanitarian crisis was largely marginalised as seen in the leading role played by NATO in implementation of Resolution 1973. The rejection of the AU's 'roadmap' by Libya's National Transitional Council (NTC) further undermined the AU's role as an interlocutor in ending the crisis (Kasaija 2011:3). Not surprisingly, the apparently contra-AU votes of the three non-permanent African states on the UNSC during 2011 (Gabon, Nigeria and South Africa) in favour of coercive action ruffled many feathers. The backlash against the Libyan intervention and claims of mandate creep in subsequent months initiated fresh debate on whether Libya represented deeper normative consensus over R2P or revived rollbacks and 'buyer's remorse' challenging further African internalization of the emerging norm.

In light of the above, this study will aim to explore the embedment of R2P within the peace and security architecture of the AU and the bearing of the concept on the AU's interventionist posture, both at the theoretical and practical level. The thrust of the study will be an analysis of the normative fit between the AU and R2P by drawing upon the process of norm localisation and by investigating the organisation's response to the Libyan crisis. Conclusions will then be drawn as to the pertinence of the R2P doctrine within the peace and security framework of the AU, and future prospects for operationalisation by the AU will be considered.

1.2. Literature Overview

The preliminary overview of relevant literature focused on three areas: general conceptual discourse on R2P, the theoretical accommodation of R2P within the AU, and the practical implementation thereof as demonstrated during the UNSC's 2011 intervention in Libya.

1.2.1. General conceptual discourse on R2P

One of the core reference works for this study will be the key report published by the ICISS in 2001 titled *The Responsibility to Protect*. This report outlined the central tenets of R2P as a response to a challenge issued by former UN Secretary-General Kofi Annan. In 2000, Annan

challenged the international community to come up with a solution to the conceptual dilemma around humanitarian intervention and to devise a consensus around the legitimacy, principles and implementation of humanitarian intervention (Annan 2000).

The 2001 ICISS report encapsulated R2P as comprising of three sets of responsibilities: to prevent, react and rebuild. The *responsibility to prevent* was highlighted as the ‘single most important’ dimension of R2P. Prevention entailed concepts such as early warning, tackling root causes and direct prevention. The *responsibility to react* comprised of detailed legitimacy criteria borrowed from the just war tradition outlining precautionary principles. The UNSC was also pinpointed as the ultimate sanctioning authority on utilization of force. Finally, *the responsibility to rebuild*, committed interveners to reconstruction and rebuilding of post-conflict societies. Security, justice and reconciliation and development were cited as the focal areas of efforts towards rebuilding (ICISS 2001). Thus R2P represents a reconceptualization of both the concept of sovereignty (reframing it as conditional) and the concept of responsibility (outlining a three-tiered framework of distribution between the state and the international community).

As far as the existing literature on R2P is concerned, R2P can be studied on the one hand as an analytical concept comprising of philosophical antecedents, theoretical framework and conceptual strengths, tensions and inconsistencies. Alternatively, R2P can be analysed as an ‘action-oriented normative project’ that aims to codify and transform international doctrine in order to realize in practical terms the core values envisaged by the UN (Thakur 2012: 284).

Thakur (2012: 284) observes that as an analytical concept, R2P is the normative instrument of choice that bridges the gap between the ‘Scylla of indifference’ to victims and the ‘Charybdis of intervention’ in the domestic affairs of states. As afore-mentioned, the ICISS 2001 report represents the epitome of the new norm, outlining the fundamentals, foundations, elements, priorities and criteria for operationalizing R2P.

It is under the subject of implementation of R2P where there has been vigorous debate, specifically among second generation scholars and practitioners. According to Alex Bellamy (2009: 33), two dissenting schools of thought can be identified within the proponents of R2P. First, there are those who contend that the R2P is primarily about prevention. Bellamy belongs to

this group who take the sovereignty-as-responsibility debate and the post-Kosovo debate around humanitarian intervention as the foundations of R2P. The second group, consisting of contributors like Gareth Evans, are those who maintain that R2P's main focus should be on 'questions around military intervention' (Sharma 2010:125).

UN Secretary-General Ban's 2009 report 'Implementing the Responsibility to Protect' provided some level of contextual clarity and acted as the middle ground in the implementation debate. Ban offered a narrow but deep conceptualization that would aid the evolution of R2P from words to deeds. The report limited the scope of R2P to the four mass atrocity crimes highlighted in paragraph 138 of the 2005 WSOD. The report also proposed a three-pillar strategy for responding to said mass atrocity crimes: pillar one spells out the protection responsibilities of states; pillar two is concerned with international assistance and capacity building and pillar three stipulates timely and decisive response (Ban 2009: 2)

Moving away from the focus on R2P as an analytical concept, in her book *International Authority and the Responsibility to Protect* (2011), Anne Orford approaches R2P as an action-oriented norm closely linked to the UN's claims of international authority. She reverses the words-to-deeds argument positing that the significance of the R2P 'lies not in its capacity to transform promise into practice, but rather in its capacity to transform practice into promise, or deeds into words' (Orford 2011:2). The essence of Orford's argument is that R2P represents entrenchment of international executive rule, including the internal practices of the UN since 1945 under the moniker of protecting life (Orford 2011:28).

For every ardent proponent of R2P, there is a vehement opponent. David Rieff contends that advocates of R2P are backing a utopian project of obliterating war implied by the R2P's aims of addressing mass atrocity crimes. Furthermore, he points out that the Achilles' heel of R2P is a combination of narrow legalism in terms of normative internalization and narrow institutionalism based on the ideal notion of an international community (Rieff 2011a:12). Another critic, David Chandler, has argued that R2P provides an avenue for states, particularly the powerful states, to impose the 'liberal peace' evidenced by the lopsided relationship between realpolitik and morality. Thus the essence of his argument is that R2P implies that morality can be employed by power; but the inverse relationship is not plausible (Chandler 2004: 76).

De Waal *et al* (2012) also provide a critique of R2P as an instrument for dealing with mass atrocities. They identify three narrative frameworks that unravel misperceptions on how to end mass atrocities. The first assumption is the ‘teleological assumption’ that violence against civilians will ultimately build up to genocide. The contention is that assumption of genocidal escalation inhibits development of alternative response agendas that exclude rationale for armed intervention. Secondly, there is an ‘epistemological assumption’ based on a retrospective of interveners’ failures and triumphs that fails to take into account the local, national and regional forces as well as the political contexts that come into play in the ending of mass atrocities. The final assumption is an ‘ethical imperative’ based on the afore-mentioned teleology and epistemology that highlights how mass atrocities *ought* to end while obscuring other contexts of mass atrocities such as recognizing the ending of mass atrocities and questioning how they ended.

Branch (2011:269) scrutinizes the relationship between development of R2P and the post-Cold War politics of Africa arguing that R2P can foster ‘political irresponsibility’ by reducing all politics in Africa to ‘effective protection capacity’ and that R2P depicts determination of the legitimacy of the African state as contingent upon moral standards set by the ‘international community’.

Augmenting the prolificacy of works on R2P, a more recent conceptual contribution has been the notion of Responsibility While Protecting (RwP). Formulated by the Government of Brazil, RwP complements R2P, highlighting accountability while exercising R2P. In the wake of the Libyan intervention, the UNSC held an open debate on the protection of civilians on 9 November 2011. Maria Ribeiro, the Brazilian Permanent Representative to the UN, expressed Brazil’s view that the international community had to exercise responsibility while protecting concurrent with R2P (Brazil 2011b:1). The Brazilian concept paper represented RwP as based on similar fundamental principles as R2P. First and foremost, prevention is pinpointed as the best policy. Second, authorization by the UNSC within the provisions of Chapter VII of the UN Charter is prioritized. Third, while exercising RwP, the use of force is to be employed within the confines of the UNSC mandate and must abide by International Humanitarian Law. Finally, RwP means that use of

force must be 'judicious, proportionate and limited to the objectives established by the Security Council' (Brazil 2011b:3).

In a statement made during an informal UNGA discussion on RwP on 21 February 2012, Gareth Evans asserted that the Brazilian proposal was largely a critique of UNSC working methods. He pointed out that the Brazilian initiative comprised of two central tenets. The first element is the prioritization of prudential criteria prior to UNSC authorization of use of force. Another key aspect is accountability through the establishment of a monitoring and review mechanism for the purposes of appraising UNSC members and scrutinizing the implementation of mandates (Evans 2012a:1). Evans' critique and the Brazilian contribution to the discourse on R2P both confirm that a global consensus has not yet been forged around practical implementation of the norm.

1.2.2. Theoretical accommodation of R2P within the AU

As early as 2000, African leaders had enshrined the right of intervention in the CA of the AU. Former chairperson of the AU Commission Alpha Oumar Konaré has described the AU's right of intervention as *ingérence courtoise* (courteous interference) in member states for purposes of maintaining peace, security and stability (Mwanasali 2008: 42). The doctrine of non-indifference with relation to R2P is encapsulated in Article 4(h) which authorizes collective intervention in a member state in the event of grave circumstances such as war crimes, genocide and crimes against humanity. Tieku (2007: 30) has pointed out the fact that the provision for intervention outlined in the CA of the AU surpasses the provision for intervention in the UN Charter. As a matter of fact, the CA has set 'lower thresholds' for intervention by specifying mass atrocity crimes as grounds for intervention in the internal affairs of a member state. Furthermore, the AU can decide on intervention against the consent of the target state in the case of manifest failure to protect the lives of the population. Upon recommendation of the AU's PSC, the Assembly of the Union is the organ that makes final decisions on intervention at two levels: on its own initiative according to Article 4 (h) or upon appeal by a member state as per Article 4 (j) (Kioko 2003: 817).

Moreover, in March 2005 during the 7th extraordinary session of the AU's Executive Council, the AU reiterated its acceptance of R2P in the 'Common African Position on the Proposed Reform of the United Nations', also known as the Ezulwini Consensus. It was noted that the Security Council and General Assembly are often far from the hotspots of African conflicts and crises and may not fully appreciate the complexity of crisis situations on the ground. As such it was proposed that regional organizations close to conflict zones be empowered to intervene with the approval of the UN and in some urgent cases UN approval could be sought *ex post facto* (AU 2005a).

African leaders have also acknowledged R2P as a crucial tool in dealing with mass atrocity crimes on the continent. For instance, during the 2005 World Summit, Rwandan President Paul Kagame succinctly captured Africa's embrace of R2P stating:

'Never again should the international community's response be left wanting. Let us resolve to take collective action in a timely and decisive manner. Let us also commit to put in place early warning mechanisms and ensure that preventive interventions are the rule rather than the exception' (Rwanda 2005).

In addition to the AU Executive Council, other AU institutions have also adopted R2P. In November 2007, the African Commission on Human and Peoples' Rights (ACHPR) adopted a resolution on 'strengthening the responsibility to protect in Africa.' In this resolution (Res 117), the ACHPR expressed concern at the slow response of the international community to mass atrocity crimes in the past and recalled elements in the African Charter on Human and Peoples' Rights, the CA, the 2001 ICISS report and the Ezulwini Consensus that endorsed R2P at the AU level (ACHPR 2007).

The congruence of Article 4(h) and R2P is realized in the machinery of the AU's PSC. The Council and its subsidiary bodies comprising of the Continental Early Warning System (CEWS), the Panel of the Wise, the African Standby Force (ASF) and the special African Peace Fund collectively stand as the AU's peace and security architecture (APSA) as far as the interventionist framework is concerned (CCR 2007: 20). The PSC is the principal organ in matters of conflict prevention and management with the key objective of promoting peace, security and stability in Africa (PSD 2010: 22). The CEWS was established in line with Article

12 of the PSC Protocol which stipulates the creation of a situation room to serve as source of information for the PSC on African conflict situations (PSD 2010: 32). The Panel of the Wise consists of five highly respected African personalities from different backgrounds and plays an advisory role to the PSC and Chairperson of the Commission on peace and security related matters (PSD 2010: 53). The Peace Fund, established under Article 21 of the PSC Protocol, serves as the prime source of financial resources for the peace and security operations of the AU. The coffer of the Fund consists of provisions from the mainstream budget of the AU, contributions from member states and donations from sources outside Africa (PSD 2010: 59).

Additionally, in spite of the fact that the AU's CA uses the phrase 'right to intervene' rather than the 'responsibility to protect', the CA and the PSC Protocol are in tandem with the R2P principles. Both emphasize military force as the last resort, application of R2P in cases of mass atrocity crimes and the continuum of prevention, intervention and post-conflict reconstruction (Puley 2005:12).

According to Williams (2007: 278), the concepts of security culture and norm localization can shed light on the internalization of R2P within APSA. Williams (2007: 256) defines security cultures as 'patterns of thought and argumentation that establish pervasive and durable security preferences by formulating concepts of the role, legitimacy and efficacy of particular approaches to protecting values. Through a process of socialization, security cultures help establish the core assumptions, beliefs and values of decision-makers about how security challenges can and should be dealt with'. With regard to the AU, he argues that the organization's security culture is composed of a series of intertwined beliefs that become apparent as norms. As such, he identifies seven norms that can be said to make up the AU's security culture: sovereign equality of members (Article 4a) ; non-intervention by member states (Article 4g); anti-imperialism/African solutions first; *uti possidetis* (Article 4b); non-use of force/peaceful settlement of disputes (Articles 4e, 4f, 4i); condemnation of unconstitutional changes of government; (Article 4p) and the Union's right to intervene in a member state in grave circumstances (Article 4h). In a subsequent article, Williams (2009: 394) makes the linkage between Article 4(h) as a component norm of the AU's security culture and the embedment of R2P in the African international society through the process of norm localization. While Acharya's concept of norm localization offers

some insight on the extent to which the AU has institutionalized R2P, it is admittedly misguided to think of R2P as completely foreign to Africa. As Edward Luck framed it, R2P was borne out of the ‘soil and soul of Africa’ (Luck 2008). Luck was referring to Francis Deng’s articulation of ‘sovereignty as responsibility’ which affirmed the primary responsibility of the state to protect its population. Furthermore, in their book *Sovereignty as Responsibility: Conflict Management in Africa* (1996) Deng and his colleagues at the Brookings Institution laid the foundation for the three pillars of R2P by depicting sovereignty as a ‘pooled function’ that is ‘to be protected when exercised responsibly and to be shared when help is needed’ (Deng *et al* 1996:212). Ban (2008) also highlighted the ties between R2P and Africa by pointing out the roles of the first two African Secretaries-General of the UN (Egyptian Boutros Boutros-Ghali and Ghanaian Kofi Annan) in exploring evolving notions of sovereignty and humanitarian intervention.

Acharya (2004: 245) expounds on the process of ‘norm localization’ which is defined as ‘the active construction through discourse, framing, grafting, and cultural selection of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices.’ He adds that norm localization is more likely to occur in situations of crisis, systemic change and in the event of domestic political changes such as integration of human rights promotion within foreign policy priorities. Acharya highlights four factors that influence the success of norm localization. First, norm localization is more likely to occur if norm-takers are convinced that the foreign norm will elevate status of pre-existent norms while resulting in negligible changes to identity. Second, strong local norms lead to localization of foreign norms. A third factor is existence of credible and influential insider proponents acting as norm entrepreneurs whilst defending local values. The final factor is the extent to which norm-takers’ sense of identity has developed, with norm localization more likely to occur in the case of a strong sense of identity (Acharya 2004:249). Acharya’s framework on norm localization will be useful in investigating the AU’s commitment, institutionalization and internalization of R2P within its peace and security dynamics.

Closely linked to the concept of norm localization are the actions of Africa’s norm entrepreneurs in garnering support for R2P. For example, during a UNSC debate on the Protection of Civilians

in Armed Conflict held on 9 November 2011, all three African non-permanent members of the UNSC made statements supportive of R2P:

(Gabon 2011b): ... ‘We believe that responsibility for the protection of civilians, both in peacetime and in armed conflict, falls primarily to States themselves. Every State must scrupulously train security personnel and members of its judiciary institutions with regard to that responsibility. We can be proud of the important normative framework that the Council and the international community have developed over the past decade around the responsibility of States in protecting civilians, especially through resolutions 1674 (2006), 1888 (2009), 1894 (2009), 1906 (2009), 1970 (2011) and 1973 (2011).’

(Nigeria 2011b): ... ‘It is within our capabilities to shield the vulnerable from the ravages of conflict and other breaches of peace and security. If we continue to act in concert, over time, our responsibility to protect will surely be met.’

(South Africa 2011d): ... ‘We wish to underline that it remains the primary responsibility of States to protect civilians within their borders...’ ‘It remains the sovereign responsibility of states to determine what their judicial mechanisms are in ensuring accountability. Failing which, the international community has a collective responsibility to act, with utmost adherence to international law, in accordance with the purpose and principles of the Charter, as prescribed in the 2005 Outcome Document and the Constitutive Act of the African Union.’

The three states therefore used the global platform of UNSC membership to promote the R2P norm.

1.2.3. The UNSC’s 2011 intervention in Libya.

There is an abundance of literature that highlights the existing tension between the proponents of R2P who view Libya as a triumph for application of the norm and the detractors who point out the Achilles’ heel of R2P, tainted with undertones of regime change. Those in favour of the Libyan intervention have pointed out that the Libyan case exemplified convergence of ‘will, operational speed and gold-plated legality’ (APR2P 2011). Gareth Evans (2011a) has argued that Resolution 1973 and its forerunner Resolution 1970 were textbook cases of the sequence of action from pillar two to pillar three in terms of the response continuum. From a military

perspective, Schmitt (2011:55) has framed Resolution 1973 as a ‘robust and carefully crafted no-fly zone authorization.’ He adds that although there are aspects borrowed from previous no-fly zones, the Libyan no-fly zone was the most robust of its kind to date. In addition to its legality, the Libyan no fly zone applied to both civilian and military aircraft; allowed support of any state in supporting the operation and made reference to protection of civilian-populated areas (Schmitt 2011:56).

On the other side of the controversy that is the Libyan intervention, critics such as O’Connell (2011:15) have argued that military intervention in Libya was not used as a last resort in view of the fact that sanctions, negotiations and other peaceful means were hardly attempted before NATO troops were deployed. Hehir (2011:18) builds on the detraction arguing that there is no causal relationship between R2P and the UNSC-sanctioned action in Libya. The interests of the permanent five members of the UNSC (P-5) largely drive the response of the international community thus ‘in the absence of a duty to act, R2P constitutes no more than a discretionary entitlement.’ Closely linked to Hehir’s contestation is Chandler’s (2011b:25) argument that the Western powers’ divestment of responsibility over the outcome of Libya proves that Libya disqualifies as a humanitarian intervention. In his view, ‘Libya was an intervention freed from liberal internationalist baggage where the West could gain vicarious credit and distance itself from any consequences’ (Chandler 2011b:25).

The AU’s advocacy for a political solution in the Libyan crisis has come under heavy criticism with many commentators dubbing it ambiguous and unrealistic. Handy (2011) points out that though the AU was the only actor pushing for a negotiated settlement to the crisis, the failure to compel other actors towards its political approach points to the AU’s ‘illusions of dogmatic pacifism’. Aboagye (2011) asserts that the Libyan crisis exposed the AU diplomacy as ‘dysfunctional’ and ‘fossilised’ with the emphasis on a ceasefire and negotiations which Sturman (2012) has termed ‘premature and unrealistic.’ Kasaija (2011) recounts the PSC’s decision to establish a roadmap and form an *ad hoc* committee in line with its quest for a political solution. However, he is quick to point out that the PSC’s tepid and tardy response, coupled with ambivalence over the future of Gaddafi, set the basis for the subsequent marginalisation by the UNSC. Furthermore, Nathan (2011) has pointed out that the roadmap set up by the AU was

doomed to fail from the start due to underlying misconceptions. For instance, he points out the AU's lack of credibility with the Libyan rebels as a non-partisan mediator given its long-standing relationship with Gaddafi. He also cites the impracticability of preventive diplomacy in the face of the earnest Libyan rebellion. In sum, the failure of the AU to invoke Article 4(h) in relation to the crisis Libya has exposed weaknesses, divisions and tensions in the institution's resolve to operationalize R2P.

On a different tack, Adebajo (2011) points out the nuances in the debate about the intervention in Libya by spelling out 'myths' that need to be clarified. He dispels the myth of Gaddafi's popularity in Africa arguing that the former Libyan leader was also regarded with fear and suspicion. He also argues that rather than seeing the AU's marginalisation as the moral and political failure of the institution in handling the Libyan crisis, the AU was mostly 'divided' on the course of action; and that these divisions are reminiscent of the European Union's setbacks in responding to the Balkan crises in the 1990s. Other myths include the sense of NATO's invincibility and the assumption that the NTC leaders will establish a multiparty democracy devoid of corruption, tribal divisions and political infighting. In essence, accounting for the AU's response to Libya will have to entail critical consideration of the nuanced nature of the debate on the intervention.

1.3. Formulation and Demarcation of the Research Problem

The fundamental research problem covered by this study is captured in the following principal research question: with reference to the 2011 UNSC intervention in Libya, what lessons can be learnt about the pertinence of the R2P doctrine within the peace and security framework of the AU? This question leads to a number of secondary research questions: a) utilizing the concept of norm localization, to what extent has congruence between Article 4 (h) of the Constitutive Act of the AU and the normative framework of R2P been realized? b) with reference to the popular uprising in Libya, what implications does the AU's stance against foreign military intervention have on the consolidation of the R2P norm within the AU's security culture? c) in view of the AU's peripheral engagement in the Libyan experience, what prospects are there for deeper

consolidation and increased saliency of R2P as a normative component of the institutional security culture?

The central research assumption can be framed as follows: as regards the UNSC 2011 intervention in Libya, the AU failed to live up to expectations that it would act as a trailblazer of the R2P norm when it allowed the debate and subsequent intervention to be dominated by other regional organizations and the international community at large. The main research postulation can be subdivided into a number of subsidiary research assumptions. The first subsidiary research assumption is that in spite of conformity between R2P and the normative basis of the AU's Peace and Security Architecture, R2P has remained subservient to other norms such as non-interference in the norm hierarchy of the AU. The second subsidiary assumption is that an array of political, institutional and material challenges continues to impede the AU's movement from non-interference to non-indifference. The final subsidiary position is framed as follows: the marginalization of the AU in the run-up to the NATO-led Libyan intervention is an indictment of the lack of commitment to consolidation of R2P. The AU needs to move from rhetoric to reality in marrying political decisions with feasible operationalization and this should be done through pro-active norm localization.

The study is demarcated in conceptual, temporal and geographical terms. With regard to conceptual delimitation, the study will focus on understanding of R2P as encapsulated by the ICISS 2001 report, paragraphs 138-139 of the 2005 WSOD and the CA of the AU; and the supplementary theoretical discourse that has followed such codification of R2P. The study will also be positioned within the broader concept of human security, *inter alia* utilizing concepts such as security culture and norm localization with relevance to R2P.

As far as temporal delimitations are concerned, the study will focus on the period immediately preceding and following the Libyan intervention in 2011. For the sake of historical perspective, the development of the R2P debate since the mid-1990s will also be considered. The period under review tracks the evolution of the emergent norm of R2P and goes on to highlight milestones and institutionalization within the APSA. With reference to the case study of the 2011 Libyan intervention, the demarcated period covers the introduction of the Libyan case on the

UNSC agenda, the termination of the NATO-led mandate on the no-fly zone and the recognition of the NTC in Libya.

In terms of a geographical delimitation, the study will focus on the African continent, drawing on the case of Libya, a country located at the northern-most coast of Africa. Libya's identity as an Arab state will invariably stretch the geographic delimitation in a geopolitical sense to include the greater Arab and Mediterranean neighbourhood whose support for intervention in Libya proved pivotal to the UNSC's adoption of Resolution 1973.

1.4. Research Design and Methodology

The study will take on a qualitative and analytical research methodology. The strength of the qualitative method is that it allows for the interpretation of the variable under study which in this case is the institutionalization and operationalization of the R2P norm by the AU. Hence, this study will constitute a literature-based analysis of the congruence of R2P and interventionist framework of the AU. Furthermore, a qualitative research design will guide the researcher towards inductive, context-specific findings as to the weaknesses, contradictions or strengths in the AU's resolve to operationalize R2P.

Based on the qualitative nature of the proposed study, the researcher intends to use an array of both primary and secondary data sources. Key primary sources such as the ICISS report; UNSC and UNGA documents such as resolutions, meeting records, statements and reports, the AU's CA, speeches and statements of the African players involved in the Libyan case will be essential in gauging the operationalization of R2P. Secondary sources dealing with the thematic and conceptual analysis of R2P such as opinion editorials, journal articles, commentaries, and book chapters among others will be critically investigated with respect to their illumination on implementation of R2P in Africa. An examination of the debate on the 2011 UNSC intervention in Libya, especially as concerns the AU position, will determine the role played by R2P as a normative framework for action and the impact of the Libyan intervention on intra-African debate on R2P.

The researcher is aware of the challenge of accessing sufficient data in the public domain on a very recent, highly-politicized foreign policy issue. As such the researcher intends to conduct *ad hoc*, unstructured and anonymous interviews with policy makers and implementers and other relevant stakeholders in the debate on the AU handling of the Libyan intervention. The interviewees could possibly assist with bridging conceptual gaps in the available literature, advise the researcher about sources and suggest additional avenues of approaching the research problem.

In the case that quantitative information will be used in the research, such data will mostly be utilized to reinforce the research with statistical facts for example the military setup of the NATO-led intervention in Libya. Nonetheless, the data will be assessed qualitatively.

1.5. The Structure of The Research

The current, first chapter of the dissertation has served to introduce and contextualize the study in order to clarify the scope and focus of the research. A preliminary literature overview will be offered and the research methodology will be explained.

The development of R2P as a global norm will be the essence of Chapter 2, which will serve as the conceptual framework of the study. The linkage between the human security paradigm and the conceptual underpinnings of R2P will be reviewed. Additionally, the theory of norm localization will be explored with specific references to the dynamics of norm diffusion as pertaining to the norm of R2P.

Chapter 3 will explore the institutionalization of R2P within the African Union context. The purpose of this chapter is a historical overview of the link between the AU and R2P. The congruence of R2P and Article 4 (h) will also be analysed as a way of investigating if the AU's Peace and Security Architecture is on all fours with the normative thrust of R2P.

Chapter 4 will provide an overview of the humanitarian crisis in Libya and the subsequent action of the UNSC in authorizing Resolution 1973. The purpose of this chapter is to contextualize the

applicability of R2P to the Libyan case and to outline the response of the international community to, and subsequent reflection on, the Libyan situation.

Chapter 5 builds on Chapter 4 by zeroing in on the AU's handling of the 2011 UNSC intervention in Libya. The voting behaviour of the three African non-permanent members (Gabon, Nigeria and South Africa) will be juxtaposed with the position of the AU in relation to Libya and the actions undertaken by the AU in response to the crisis. The goal of this chapter is to evaluate the nexus between the normative consolidation of R2P by the AU and the practical application as seen in the case of Libya.

Chapter 6 concludes the study by drawing upon the findings of the preceding chapters in relation to the broad focus of the research. The chapter thus establishes the extent to which the AU has embraced R2P and whether a nexus has been achieved between the AU's rhetorical shift to non-indifference and the practical application of the responsibility to protect. Conclusions will be drawn as to the strengths, weaknesses and contradictions in the AU's consolidation of R2P. Based on these conclusions, future prospects and recommendations concerning the operationalization of R2P in Africa will be considered as opportunities for further research.

CHAPTER 2: CONCEPTUAL FRAMEWORK AND NORMATIVE EVOLUTION OF THE RESPONSIBILITY TO PROTECT

2.1. Introduction

This chapter seeks to provide a conceptual framework for analysis of R2P. An overview of the norm's antecedents, core tenets, evolution and current status will be discussed as part of the broad framework underpinning R2P. In addition to tracing its theoretical evolution, this chapter will also position R2P within the human security paradigm, examining the interface between the two concepts.

In the light of the broader objectives of this study, namely exploring the consolidation and the saliency of R2P as a normative component of the AU's security culture, the concepts security culture and norm localization will also be discussed as imperative notions to understanding the AU's normative framework as far as R2P is concerned.

Lastly, this chapter will also position R2P within the framework of norm localization. Imperatively, a broad overview of norm diffusion within an IR context will be discussed leading up to norm localization as a component process of norm diffusion. The purpose of this section lines up with the broad objectives of the study in using norm localization as a possible explanation for diffusion of R2P.

2.2. Theoretical evolution of R2P

The foremost comprehensive overview of the core principles, elements and priorities of the norm of R2P is the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS). The ICISS had several key objectives with its launch of R2P, starting with an attempt to modify the language of humanitarian intervention in a way that promoted consensus by focusing on 'responsibility' as opposed to 'right' and on 'protection' rather than 'intervention'. The ICISS also aimed to change the focus of the discourse from 'after-the-event' reaction to before-the-event' protection. Another objective, according to Thakur (2011b: xiii), was to deviate the emphasis from a narrow focus on coercive military intervention towards 'a nuanced approach

recognizing the utility of a whole continuum of measures, beginning with the supportive and persuasive, extending to non-military forms of pressure, and only as a last resort embracing coercive military force – if prudential criteria we defined could be satisfied, and there was clear UN Charter authority’. Thakur’s description is based on the clear stipulations of Paragraphs 28-33 of the ICISS Report. The ICISS also listed crucial legitimacy criteria for R2P action: right authority; just cause; right intention; last resort; proportionality of means and reasonable prospects of success (ICISS 2001: xii).

Additionally, it is important to mention normative antecedents of R2P such as the notion of sovereignty as responsibility and the right to intervene. Bernard Kouchner, co-founder of *Médecins Sans Frontières* and former French government minister, formulated the term *droit d’ingérence* (‘right of interference’) in the late 1980s in a bid to campaign for right of intervention for humanitarian NGOs in conflict zones (Evans 2008a:32). In a 1999 speech to the Chicago Economic Club, then British Prime Minister Tony Blair outlined ‘a doctrine of the international community’ as a guide for deciding when and how to conduct a military intervention in the internal affairs of others. Known as the Blair Doctrine, the proposals entailed five major considerations; not ‘absolute tests’ but ‘the kind of issues we need to think about in deciding in the future when and whether we will intervene.’ These considerations ranged from ‘Have we exhausted all our diplomatic options?’ to ‘Do we have national interests involved?’ among others (Evans 2008a:33).

During the 1990s, Francis Deng (Representative of the UN Secretary-General on Internally Displaced Persons 1992-2004) and his colleague Roberta Cohen introduced the notion of ‘sovereignty as responsibility’ in which the host state bore the primary responsibility of protecting IDPs (Cohen & Deng 1998: 275). This notion presupposed that the host state bore the primary responsibility of protecting IDPs, and failure to protect citizens on the part of the state implied that the latter had to invite the international community to assist in meeting its responsibilities (Evans 2008a:36). In a related argument, UN Secretary-General Kofi Annan during 1999 differentiated state sovereignty from individual sovereignty as enshrined in the UN Charter, arguing that the aim of the Charter was ultimately protection of the rights of the individual by balancing the two conceptions of sovereignty (Annan 1999).

Arguably, the conceptual purpose of R2P is to provide a framework for humanitarian intervention in restricted situations rather than create a novel alternative for protection of civilians. The UN already has a comprehensive human rights corpus that emphasizes the twin protection-prosecution agenda. The concepts of Protection of Civilians (PoC) and R2P can be regarded as siblings but not twins. Indeed their agendas intersect in terms of a humanitarian calculus as the sole rationale but they have distinct normative and conceptual variations. PoC stems from codification of the norms of war as in the 1949 Fourth Geneva Convention and broadly covers protection of civilians in situations of armed conflict. On the other hand, R2P deals with the mass atrocity crimes namely ethnic cleansing, genocide, war crimes and crimes against humanity. Not all war crimes would fall under PoC because not all are committed against civilians. But all war crimes would fall under R2P. PoC and R2P would thus overlap in the case of war crimes against civilians and crimes against humanity in times of armed conflict. R2P is thus at the same time more encompassing and more focused than PoC because it would apply in situations with evidence of mass atrocity crimes (Popovski 2011: 4).

As an analytical endeavour, the discussion around R2P should entail not only its conceptualisation, but also its actualization and implementation. Following the 2001 ICISS Report, there are four key stages in the normative trajectory of R2P. The first was the Report of the Secretary-General's High-Level Panel (HLP) on Threats, Challenges and Change, *A more secure world: Our shared responsibility*, which was presented before the UNGA in 2004. The HLP formally placed R2P on the UN reform agenda and endorsed R2P as 'the emerging norm that there is a collective international responsibility to protect' (Badescu 2011:105). The second milestone for R2P came in 2005 when Kofi Annan released his report *In Larger Freedom: towards Development, Security and Human Rights for All*. The 2005 Annan Report was crucial in several aspects. Contrary to the HLP Report and the 2001 ICISS Report, Annan's report contended that the UNSC should be made to work better as a custodian of authority as opposed to searching for alternatives. The report listed various criteria for intervention as key to gaining legitimacy and global support for the UNSC action. It also introduced the notion that international crimes could prompt the use of force. Finally, unlike the HLP Report that

considered R2P a sub-category of the discussion on ‘Collective security and the use of force’, Annan’s report detangled normative elements of R2P from the discussion on the use of force. Therefore Annan delineated that R2P was about the duty of states to protect rights of their own populations and the collective responsibility of the international community in the case where a state fails to live up to its responsibility (Annan 2005 Par. 135). Another landmark moment for R2P in its move from concept to norm was realized during the 2005 UN World Summit which saw the unanimous adoption of R2P by world leaders attending the UNGA (UNGA 2005 Par. 138-139).

There were, however, marked differences between R2P as presented in the 2001 ICISS Report (‘R2P2001’) and R2P as adopted by UN member states in 2005 (‘R2P2005’). The 2005 consensus was on a more restrictive reading on intervention, limiting authorization to the UNSC. The omission of regional bodies’ and other institutions’ mandate to authorize intervention has led to dubbing of R2P2005 as ‘R2P-lite’ (Weiss 2007:116). Another difference is the linkage of R2P to a specific range of crimes. The ICISS report focuses on human protection in situations of civil conflict; insurgencies and state collapse whereas the World Summit Outcome Document (WSOD) limits the scope of R2P to occurrences of genocide, war crimes, ethnic cleansing and crimes against humanity. Finally, the WSOD omitted the ICISS criteria for initiation of military intervention (just cause thresholds and precautionary principles) placing further consideration of R2P under the UNGA and including the notions of ‘case by case basis’ and ‘preparedness’ with regard to the UNSC (Haacke 2009:160). According to Bellamy (2008:625), the omission of criteria did not water down R2P as endorsed in 2005. The criteria had three functions: one, they were intended to create expectations about circumstances in which the international community could intervene in order to protect populations. Two, they were a means of legitimizing military intervention without UNSC authorization. Three, they were intended to prevent abuse of R2P. Bellamy’s (2008: 629) argument is that the criteria would in fact prove redundant had they been adopted. The expectations of action had already been outlined in ‘R2P2005’ under the responsibility of the international community to intervene in cases of manifest failure by a target state. Moreover, there was little chance that UN member states would endorse guidelines for intervention outside UNSC authorization as this would shift the language to debate whether criteria had been met. And finally, the criteria were unlikely to restrict abuse because ‘R2P2005’

limits legitimate action to the UNSC, which already has mechanisms for preventing abuse (Bellamy 2008:630).

Another pivotal period for R2P was 2009/2010 when the UNGA engaged first in general debate during 2009 and thereafter in a more focused, interactive dialogue in 2010 on the implementation of R2P. These debates, which were based on the Secretary-General's report of 2009 *Implementing the Responsibility to Protect* and the 2010 report *Early Warning, Assessment and the Responsibility to Protect*, made it apparent that there was broad consensus among states on endorsement of the three-pillar approach towards implementation (Serrano 2011a:433). According to this strategy, pillar one spells out the protection responsibilities of states. Pillar two is concerned with international assistance and capacity building through measures such as provision of development assistance and co-operation between UN and regional and sub-regional organizations. Pillar three stipulates timely and decisive response with UNSC authorization as per Chapters VI, VII and VIII of the UN Charter (Ban 2009: 2). Furthermore, Hilpold (2012:67) adds that the aspects that led to R2P's normative advancement were inherent within the concept's conception. Timing was key: R2P was introduced at a period when the international community was searching for a way out of the humanitarian conundrum *vis-à-vis* the crises in Rwanda, Yugoslavia and Kosovo. Moreover, the characteristics of R2P provided the 'recipe' for its wide embrace. The ICISS formulated R2P as a concept that consisted of established notions that had long been recognized by states. At the same time, R2P is positioned in a novel context seeking to balance out solutions to problems in IHL while preserving the sovereignty of states in an environment of constant flux. As Hilpold (2012:68) puts it, 'The problem-solution process is put on track but the solution itself has to be found through a sovereign negotiation process'.

Overall, the normative progress of R2P is linked to four key factors. First, R2P has normative coherence in view of the move towards re-examination of sovereignty and the embrace of humanitarian interventions to protect civilians in the face of gross violations of human rights. The second factor is political context. R2P emerged against a rapidly evolving environment as far as international politics was concerned. This is captured in the ICISS report (2001:50): 'the emerging guiding principle of the "responsibility to protect," a principle grounded in a miscellany of legal foundations (human rights treaty provisions, the Genocide Convention,

Geneva Conventions, International Criminal Court statute and the like), growing state practice – and the Security Council’s own Practice’. Third, the demand-driven nature of the ICISS report, which came about as a result of the mounting need to find common ground on the humanitarian intervention debate and to address the failure of the international community in dealing with humanitarian crises as occurred in Rwanda, Kosovo and Bosnia. A fourth catalyst is the role of norm entrepreneurs particularly the efforts of individuals such as former UN Secretary-General Kofi Annan, former Australian foreign minister Gareth Evans, Secretary-General Ban Ki-Moon and his former Special Adviser Edward Luck. States can also be norm entrepreneurs as seen in Canada’s efforts to advance R2P first by supporting the ICISS and later by ardently campaigning for R2P’s endorsement by the international community. By the same token, Australia has played a leading role as a norm entrepreneur of R2P epitomized by the efforts of Gareth Evans, who served as co-chair of the ICISS. In addition to sustained diplomatic advocacy, Australia has helped in funding the UNSG Special Adviser as well as allocating funds to dedicated R2P research centres such as the Asia Pacific Centre for the Responsibility to Protect (APR2P) and the Global Centre for the Responsibility to Protect (GCR2P) (Bellamy 2010b: 436). Coalitions of states have also been key players in the advocacy for R2P. In the build-up to the adoption of the 2005 WSOD, African countries such as South Africa, Rwanda and Tanzania were vocal in their support for R2P. During the 2009 UNGA debate on the subject, a coalition of pro-R2P states known as ‘Group of Friends of R2P’ emerged. (Badescu 2011:127). This group, comprised of thirty states from both the developed and developing world, is an informal cross-regional group of UN member states, chaired by Canada and Rwanda, who share a common interest in promoting R2P (Williams & Claes 2012: 132).

Serrano (2011a:431) explores the reasons that consensus could be achieved during the UN’s consideration of R2P in 2005 and later in the 2009 debate and 2010 dialogue. She argues that the Secretary-General’s report, the active engagement of Francis Deng and Edward Luck as special advisers and the support of organizations like the GCR2P and the International Coalition for the Responsibility to Protect (ICRtoP) set in motion the crucial process of R2P socialization. The 2009 debate and 2010 interactive dialogue by the UNGA also proved instrumental in the progress of R2P. The portrayal of R2P as a global North-driven matter was dispelled by the active involvement of various countries across the world, and the debates fostered a shared

understanding of R2P that differentiated it from humanitarian intervention thus leading to further agreement. Another benefit was that the sessions portrayed R2P as beneficial to sovereignty as opposed to being detrimental to state sovereignty. Badescu (2011: 41) reiterates this by portraying R2P as a ‘balanced’ relationship between sovereignty and human rights. She argues that R2P reaffirms the sovereignty of states in that the main responsibility to protect belongs to the state. In the case that a state fails to fulfil its responsibility, the collective responsibility falls to the international community made up of a society of sovereign states. Finally, these UNGA engagements on R2P intimated that consensus on R2P was growing and that there were changes in perceptions about its legitimacy. Overall the UNGA 2009 debate and 2010 interactive dialogue provided important lessons on the value of the strategy of consensus in promoting R2P (Serrano 2011a:435).

Williams and Bellamy (2012:287) argue that further socialization of R2P means that it has to overcome several principled, political and prudential challenges. In terms of principle, the looming question has changed from whether to intervene or not to the question of how to implement R2P-type interventions. As far as political challenges are concerned, the pliability of political will has encouraged R2P proponents in civil society organizations and lobby groups to shift political balance towards engagement of military force in protection of civilians in particular scenarios. R2P has also had to address prudential questions around operationalization of the responsibilities to prevent, react and rebuild while gauging the range of policy tools that are part of its framework. Evans (2008a: 253) depicts R2P as a container consisting of prevention, reaction and rebuilding toolboxes. Each toolbox contains four compartments namely political and diplomatic measures, economic and social measures, constitutional and legal measures, and security sector measures. Hence, in the political and diplomatic compartment for instance, prevention would entail preventive diplomacy, reaction would entail sanctions and rebuilding would emphasize local ownership.

A useful analytical tool in considering the normative evolution of R2P is utilizing what analysts refer to as the ‘life cycle’ of an emergent norm. Finnemore and Sikkink (1998:895), for example, put forward a three-stage life cycle of norms. The first stage is norm emergence; the second stage is norm cascade. Between emergence and cascade is the ‘tipping point’ at which a ‘critical mass

of relevant state actors adopt the norm'. The critical mass is ascertained when at least one third of the total states, especially the critical states, in the system adopt it. The third stage is norm internalization at which norms take on a 'taken-for-granted quality' and cease to be an issue of public contestation. In view of the normative trajectory of R2P since 2001, it can be said that R2P is in the early phases of norm acceptance. Arguably, the 'tipping point' was realized during the 2005 World Summit when states endorsed R2P. Upon reaching the tipping point, a measure of R2P norm cascading has been taking place through processes such as socialization and imitation as evidenced by the 2009 debate and 2010 interactive dialogue on R2P (Badescu and Weiss 2010: 360). Africa and Pretorius (2012:400) also maintain that R2P has gained formal acceptance to an extent but not by all states in the international community. Furthermore, R2P application is not prevalent enough for it to be considered part of the existing legal framework and of international humanitarian law.

The 'robustness' of R2P can be analysed utilizing Legro's (1997:34) framework based on aspects such as specificity, durability, and concordance. Legro's work is closely linked to Franck's (1992:56) contribution which identifies determinants of a norm's legitimacy and compliance as pedigree, determinacy, coherence and adherence. Specificity of a norm has to do with 'clarity and simplicity' as conceptualized by actors, dove-tailing Franck's (1992: 56) notion of determinacy which entails the clarity of the language of the norm, that is, its text and meaning. Specificity is linked to precision in international law seen in terms of unambiguity and clear stipulation (Abbott *et al.* 2000:412). Durability refers to the duration of a norm's existence and legitimacy status (Legro 1997:34). It corresponds with Franck's (1992:52) note on pedigree, which he links to historical roots and consistent application in international relations. The third element is concordance which is the public endorsement of a norm by leaders and states as a pointer to the norm's legitimacy (Legro 1997: 35). Franck's idea of coherence is linked to the notion of 'normative fit' as advanced by Florini (1996:376) asserting that the persuasiveness of an emergent norm is linked to its fit in existing normative frameworks. Adherence pertains to a norm's 'vertical connectedness' as part of other norms in a normative hierarchy (Franck 1992:87).

Applying these concepts to R2P, insofar as specificity is concerned, R2P still lacks the requisite precision for its consistent application. Conceptual variations and ambiguities over aspects such as criteria for intervention have led to confusion over *when* to intervene, and *who* should intervene. An example is the on-going Darfur crisis, which began in 2003, where it was unclear whether the AU or the UN had the primary international responsibility to protect the people of Darfur (Bellamy 2005: 32). In terms of normative fit coherence and adherence; the prevention and re-building tenets of R2P have been gaining considerable levels of coherence. For instance, Rosenberg (2009:477) remarked that R2P is an important part of the trend towards ‘the acceptance of a positive obligation to prevent mass atrocities.’ Similarly, R2P fits favourably with other widely-accepted and established norms and principles in IHL and IHRL relevant to the protection of civilians in conflict situations. Examples include the Genocide Convention, the Geneva Conventions and the International Covenant on Civil and Political Rights (Shawki 2011:192). Finally, as concerns adherence, R2P can be connected normatively to the right to peace. Generally, the range of atrocities addressed by R2P can be regarded as grave threats to international peace and security. Therefore R2P can be seen as one of the instruments aimed at fulfilling the broad goal of international peace (Shawki 2011:193). Overall, while the degree of R2P’s specificity can be called into question, the norm demonstrates a high level of durability and concordance. The latter can be observed in the public endorsements and acceptance within diplomatic circles such as references to R2P in UNSC Resolutions, international and regional organizations (Shawki 2011:188).

According to the model set out by Finnemore and Sikkink (1998: 891), while there is consensus that R2P is an emerging norm, opinions differ on what kind of norm it is. Norms are constitutive in that they ‘create new actors, interests or categories of action’. They are regulative in the sense that they ‘order and constrain behaviour’ There is a third category of norms which are evaluative/prescriptive. Evaluative norms, like regulative norms, prescribe behaviour however the difference is that evaluative norms emphasize the moral aspect, thus prescribing behaviour based on questions of morality (Katzenstein 1996 footnote 12). Gelpi (1997:340) clarifies the difference between evaluative and regulative norms with the baseline that when states violate both kinds of norms, behaviour is acknowledged as illegitimate. Yet reasons for this illegitimacy vary when it comes to regulative norms as states will have behaved contrary to the way they

‘usually’ behave. On the other hand, violation of prescriptive norms means states have departed from the way they ‘ought’ to behave. Katzenstein (1996) also identifies a fourth category: practical norms that manifest as commonly accepted notions of ‘best solutions’. In the African context, an example of a constitutive norm is anti-imperialism which inspired the notion of African solutions to African problems. Examples of regulative norms are the peaceful settlement of disputes and *uti possidetis* which is adherence to the boundaries set out after decolonization, as happened when the OAU in 1961 undertook to honour the continent’s arbitrarily drawn colonial borders. The condemnation of unconstitutional changes of government is an example of an evaluative norm, as demonstrated by the AU’s constitutive undertaking to suspend the membership of erring states.

From the brief description on typology of norms, the category into which R2P falls is essentially contested. R2P can be considered a constitutive norm because its essence is a continuum of actions to prevent and react to mass atrocity crimes. On the other hand, R2P can also be considered a prescriptive norm by emphasizing the moral duty of the international society of states to protect civilians should a state fail to live up to its sovereign responsibility. R2P can also be regulative, in the sense that it constrains behaviour – limiting the cavalier attitude of governments towards protecting their own people.

As an emerging norm, R2P has come under an array of critical perspectives. For ease of analysis, Breakey (2011:40) has divided the range of criticisms into five categories. The first set of criticisms points to issues of definitiveness and codification. Molier (2006:48) has argued that the preventive responsibility in Pillar Two is too broad for practicality. Hehir (2010:227) adds that the emphasis on prevention is minimal; covering only nine of the eighty-five pages of the ICISS report. Furthermore, the portrayal of R2P as an initiative of prevention strips R2P of its original purpose of dealing with and halting mass atrocity crimes and thus erroneously conceives the mass atrocities as eradicable ills rather than ‘inevitable periodic eruptions which must be halted’ (Hehir 2010:227).

Nasu (2009: 215) identifies the conceptual contradiction that R2P presents in that the international community is required to respect state sovereignty unless there are special situations that ‘shock the conscience of mankind’ while simultaneously urging the international

community to commit to ambiguous early peaceful engagement. What remains unclear is specifically what the responsibility of the international community is when it comes to early peaceful engagement.

An additional issue that has raised considerable debate is the question of who should intervene. As Welsh (2007:363) argues, the lack of clarity about who is obliged to lead international action in the face of mass atrocity crimes can lead to disparity between expectations of those being intervened upon and the capacity of the interveners. Chandler (2011a:30) makes the additional point that R2P has led to divestment of Western responsibility. This is done through relationship management where regulatory frameworks are reshaped through institutional intervention in non-Western states and regional organizations at the continental level. Chandler gives the example of the emphasis on the credo of ‘African solutions to African problems’ as a pretext for the UN Security Council’s P5 deferring their responsibilities to the AU in the absence of their own political will. For instance, in spite of an escalating humanitarian crisis in Zimbabwe since the early 2000s, and calls for international intervention when the crisis reached its zenith in 2008, the UNSC failed to agree on any form of reaction. Arguably, it abdicated from its responsibility to protect the people of Zimbabwe against a predator government, deferring to the AU instead, despite the latter’s reluctance to address the crisis.

Questions around obligations are linked to the larger critique that the normative tenet of R2P2005 suggests absence of legal duty. Focarelli (2008:202) contends that in the absence of said legal duty, it is highly unlikely that states will acknowledge a political or moral duty to react hence opening a leeway for the powerful states to intervene and promote own interests and values. Cunliffe (2011: 52) reiterates Focarelli’s point maintaining that R2P can only exist as an imperfect duty. In a critique to Louise Arbour’s article *The responsibility to protect as a duty of care in international law and practice* (Arbour 2008) which portrays R2P as an international duty of care, Cunliffe counters that R2P gives rise to problems of agency in which the lack of agency means that the ‘duty of care’ will be linked to arbitrary prerogatives of state power and national interest.

The second set of criticisms pertains to perceptions of R2P as a ‘Trojan Horse’, a decoy for self-interested interventions by powerful states (Bellamy 2005: 39). Closely linked to this argument is

the charge by Chomsky (2011:11) that colonialism, which he terms the ‘skeleton in the closet’ has historically been advanced on the basis of altruism and saving people from mass atrocities. Chomsky (2011:12) contends that collective intervention being dependent on UNSC authorization, with the latter body being manipulated by five veto-wielding states, reaffirms the realist maxims of Thucydides and Adam Smith. Thucydides (1954:118) pointed out that ‘the strong do what they have the power to do and the weak accept what they have to accept.’ Adam Smith (1999: 247) also captured *realpolitik* stating that ‘the principal architects of state policy, the merchants and the manufacturers, make sure their own interests are particularly attended to, however grievous the consequences for others’. From Chomsky’s perspective the UNSC can therefore not be a neutral arbiter, but serves instead as a vehicle for the promotion of the interests of the powerful; rampant with selectivity and inconsistency.

The third set of criticisms points to the gap between the theoretical coherence of R2P and its practical implementation in reality. According to Badescu (2011:145), the gaps between the normative and operational aspects of R2P are interlinked and stem from conceptual, political, institutional and operational challenges. The conceptual challenge to R2P is seen in the lack of consensus on how to operationalize it. Additionally, there are various terminologies used to refer to R2P with some calling it a norm (Evans 2008a); while others refer to it as a principle (Bellamy 2009) and some UN officials describe it as a concept (Luck 2010b). A second hurdle is the lack of political will to back up pillar three of R2P. Implementation of R2P is also hampered by the absence of institutional structures to fast-track policies at the UN level and at the level of regional organizations. The final set of challenges is operational and is linked to the lack of institutional structures and political will. Several operational issues remain unclear: the grounds for use of force, the means of force to be used; and the transfer of responsibilities to local authorities post-intervention.

Finally, there is the ‘nothing new’ critique challenging the notion that R2P led to ultimate reconfiguration of state sovereignty in an international society, prior to which, states acted as they willed. The argument proceeds that rather than view the sovereign inviolability of the state as the cause of humanitarian crises, it is the lack of will, selectivity and inconsistency of internationally recognized interveners (in this case the UNSC) that has been the main cause of

inertia in grave intra-state conflicts (Chesterman 2003:54). The ingenious aspect of the ICISS report was the upward transfer of responsibility to the international community. However, the report failed to propose ways in which this international responsibility was to be actualized hence capturing R2P as a ‘discretionary entitlement’, already contained in Chapter VII of the UN Charter (Berman 2007: 161).

Detractors such as Kuperman (2004:64) talk about the ‘moral hazard’ of military interventions for purposes of protecting civilians. He argues that the kind of intervention depicted by R2P could encourage insurgents to promote lethal host-state actions by guaranteeing protection against such responses. Kuperman’s contention is reiterated by Branch (2011:269) who talks about the negative impact of R2P on African states. He alleges that, bearing in mind the post-Cold War politics of Africa, R2P can foster ‘political irresponsibility’ by reducing all politics in Africa to ‘effective protection capacity’. Based on an analysis of Deng’s *Sovereignty as Responsibility*, Branch (2011:280) points out that African states are expected to demonstrate responsibility over protection of civilians’ rights, failure to which results in forfeiture of this responsibility to the international community. The discretion of determining when an ‘irresponsible’ African state has failed to protect its civilians is thus left to the international community. An extension of Branch’s argument is that R2P depicts legitimacy of African states as dependent on human rights protection standards set by the international community. As such, R2P can promote political irresponsibility by promising external support to non-state actors (such as rebel groups) that claim to be against ‘irresponsible’ African states (Branch 2011:297).

De Waal *et al.* (2012:17) also provide a critique of R2P as an instrument for dealing with mass atrocities. They identify three narrative frameworks that unravel misperceptions on how to end mass atrocities. The first assumption is the ‘teleological assumption’ that violence against civilians will ultimately build up to genocide. As far as the escalation of mass atrocities is concerned, a fundamental logic of violence has been emphasized depicting a graduated scale from political exclusion to group-targeted violence and eventual genocide. There is an underlying assumption that once mass atrocities are underway, they invariably lead to genocidal occurrences. As a result, inclusion of genocide in mass atrocity crimes means that R2P precludes a response agenda outside the logic of armed intervention. Secondly, there is an

‘epistemological assumption’ based on a retrospective of interveners’ failures and triumphs that fails to take into account the local, national and regional forces as well as the political contexts that come into play in the ending of mass atrocities. For instance, the ending of the war in Bosnia-Herzegovina cannot be attributed only to the NATO intervention. Other factors included political tension between the Bosnian Serbs and the Serbian political leadership under Slobodan Milosevic and a counter-offensive by Bosnian and Croatian military forces (De Waal *et al.* 2012:25). The final assumption is an ‘ethical imperative’ based on the afore-mentioned teleology and epistemology that highlights how mass atrocities ought to end while obscuring other contexts of mass atrocities such as recognizing their ending and questioning how they ended. There is seldom an ideal ending to mass atrocities: some end as a result of drastic changes in the political landscape or disintegration of the perpetrator regime. Nonetheless, there is need to move away from ‘ought’ to ‘is’ by acknowledging the complexities of the political reality and basing analysis on evidence as opposed to universal morally-based imperatives (De Waal *et al.* 2012:30).

So far the discussion has focused on R2P as an analytical concept. Nonetheless, R2P can also be analysed as an action-oriented norm. Anne Orford reverses the words-to-deeds argument positing that the significance of the R2P ‘lies not in its capacity to transform promise into practice, but rather in its capacity to transform practice into promise, or deeds into words’ (Orford 2011:2). The essence of Orford’s argument is that R2P 2001/2005 translated UN deeds since the organisation’s inception in 1945, into words. The executive role of the UN was the result of a systematisation of the practices of peace and protection into norms. These practices of protection were initiated in the early years of decolonization and included administration, surveillance, fact-finding, quiet diplomacy, management, capacity-building and policing (Orford 2011: 42).

In a move to reconfigure perceptions of the UN as a mere forum for conference diplomacy, Secretary-General Dag Hammarskjöld at the height of the Cold War emphasized UN executive actions to ensure protection of civilians especially in the decolonized world. Drawing on European imperial history, Orford (2011:42) argues that the shadow of colonialism left behind power vacuums that could easily become theatres for Cold War powers. The responsibility to protect civilians and prevent exploitation of the newly independent states thus fell to the UN.

Orford uses two case studies, the 1956 Suez crisis and the 1960 Congo crisis to give credence to her assertion of Dag Hammarskjöld's role in consolidating practices of UN international executive action and in challenging the imperialistic intentions of former colonial powers – such as the British and the French in Suez and the Belgians in the Congo (Orford 2011: 32).

In the post-Cold War period, it became apparent that it was no longer sufficient to justify UN peace operations only on principles of neutrality, impartiality and independence. The authority of the UN had to be accounted for and this is where R2P comes in. R2P thus lends legitimacy to the account of UN authority as a neutral actor in pursuit of public safety and maintenance of international peace and security. All in all, Orford's assertion is that R2P gives normative footing to practices of UN international executive action that had begun in the era of decolonization (Orford 2011: 10).

2.3. Positioning R2P within the human security paradigm

2.3.1 Overview of the human security paradigm

Human security implies a notion of security that extends beyond focus on military capacity and national security. According to Haq (1995:15), human security encapsulates a new paradigm of security which is concerned with security of people and not just security of territory. Human security is an essentially contested concept; the various definitions are categorized into broad and narrow definitions. The broad school is mainly concerned with issues of underdevelopment and is also known as the 'freedom from want' strand. It draws on the development studies tradition and views underdevelopment as the main threat to human security. On the other hand, the narrow school draws on international relations tradition and focuses on political violence against ordinary people. The narrow school is also known as 'the freedom from fear' strand (Holliday & Howe 2011:76).

In the aftermath of the release of the UNDP 1994 report which called for greater focus on human security and its dimensions of economic, food, health, environmental, personal, community and political security, the concept of human security gained popularity and the first debate emerged around the nature of threats to human security. From about 2004, the broad and narrow fronts

had reached a deadlock and entered into the second wave of the debate concerned with the practical agenda for human security. Within the narrow school, the practical agenda is multi-dimensional including evolving practices that support R2P (Kerr 2010:115).

2.3.2. Interface between Human Security and R2P

There is a clear intellectual and empirical link between R2P and human security, particularly the narrow definition (Kerr 2010:115). Although the concept of human security is broader than that of R2P, the basis of R2P is nested within the concept of security which reflects solidarity i.e. reconciliation between the needs and rights of the individual with the duties of the international community and the rights of the sovereign state. Furthermore, R2P sets up a platform for accountability for the failures of both the state and the international community. R2P also outlines the responsibility of the international community to prevent, and react to violations of human rights as well as to assist in rebuilding of post-conflict states (Pace & Deller 2005:17). The 2001 ICISS report (paragraph 2.21) defined human security as: ‘the security of people: their physical safety, their economic and social well-being, respect for their dignity and worth as human rights and fundamental freedoms.’

Duffield (2005:4) is of the view that human security is a principle of formation closely linked to governance, simultaneously presupposing humans that need security while promoting the state and non-state networks of aid, subjectivity and political practice required for securing humans. He adds that the 2001 ICISS report and the 2003 report of the Commission on Human Security *Human Security Now* illustrate how human security is a biopolitical assemblage. In this context, Duffield builds on Foucault’s definition of biopolitics as the mark of the transformation from the classical to the modern age, whereby the sovereign’s right over life and death becomes modernized, evident by a rupture in the exercise of power within the nation-state. The shift from personal rule to an administrative entity was the result of a combination of certain material conditions such as the centralization of authority and growth of bureaucracy. Thus the modern conceptualization of life (in the form of biopolitics) deals with the maximization of life through proper administration of the population within the state (Foucault 2003: 243).

Human Security Now emphasizes human security in relation to conflict and post-conflict rebuilding; protection of migrants; economic insecurity; basic healthcare and education. Rather than seeking new definitions for calibrating human security, *Human Security Now* calls for the biopolitical regulation of non-insured populations through co-ordination and centralization of existing aid networks, programmes and datasets (CHS 2003: 142). On the other hand, the ICISS report pits human security at the centre of a re-conceptualization of sovereignty. The report moves the previous juridical-based notion of humanitarian intervention onto the field of moral duty (ICISS 2001:ix). Furthermore, in the ICISS report, human security has been re-inscribed within the juridico-political architecture of the modern state. The essence of R2P, as seen through the lens of human security, is functioning states prioritizing populations living within ineffective ones (ICISS 2001:5). When considered together, *The Responsibility to Protect* and *Human Security Now* illustrate two inter-connected trajectories to the institutional framework of human security. The interface between human security and R2P is located in the differences between effective and ineffective states (Duffield 2005:11).

Human security is also concerned with the role of states and international community in securing the rights and freedoms of citizens. Freedom from want is gaining dominance over freedom from fear based on allegations that hunger, diseases and natural disasters kill more people than war, genocide and terrorism. Consequently, some proponents of human security are calling for ‘aid invasions’ in the case where states engage in actions that affect citizens through incompetence, obstruction and neglect (Evans 2008b). Be it as it may that there are no general normative guidelines and regulations for humanitarian intervention and that considerations have to be analysed on a case by case basis; getting to a point where such decisions have to be debated is an indictment of the failure of international and national actors in addressing humanitarian issues. A move towards ‘the global responsibility to protect and to provide’ will lessen instances of debate over the ‘responsibility to intervene’ (Holliday & Howe 2011:86).

Turning to the AU, the 2005 AU Non-Aggression and Common Defence Pact highlighted a broad approach towards human security including the individual’s social, political, economic, military, environmental and cultural needs (AU 2005b). The 2008 UNGA debate on human

security ended with calls for a ‘new culture of international relations – with the precept of human security at its core’ (UNGA 2008).

Overall, human security implies an apparent paradigmatic shift of security from state-centrism to people-centrism. This shift has been necessitated by non-traditional security challenges characterized by non-military rather than military threats; transnational rather than national threats and multilateral rather than self-help security arrangements (Holliday & Howe 2011:75). Moreover, R2P merges human security and national security with its reconceptualization of sovereignty (Neack 2007: 205). Despite its essentially contested nature, human security has brought about key conceptual innovations: it has placed human beings at the heart of security; and acts as a lens for understanding the impact of violent conflict on humans. The notion of human security has also been incorporated into foreign policy, and securitization of non-traditional issues such as health has led to increased policy focus in these areas (MacFarlane & Khong 2006:228). Human security is therefore a powerful juxtaposition. One word, ‘security’, carries implications of realpolitik and law enforcement and the other, ‘human’, bears humanitarian tradition and human-centrism (McIntosh & Hunter 2010:3).

2.4. R2P and the concept of Security Culture

Within IR literature, there are various perspectives on dimensions of culture ranging from diplomatic to political to strategic and security culture. Underlying the discourse on culture is the general consensus that culture refers to ‘any set of interlocking values, beliefs and assumptions that are held collectively by a given group, and passed on through socialization’ (Dueck 2005:200).

Security culture can be taken as ‘discourses in which actors collectively develop pervasive and durable security preferences around the role, legitimacy and efficacy of particular approaches to protecting values’ (Johnston 1995: 6). Augmenting this definition is the argument by Neumann and Heikka (2005: 7) that culture is seen in evidence in specific norms and practices. Beliefs and normative preferences about the use of force are a small part of a broader security culture dealing with legitimate and effective approaches toward security. The key elements of a security culture

include shared basic assumptions about key referents of security, the dimensions of security, the nature of the security environment and the purpose of regional arrangements. There are also operational assumptions around practical issues such as threat identification and classification, dynamics of the region-state relationship and choice of policy frameworks. The substance of a security culture at a regional level denotes convergence of both the central tenets and the operational assumptions of member states. It requires ‘inter-locking beliefs’ where actors not only share common beliefs but also assume that other actors share similar beliefs (Williams & Haacke 2008:130).

Katzenstein (1996: 8) argued that national security cultures do not arise out of a vacuum, but are products of a three-layered cultural environment. The first layer consists of formal institutions and security regimes; the second layer is comprised of a world political culture with elements like sovereignty, international law and global norms; and the third layer consists of international patterns of enmity and amity. In spite of the contention that all states have been socialized into an international system set upon notions such as good governance, human rights and legitimate sovereignty, instead of a similar dynamic at the regional level, there have been deviations across regions. The differences are a result of many factors. First, the internalization of a global norm at the regional level is contingent upon the status of the international norm either as a hard or a soft law. Norms codified in treaty law and those that have achieved status of customary international law are more likely to be integrated by regional institutions than soft law (political or moral principles). Secondly, regional identities impact the integration of global norms into the regional security culture (Dembinski & Reinold 2010:2). If a global norm is incompatible with regional beliefs and norms, it will be rejected or reconstituted to attune to regional beliefs. The process of adjusting norms to fit to regional contexts is what Acharya (2004:239) has termed ‘norm localization’. A third factor that influences the norms inherent in regional security cultures is regional political dynamics. Elements at the state level and societal level have a bearing on regional security culture. For instance in democratic regimes, sub-state actors such as civil society groups are likely to be more significant norm entrepreneurs in contrast to autocratic regimes where state officials are more likely to impact national government policy options than civil society bodies. Additionally, threat perceptions of a region also determine which norms are part and parcel of that region’s security culture. Regions that enjoy a greater degree of political

stability and internal solidarity will have a security culture distinct from those that face internal upheavals such as civil wars or state failure. Moreover, historical factors such as colonization and nationalist waves will also determine the threat perceptions and in turn the norms that are incorporated into the regional security culture (Dembinski & Reinold 2010:2).

To sum up thus far, regional security cultures are framed by universal norms which are pruned to attune to regional identities, threat perceptions and political dynamics. Turning to the impact of security cultures on regional arrangements, Williams and Haacke (2008:131) submit that, security culture will indirectly influence the nature and development of the institution, including the decision-making structures and operational norms. Subsequently, evidence of the norms and beliefs as a manifestation of the institution's security culture will be contained in the founding documents and *modus operandi* of the institution in question. In addition, security culture will directly influence the collective decision-making within regional arrangements, to the extent that shared preferences exist relative to security cooperation. Thus security cultures offer insight into behavioural choices of a regional institution by framing and even limiting the range of collective action in response to security challenges (Johnston 1995: 53). However, Williams and Haacke (2008:131) maintain that although security culture is likely to confine regional arrangements and their members, individual states operate in varied and overlapping foreign policy contexts. In the realm of foreign policy analysis literature, it is apparent that states' foreign and security policies increasingly draw upon and are influenced by both the international and regional contexts (Hill 2003). It follows that in spite of the influence of security cultures over regional arrangements and members, individual member states may sometimes choose to pursue courses of action that depart from the institutional collective policy.

One of the subsidiary research questions that this study endeavours to address is the implications that the AU's stance against foreign military intervention will have on the consolidation of the R2P norm within the AU's security culture, with reference to the popular uprising in Libya. In this regard, a brief overview of the AU's security culture is warranted. According to Williams (2007: 258), the AU's security culture is made up of connected beliefs that express themselves as behavioural norms. Norms are 'collective expectations about proper behaviour for a given identity' (Jepperson *et al.* 1996: 54). This point is reiterated by Risse *et al.* (1999:6) that 'to

endorse a norm not only expresses a belief, but also creates impetus for behaviour consistent with the belief. While ideas are usually individualistic, norms have an explicit intersubjective quality because they are collective expectations. The very idea of “proper” behaviour presupposes a community able to pass judgements on appropriateness’.

The AU’s security culture is inseparably linked to the nature of a ‘partly autonomous African society of states’ (Williams 2007:259). This society is partly autonomous because it is located within a broader international society that impacts African states’ approaches toward sovereignty, statehood and universal norms. African international society is intended to supply political goods that secure the survival, security, identity and integrity of African states (Jackson & Rosberg 1982: 19). Moreover, its existence insofar as there is regional awareness and collective identity fosters the notion of Africa as a ‘cognitive region’ (Adler 1997: 630). This conceptualization of security culture draws on constructivist approaches in analysing regional security dynamics. In brief, Constructivism emphasizes the role of ideas, assumptions and beliefs; the processes through which identities and interests form and evolve and the interaction between shared knowledge, material resources and practices (Jackson & Sørensen 2007:164).

Through a process of socialization, security cultures help establish the core assumptions, beliefs and values of decision-makers about how security challenges can and should be dealt with’(Barnes *et al.* 1980:35). With regard to the AU, Williams (2007: 256) argues that the organization’s security culture is composed of a series of intertwined beliefs that become apparent as norms (see Chapter 1). The origins of the AU’s security culture stem from a variety of episodes in the institution’s history. The formation of the AU’s predecessor, the OAU, was a key moment in the process of norm socialization. The OAU’s ‘articles of faith’ contained four principles that later informed the AU’s security culture. These principles were anti-imperialism/African solutions first; sovereign equality; non-intervention; and the principle of *uti possidetis*. A second episode was early post-colonial statecraft marked by high levels of elite socialization and the discourse of Pan-Africanism. This period brought to the fore contradictions around the OAU’s stance on secession, non-interference and African autonomy. However, the contradictions also acted as drivers for further development of culture with the embrace of new

norms, namely the condemnation of unconstitutional changes of government and R2P (Williams 2007: 264-278).

Although norm entrepreneurs succeeded in institutionalizing the emergent norm of R2P as part of the AU's security culture and paving the move from non-intervention to non-indifference, internalization remains incomplete. The AU's faltering commitment to institutionalize R2P within its Peace and Security Architecture (a more in-depth analysis shall be dealt with in Chapter 3) is due to a number of factors such as tension between R2P and traditional views of sovereignty, dissenting views among member states and discordant strategies between the RECs and the AU (Dembinski & Reinold 2010:14). Taylor and Williams (2008: 145) make the additional point that the role of R2P in the AU's security culture is 'doomed to be theoretical rather than practical as long as its members are primarily interested in preserving regime security and their exclusive access to the state's resources'.

Starting with an overview of the norm diffusion processes, the next section delves into the role of norm localization processes in the institutionalization of global norms particularly R2P within regional security cultures.

2.5. R2P within the framework of norm diffusion and localization

2.5.1. Overview of perspectives on norm diffusion

In the context of IR, norm dynamics point to varied responses to new norms ranging from constitutive compliance to rejection to path-dependent forms of acceptance (Acharya 2004:242). The baseline argument as far as norm dynamics are concerned is that 'new norms never enter a normative vacuum but emerge in a highly contested normative space where they must compete with other norms and perceptions of interest' (Finnemore & Sikkink 1998: 897). Two perspectives on norm diffusion stand out. The first perspective is the moral cosmopolitanism perspective which has three characteristics. The first is that the norms in question are universal norms; norm entrepreneurs are transnational agents and third, a focus on conversion rather than contestation. The second perspective on normative change highlights the role of domestic,

political, organizational and cultural factors impacting the embrace of new international norms. Both perspectives offer an institutionalist approach pegged on the existential fit between domestic and external norms as opposed to a dynamic matchmaking process of normative diffusion (Acharya 2004:243). The concepts of framing and grafting serve as more dynamic perspectives on norm compatibility. Framing entails the active construction of linkages between existing norms and emergent norms by ‘using language that names, interprets and dramatizes them (Finnemore & Sikkink 1998:897). Grafting or ‘incremental norm transplantation’ involves the institutionalization of a new norm by relating it to a pre-existing norm in the same issue area (Farrell 2001: 65).

2.5.2. Norm localization

Norm localization presents an alternative description of norm diffusion that goes further than the diffusion dynamics discussed above that boil down to outcomes of acceptance or rejection. The essence of localization is congruence building, focusing on the mechanisms that local agents seek compatibility between international norms and local beliefs and identities. According to Acharya (2004:245), localization is the ‘active construction through discourse, framing, grafting, and cultural selection of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices’.

The starting point to understanding localization is examining why new norms are borrowed in the first place. In the first place, norms may be borrowed in instances of major security or economic crises. A second factor is systemic changes such as radical shifts in the distribution and polarization of power. An example is the end of the Cold War which saw the transition to a unipolar world order and the emergence of new norms on economic and security cooperation. A third consideration is that domestic changes in the norm-recipient such as transition to different political regimes may prompt the recipient to borrow norms that adhere to their novel identity (Acharya 2004: 247). Finally, Finnemore and Sikkink (1998: 902) refer to an international or regional demonstration effect or ‘contagion’ which prompts behavioural change in norm followers through emulation, praise and ridicule.

The success of norm localization is dependent on four crucial factors. First, norm localization is more likely to occur if norm-takers are convinced that the foreign norm will elevate status of pre-existent norms while resulting in negligible changes to identity. For instance, in line with the AU's rhetorical shift from 'non-interference' to 'non-indifference', Article 4(h) was enshrined in the 2000 CA of the AU and signified the Union's interpretation of its responsibility to protect civilians from mass atrocities (CCR 2007:16). Second, strong extant local norms lead to localization of foreign norms. For example, the Economic Community of West African States (ECOWAS) has established structures and norms that are pertinent to the implementation of R2P such as the 1978 Protocol on Non-Aggression and the 1999 Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution and Peacekeeping and Security (Aning & Atuobi 2012:217). A third factor is existence of credible and influential insider proponents acting as norm entrepreneurs whilst defending local values. For instance, in 2008 Ghanaian Members of Parliament called for military intervention by the UN in Zimbabwe as a feasible solution to the then growing humanitarian crisis in the country (Kotey 2008). Similarly, South African Archbishop Desmond Tutu voiced his support for intervention in Zimbabwe, by force if necessary, under the auspices of the UN (Marr 2008). The final factor is the extent to which norm-takers' sense of identity has developed, with norm localization more likely to occur in the case of a strong sense of identity. Pan-Africanism and anti-imperialism form the core of the regional identity of the AU which results in the preference of intra-system solutions to extra-system solutions (Zartman 1967: 558).

Drawing on the above discussion of factors favouring the import of new norms and the factors favouring localization, Table 1 illustrates the various stages of the localization process and respective conditions for progress.

Table 1. Various stages of the norm localization process and respective conditions for progress.

STAGES	CONDITIONS FOR PROGRESS
<p><i>1. Pre-localization</i></p> <ul style="list-style-type: none"> - Resistance and contestation by local actors as they weigh benefits of external norm - involves matching and clashing 	<ul style="list-style-type: none"> • Local norm takers must be convinced of the legitimacy and benefit of the new norm with negligible impact on prior beliefs and identities.
<p><i>2. Local initiative</i></p> <ul style="list-style-type: none"> - entrepreneurship and framing 	<ul style="list-style-type: none"> • Credible and willing insider advocates.
<p><i>3. Adaptation</i></p> <ul style="list-style-type: none"> - grafting and pruning of external norms to adhere to local beliefs and practices - involves conversion and rejection 	<ul style="list-style-type: none"> • Scope for incremental grafting within existing norm hierarchy.
<p><i>4. Amplification and universalization</i></p> <ul style="list-style-type: none"> - evidence of institutionalization of the new norm within local architecture 	<ul style="list-style-type: none"> • Modification and borrowing should offer leeway for aspects of the existent norm hierarchy to gain external recognition by virtue of association with the external norm.

Source: Acharya (2004: 251)

To an extent, there are conceptual similarities between the third stage of this model, namely *adaptation*, and the overall process of localization. However, localization is a more holistic, long-term process of building congruence between local and external ideas whereas adaptation is a generic term that implies the short-term mechanisms of how foreign elements fit into the local context. In short, adaptation focuses on how ‘local practices are made consistent with an external idea,’ while localization refers to the process in which foreign ideas are ‘simultaneously adapted to meet local practices (Acharya 2004: 251).

Localization is thus a progressive form of norm diffusion that seeks to bring about *institutional change*. There are two broad categories of institutional change. The first is change in functional scope and membership expansion while the second type of institutional change involves changes in the ‘means’ through which new tasks are carried out such as formation of new policy instruments, procedural changes and creation of new institutions. Localization is one form of local response to global norms. Two other local responses, resistance and norm displacement, also deserve note. Resistance results in the failure to create novel tasks or instruments hence extant institutional model remains unchanged. Norm displacement results in creation of new tasks and instruments, shift in norm hierarchy, displacement of target norm and emergence of new institution. Localization may in the long term lead to norm displacement.

2.5.3. Contextualizing R2P within norm localization

Given this study’s focus on institutionalization of R2P within the framework of the AU’s Peace and Security Architecture (which shall be covered in detail in Chapter 3), it is useful to analyse the localization of R2P within the AU utilizing the framework provided by Acharya.

The transformation of the OAU to the AU was driven by the need for a more hands-on approach by the regional organization in addressing the challenges faced by the continent, such as human rights violations and intra-state conflict (Sarkin 2009: 17). Closely linked to the normative shift in the AU’s security culture was a fundamental belief in ‘African solutions to African problems.’ This ideal stemmed from the post-colonial realization by African leaders that the international community did not adequately respond to African crises. ‘African solutions to African crises’ also resonated with the AU’s aversion to perceived hegemonic interferences in African affairs in view of the political history of the continent (Dersso 2012). The AU’s approach towards R2P has to be seen against the background of the international arena in the 1990s where a ‘renegotiation’ of norms that comprised the world political culture was underway, coupled with a move away from state-centrism to people-centrism (Dembinski & Reinold 2010:15). Seen in this light, the endorsement of R2P by states in the 2005 WSOD paved the way for diffusion of the emergent norm at the regional and national levels. The salience of R2P to the AU was also enhanced by

the international demonstration and regional effect or contagion *via* mechanisms such as emulation, praise and ridicule, as previously mentioned (Finnemore & Sikkink 1998: 902).

Turning to the trajectory of the norm localization process (see Table 1), the first stage requires norm-takers' assurance of the benefit and legitimacy in adopting the new norm. In the context of the AU, Article 4(h) was consistent with the interventionist posture of the AU distinct from its predecessor's emphasis on sovereignty and non-intervention. This point is reiterated by Murithi (2009:103):

'The establishment of the African Union as a supranational legal entity with significant powers of intervention in domestic crisis situations challenges traditional notions of the Westphalian state system and in fact offers us an insight into how a post-Westphalian or post-nation-state system might be constituted. In effect, the constitution of the African Union offers an alternative framework for organizing a political community'.

The pre-localization phase, characterized by norm contestation, was kick-started by the institutionalization process of Article 4(h) within the AU, which in turn began with the adoption of the CA in 2000 (the first formal AU document to enshrine the right of intervention). The 'grafting' of R2P onto the existing norm hierarchy of the AU entailed a process of discursive bargaining between two interpretative frames: 'sovereignty as responsibility' versus 'sovereignty as possession' (Witt 2013:20). The 'sovereignty as responsibility' frame is premised on the notion that states have a 'performative responsibility' that limits sovereignty. Moreover, a holistic view of security which includes human security means that advocates of this frame privilege the re-invigoration of existing institutional frameworks to strengthen capacity for fulfilment of sovereignty as responsibility. Strong proponents in this camp include South Africa, Nigeria, Ghana, Rwanda, Botswana, Benin, Sierra Leone and Tanzania. The second frame, 'sovereignty as possession' views R2P as a purely inter-state affair. Mostly promoted by Zimbabwe, Libya (pre-fall of Gaddafi), Sudan and Algeria, this camp underscores a militaristic interpretation of R2P portraying it as a guise for intervention by powerful states. This kind of norm contestation is influential in diffusion of a norm as well as exposing the various meanings of a norm as determinant of its acceptance in various contexts (Krook and True 2012:105).

For localization to progress there must be credible and willing insider advocates. These insider proponents must be seen as promoters of local values not serving external interests, they are usually physically located within the region and can be from the government, or part of the wider local policymaking elite with reasonably direct access to policymakers, or part of an active civil society group (Acharya 2004: 249). In the context of the AU, the local initiative of grafting R2P within the APSA has largely been driven by the AU Commission (previously the OAU Secretariat). The Commission organized a series of intra-AU debates around issues of conflict prevention, peacekeeping and responses to mass atrocities that led to the adoption of the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* in 2002. The PSC is the engine of the APSA. Although there was no explicit reference to R2P in these intra-AU engagements, the issues on the agenda (prevention, reaction, reconstruction) largely corresponded to those contained in the 2001 ICISS report and later the WSOD (Williams 2009: 401).

In addition to in-house normative crusading, there are member states of the AU that have consistently expressed their support for R2P whilst serving non-permanent terms on the UNSC and also in UNGA debates on R2P. Ghana, Rwanda, South Africa and Nigeria have been eager participants in debates around the endorsement and operationalization of R2P. For instance, on 5 September 2012, the UNGA held an informal interactive dialogue on R2P based on Secretary-General Ban's 2012 report *Responsibility to protect: timely and decisive response* (A/66/874). Ghana (2012) acknowledged the clarification that the Secretary-General's fourth report added to pillar three but emphasized that the focus should remain on prevention through creation of institutional structures at the local, regional and global level. Nigeria (2012) acknowledged the role of regional and sub-regional organizations such as ECOWAS in the implementation of R2P and called for support of these organizations in the implementation of pillar three. Rwanda (2012) also acknowledged the pillar approach in implementation of R2P adding that in cases where prevention fails, collective action under the UN Charter is to be conducted to avoid delay and further loss of lives in conflicts. South Africa (2012) reiterated the AU's stance of non-indifference but was quick to add that R2P should not be used as a pretext for other motives such as regime change. Despite the notable efforts of these and many other local advocates, events such as the Darfur conflict and the crisis in Zimbabwe point to vehement opposition from

African Arabic states. These opponents have oft contended that the conceptual ambiguities in R2P deprive it of political traction and that it is a red herring for neo-colonial ventures in African crises (Williams 2009:414).

The fourth variable affecting the localization process is the sense of identity in the regional institution. The bedrock of the AU's identity is Pan-Africanism which Emerson (1962: 280) described as the 'idea that all Africans have a spiritual affinity with each other and that, having suffered together in the past, they must march together into a new and brighter future'. Closely linked to the Pan-African discourse is the ideal of 'African solutions to African problems' which seeks to accord agency and responsibility to African actors in addressing challenges faced by the continent. This approach is known as 'othering' which highlights differences with the identity in question in order to enhance cohesion within the group. As such it can be argued that by drawing on the 'distinctiveness' of a Pan-African identity, Africans sought to 'resist the Eurocentric, condescending assumptions of international law that were utilized to foster the colonial subjugation of Africa' (Gathi 1998/1999: 72). Soft-balancing is a term that has been used to describe regional cooperation among weaker states as a strategy to constrain hegemonic interferences by the powerful (Hurrell 2006: 15). Thus the AU can be seen as a front presented by African states to shield off Western neo-colonial domination. Given the AU's well-known abhorrence of neo-colonial interferences, R2P had to be reconstituted to fit to the institution's identity. Dembinski and Reinold (2010: 16) point this out:

'While Art. 4(h) of the AU Constitutive Act provides for a right to humanitarian intervention and hence at first glance seems to reject the principle of non-interference, it is important to note that the right to intervene belongs to the African Union, and only to the African Union. In relations between Africa and the outside world, the non-intervention principle continues to reign supreme. Thus, Africa has developed a very peculiar interpretation of the responsibility to protect which includes a pruning of the non-intervention norm in favour of a right to intervention which is borne by the AU, but not the international community at large, as suggested by the ICISS'.

Returning to Acharya's (2004: 252) framework, localization is indicated when an existing institution responds to a new norm through institutional change resulting in the creation of new policy instruments, displacement of target norms and little or no change to the norm hierarchy. In

this regard, localization of R2P within the AU has only been partly successful. Rhetorically, R2P can be used to account for the creation of the APSA but whether this commitment has been matched in practice by operationalization of resources is an entirely different question. Two reasons can be said to account for the failure of localization of R2P in the AU. First, R2P has arguably not seen influential insider/local proponents within the region and the drive for internalization has largely come from transnational moral entrepreneurs such as the UN Secretary-General and institutions such as the Global Centre for the Responsibility to Protect. Second, many African states still view R2P as a peril to regime security and the sovereignty of the state and as a result have only displayed ‘instrumental’ commitment (where actors resort to cost/benefit calculations and publicly commit to a norm only if in line with national interests) to R2P. This is far from institutionalization of the norm where a regional institution creates new institutions based on the new norm and up the costs of norm-breaking behaviour. At the end of the spectrum is norm internalization where the new norm is part and parcel of identities, interests and behaviour (Williams 2009: 398, Risse *et al.* 1999:12). The implications for the salience of R2P in the AU normative composition are two-fold: on the one hand, when pitted against norms such as non-intervention, the former remains a matter of contestation among member states. On the other hand, even in the face of public pressure for an intervention in grave cases, the neo-patrimonial political culture will often stand in the way of operationalizing R2P interventions (Dembinski & Reinold 2010: 14).

Critics of the idea of constitutive localization have also pointed to the soft law nature of R2P. In a technical sense, R2P is an essentially contested term that is not yet a binding norm in international law. The ‘softness’ of a norm may lead to pruning but at the same time, the lack of inter-subjective consensus around issues such the implementation of R2P has a bearing on state practice. The contestation persists that in its current status, R2P is too ‘opaque’ to prevent various actors from invoking the concept to legitimize particularistic actions like regime change in the guise of moral cosmopolitanism (Dembinski & Reinold 2010: 15). Stamnes (2009 :77) proposes the securitization of R2P, framing it as protection of the people hence warding off states’ fears of external encroachment. All in all, the shaky commitment of the AU towards institutionalization and internalization of R2P is as a result of a combination of factors such as the tension between R2P and prevalent norms such as non-intervention; influence of neo-

patrimonial tendencies among African leaders and divisions over responses to matters of peace and security on the continent. For instance, in the recent crises in Côte d'Ivoire (2010) and in Mali (2012), the AU's and ECOWAS' respective words and actions revealed a lack of consensus and consultation further illustrating the lack of a coordinated strategy between the AU and one of constituent RECs over the resolution of conflicts.

Successful internalization of R2P will only happen once these challenges, among others, are acknowledged and aptly dealt with.

2.6. Conclusion

This chapter sought to provide a conceptual overview of R2P. The first section delved into an exploration of the theoretical evolution of R2P and the key stages in its normative trajectory as an emerging norm in international politics. The foundations of R2P were traced and a distinction made between the concepts of Protection of Civilians (PoC) and R2P as related items on the UN agenda for the protection of the rights of civilians. Subsequently, several factors that accounted for the normative advancement of R2P were provided with an emphasis on the imperative contribution of a strategy of consensus. A typology of norms was used to highlight the essentially contested definition of R2P. Apart from the criticisms of R2P, a crucial mention is Anne Orford's depiction of R2P's evolution as deeds to words, a reversal of the commonly-held perceptions of the trajectory as words to deeds.

The next section discussed the human security paradigm in international relations with the aim of positioning R2P within this paradigm. Based on the empirical and intellectual links between R2P and human security, it was inferred that the core tenets of R2P were nested with the concept of security that emphasized solidarity and people-centrism.

The relationship between R2P and the concept of security culture was subsequently explored. For the purposes of this research, the manifestation of norms as part of an institution's security culture was of particular importance. In effect, a brief overview of the AU's security culture was

provided as a build-up to the next Chapter which will focus on the institutionalization of R2P within the AU's architecture.

Finally, R2P was also analysed in the context of norm diffusion processes such as framing, grafting and norm localization. A detailed outline of norm localization including the stages and conditions for success was presented based on the framework proposed by Acharya. Due to the focus of this study on the institutionalization of R2P within the framework of the AU's Peace and Security Architecture, the localization of R2P within the AU framework was traced and it was concluded that the process has only been partly successful due to *inter alia* a lack of influential insider proponents, perceptions by African states of R2P as detrimental to regime security and the 'softness' of R2P as an emerging norm that is not yet part of the existing legal framework.

CHAPTER 3: THE AFRICAN UNION AND THE RESPONSIBILITY TO PROTECT

3.1. Introduction

R2P is hardly a novel concept on the African political landscape. Indeed the 2000 Constitutive Act of the AU stands as the premier international treaty to enshrine an IGO's right to intervene in a sovereign state to protect civilians in the event of mass atrocities. Inherent in the organization's transformation from the OAU to the AU is a rhetorical shift from a policy of 'non-interference' to one of 'non-indifference' in the face of war crimes, crimes against humanity and genocide. This chapter explores the institutionalization of R2P within the context of the AU, tracing the historical link between the continent and the norm. In line with the research objectives of this study, a particular focus will be analysis of the congruence of R2P and Article 4(h) of the AU's Constitutive Act in a bid to assess the nexus between the African Peace and Security Architecture (APSA) and core tenets of R2P. An overview of the APSA's structure, working methods and normative framework will therefore be provided. Importantly, an assessment of the operationalization of the APSA will shed light not only on the 'Africanization' of human security, but also on the normative diffusion and consolidation of R2P within the institutional hierarchy of the AU.

3.2. Overview of the nexus between the AU and R2P

As early as 2000, African leaders had enshrined what amounted to a responsibility to protect in Article 4(h) of the AU Constitutive Act. Article 4(h) lends credence to the assertion that R2P is not an entirely novel concept to Africa. Edward Luck, the UN Secretary-General's special adviser on R2P until 2012, observed that R2P has 'African roots' (with reference to Deng's work on sovereignty as responsibility) and that it has been implemented for the most part in Africa relative to other regions in the world (Luck 2009: 15). The implicit inclusion of the R2P norm in the AU Constitutive Act of 2000 was a pivotal moment for the organization because it symbolized the AU's rhetorical shift from a doctrine of non-interference to one of non-indifference (Konaré as cited in Murithi 2009: 92). Former chairperson of the AU Commission

Alpha Oumar Konaré has described the AU's right of intervention as *ingérence courtoise* (courteous interference) in member states for purposes of maintaining peace, security and stability (Mwanasali 2008: 42).

Holistically seen, the transformation from the OAU to the AU was the product of a convergence of ideas with both normative and practical implications. Moreover, the political context indicated an environment ripe for change. There were by now several new international treaties in international humanitarian law, human rights law, refugee law and criminal law that were aimed at the protection of civilians. Examples include the Universal Declaration of Human Rights, the four Geneva Conventions and two Additional Protocols, the Convention against Torture, the Genocide Convention, the Conventions on civil, political, social, economic and cultural rights, and the Rome Statute of the International Criminal Court. In addition to that, the ideological triumph of liberal capitalism over communism induced a world-wide wave of democratisation, that emphasized good governance, rule of law and the protection of fundamental freedoms and rights. In Africa, for instance, the New Partnership for Africa's Development (NEPAD), formally adopted in July 2001 by African Heads of State, was launched as the continent's main development framework and crucially included the African Peer Review Mechanism (APRM). The APRM is a self-monitoring mechanism voluntarily acceded to by AU member states, and involves periodical reviews of the policies and practices of member states to assess compliance and progress in achieving agreed goals under the four focal areas of Democracy and Political Governance, Economic Governance and Management, Corporate Governance, and Socio-Economic Development (Rakne *et al.* 2007:9). Clearly, there was an increasing pronouncement of African voices calling for transparency, efficiency and inclusivity in the management of public affairs (Mwanasali 2010: 390).

Returning to the apparent African heritage of R2P, Francis Deng's articulation of 'sovereignty as responsibility' intuitively comes to mind. Writing in the context of the post-Cold War era when colonial powers were withdrawing from Africa, Deng (former Special Adviser on the Prevention of Genocide) and his colleagues at the Brookings Institution argued that sovereignty included certain responsibilities for which African governments were to be held accountable, both at the national and international level. Furthermore, if African states were unable or unwilling to

protect their own populations, the onus of protection was pooled upwards to the international community (Deng *et al.* 1996: xviii). The 1991 Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) also underscores the African roots of R2P. The CSSDCA was an African civil society initiative, spearheaded by former Nigerian President Olusegun Obasanjo, aimed at finding solutions to the post-Cold War political and economic challenges of intra-state African conflicts. The framework of the CSSDCA mimicked the 1975 Helsinki framework of the Economic and Security Cooperation in Europe (ESCE) which became the Organization for Security and Cooperation in Europe (OSCE). Consequently, a series of meetings was conducted between the African Leadership Forum and the Conference on Security and Cooperation in Europe which led to a conference in 1991 in Kampala, Uganda. The conference culminated in the ‘Kampala Document’ that proposed four ‘calabashes’¹, a term used to give them an African attribute and differentiate them from the OSCE ‘baskets.’ The four calabashes were security, stability, development and cooperation (Deng 2010: 368).

At the core of the CSSDCA was a people-centric approach to security reflective of the broadening and deepening of security in the search for solutions in a post-Cold War global order that has made Africa vulnerable to an array of security challenges and potential marginalization. However, the CSSDCA agenda was contested for several reasons. A major criticism was the institutional mimicry given that the CSSDCA was fundamentally modelled on a European creation, in spite of the alleged African focus. The CSSDCA was also perceived as a threat to the OAU because at the time of its development, the OAU was developing its own programme of conflict management; the Mechanism for the Prevention, Management and Resolution of Conflict. Personal rivalries further impeded the progress of the CSSDCA. As the leading figure behind the initiative, Obasanjo was seen as a rival for power to both OAU Secretary-General Salim Ahmed Salim and General Ibrahim Babanginda, at that stage President of Nigeria and also the chair of the OAU Council of Ministers (Deng & Zartman 2002: 10). The CSSDCA thus faced opposition from both the OAU Secretariat and member states. Sudan and Zambia argued that the CSSDCA was irrelevant as the roots of African problems lay in the colonial past and in contexts outside the continent. Overall, no considerable majority emerged in support of the initiative with some states acting as ‘derailers’, others as ‘brakers’ such as Nigeria and ‘riders’

¹ A calabash is a hard-shelled gourd often used as a utensil, bottle or pipe.

who wanted to side with the majority (Deng & Zartman 2002:132). In spite of the reluctance by African leaders, the Kampala Document was endorsed at the thirty-sixth session of the OAU's Heads of States and Government in June 2000. One of the key recommendations of the CSSDCA which informed the 2000 AU Constitutive Act was the use of force for protection of human rights. This provision was later included in Article 4(h) stipulating:

‘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’.

Therefore the CSSDCA initiative influenced the framework of the African Peace and Security Architecture (APSA) to a large extent, underscoring notions of human security and the emphasis on non-indifference in response to peace and security matters. Moreover the CSSDCA initiative can be seen as integral to the historical narrative of the various processes, initiatives and challenges involved in the transition from the OAU to the AU (Okeke 2011:6).

The AU's Constitutive Act was signed in Lomé, Togo on 11 July 2000. The transformation from the OAU to the AU was a move to reflect the changing priorities of the organization. Indeed the Assembly of Heads of State and Government (AHSG), prior to adoption of the 1999 Sirte declaration, stated that the objective was:

‘to discuss ways and means of making the OAU effective so as to keep pace with the political and economic developments taking place in the world and the preparation required of Africa within the context of globalization so as to preserve the social, economic and political potentials’ (OAU Assembly 1999).

The rationale of the OAU's conflict management approach was hinged on the doctrine of non-interference and a strong anti-imperialistic inclination. The post-colonial political, social and economic environment highlighted the disconnect between the OAU's values and the capacity to address the peace and security challenges of Africa. During its existence, the OAU had faced immense challenges such as the Biafran secession war, despotic rulers like Idi Amin, the genocide in Rwanda, civil wars in Angola and Chad, interstate war between Ethiopia and Eritrea and the spread of the HIV pandemic, among others (Adejo 2001: 131). In contrast, the AU framework for prevention, management and resolution of conflicts consists of three norms: the

principle of non-indifference, R2P and the notion of African solutions to African problems. (Zounmenou *et al.* 2012:10). In addition to the 2000 Constitutive Act of the AU, these norms are also reflected in the 2002 Protocol relating to the Establishment of the Peace and Security Council of the AU (hereafter referred to as the PSC Protocol); the 2005 Ezulwini Consensus on the Reform of the UN and the 2005 AU Non-Aggression and Common Defence Pact. The AU also included norms that were linked to promotion of democratic principles and good governance as seen in the 2000 Lomé Declaration on the Framework for the OAU Response to Unconstitutional Changes of Government; the 2007 African Charter on Democracy, Elections and Governance and Article 4(p) of the AU Constitutive Act which is a condemnation and rejection of unconstitutional changes of government (Souaré 2009:1).

The AU is thus a corollary of the acknowledgement by African leaders that there was a need for ‘rewiring’ the security culture of the organization, as Ayangafac and Cilliers (2011: 124) observe. The shift in normative posture from non-interference to non-indifference was captured in the 2000 Constitutive Act containing objectives such as the pursuit of greater solidarity among African countries; promotion of regional integration; promotion of peace, security and stability and the promotion and protection of human and peoples’ rights among a host of others. Moreover, the promotion and protection of human rights and democracy took the place of the decolonization and anti-apartheid agenda of the OAU. Article 4(h) of the Constitutive Act provides for the right of intervention, symbolizing the AU’s change in posture and calling for co-operation between the AU and the international community (Mwanasali 2010:399).

The historical connection between the AU and R2P is also seen in the March 2005 Ezulwini Consensus, in which the AU Executive Council further endorsed R2P and emphasized the empowerment of regional organizations’ intervention in urgent conflict situations with *ex post facto* UNSC approval. It was further stressed that UNSC authorization ‘should be in line with the conditions and criteria proposed by the Panel, but this condition should not undermine the responsibility of the international community to protect’ (AU 2005a). Abass (2011:218) points out that the AU’s position on R2P as stipulated in the Ezulwini Consensus stands as the AU’s claim of a ‘residual responsibility to protect’ given the reservations about an exclusive oversight by the UNSC over implementation of R2P. Moreover, *ex post facto* UNSC approval has three

crucial implications. First, although regional organizations may be speedier than the UN at deploying troops on the ground; the decision-making process may not always occur faster than at the UN level. For instance, within the AU, decisions to intervene are taken by the AHSG which meets biannually. Furthermore, a decision-making process premised on consensus may at times prove to be time-consuming. Second, UNSC approval ‘after the fact’ may open a leeway for exploitation of regional organizations by regional hegemons. Third, mass atrocities are often the result of gradual build-up over a period of time. Given that both the UN and regional organizations have early warning mechanisms, approaches in favour of the responsibility to prevent should be prioritized rather than an over-emphasis on the responsibility to react (Tavares and Felício 2013:69). Six months after adopting the Ezulwini Consensus, African states, alongside other UN member states, reaffirmed their commitment to R2P by endorsing paragraphs 138-139 of the WSOD. Key African states such as Rwanda, South Africa and Tanzania were instrumental in garnering African support for R2P in spite of a range of concerns over conceptual ambiguities and debates around possible abuse of the concept to mask power-political motives (Williams 2009:400). The Ezulwini Consensus can thus be taken as a compromise that reconciled African states that were apprehensive of external military intervention under the guise of R2P with those states that promoted sovereignty as responsibility and accountability of African governments (Witt 2013:21).

It is important to highlight an amendment² to Article 4(h) added in February 2003 by the AU Assembly of Heads of State and Government. The amendment (that is yet to enter into force) extends the grounds for collective intervention by the AU, upon the recommendation of the Peace and Security Council, to restore peace and stability in an AU member state in situations where there is ‘a serious threat to legitimate order’ (AU 2003). The implication of the February 2003 amendment is that it actually sets a lower threshold for intervention than those contained in 2001 ICISS report (Powell 2005:13). However, Baimu and Sturman (2003:42) are of the opinion that the amendment is inconsistent with the grounds of intervention listed in the Constitutive Act and the UN Charter. Furthermore, the amendment can be seen as a bid to place regime security over human security by facilitating interventions to fortify the regimes in power. As such, there

² The Amendment Protocol will enter into force upon ratification by two-thirds of member states. As of June 2014, 28 member states had ratified the Protocol. (AU 2014).

is the danger of the principle being used by authoritarian African governments to seek the AU's help in retaining power in the event of popular uprising. It is yet to be seen how the term 'a serious threat to legitimate order' will be interpreted given the ambiguity of the concept and the number of autocratic governments in African states.

Witt (2013:21) makes a compelling argument that the debates on the amendment of the CA, African contributions to the 2005 UN debate on R2P and the 2009 UNSG report on R2P point to the norm contestation around R2P inherent in negotiated meanings and formulation of common positions in the AU context. The significance of norm contestation in the AU is three-fold. First, resurgence of debates across various contexts reflects the recurrent nature of norm contestation in the discourse of the AU. Consequently, norm contestation has proved productive in promoting the strengthening of existing institutional structures as well as fostering legitimacy of the APSA. Second, the exclusive nature of norm contestation has led to constant redefinition and refinement of AU political spaces in order to promote engagement and rejuvenation of continental politics. Finally, norm contestation has led to a better understanding of AU power dynamics by portraying 'minimal consensus' as the quintessence of AU politics. For instance, the normative developments incorporated into the AU CA were achieved through minimal consensus over divergent meanings that led to a dual outcome: formation of a common African position and AU response to extra-continental demands (Witt 2013:29-30).

In light of the formation of the AU arguably infused with renewed vigour and aspirations, a new peace and security regime was established around the APSA. The latter is a mechanism, composed of separate structures, to implement the peace and security agenda of the AU. The legal basis of the APSA is provided for in the 2002 PSC Protocol and the 2004 Common African Defence and Security Policy. The Peace and Security Council (PSC) is the core of the APSA and is supported by the Panel of the Wise, the Continental Early Warning System (CEWS), the African Standby Force (ASF) and the Peace Fund (Engel & Porto 2010:5) . In combination, these five structures constitute the pillars of the APSA. The APSA can be said to be the AU's infrastructural manifestation of R2P given the powers of intervention provided for by the CA and the PSC Protocol³ and the similarities between the norms underpinning the APSA and R2P. The

next section delves into the congruence between Article 4(h) and R2P; and the institutionalization of R2P within the APSA.

3.3. The African Peace and Security Architecture (APSA)

The PSC stands as the central organ of the APSA. In addition to the Constitutive Act, the 2002 PSC Protocol endows the AU with the right of intervention.⁴ Given the AU's stance of non-indifference and inclusion of a right of intervention in its founding documents, it is imperative to investigate the congruence between R2P and Article 4(h) of the 2000 Constitutive Act.

3.3.1. Congruence between R2P and Article 4(h) and status of R2P in the AU

Aneme (2008:79) points out three key reasons for the inclusion of Article 4(h) in the AU Constitutive Act. The first reason is the 'cost of strict adherence to the non-interference under the OAU' as was seen in the failure of the OAU to address atrocities such as occurred under Amin's regime in Uganda and Bokassa's regime in the CAR in the 1970s. The Rwandan genocide further exposed the inability of the OAU Mechanism for Conflict Prevention, Management and Resolution in dealing with mass atrocities (Kioko 203:812). The point is echoed by Maluwa (2001: 28) who remarks:

'in an era in which post-independence Africa has witnessed the horrors of genocide and ethnic cleansing perpetrated on its own soil and against her own kind, it would have been absolutely amiss for the Constitutive Act to remain silent on the question of the right to intervene in respect of such grave circumstances as war crimes, genocide and crimes against humanity'.

The second reason is the AU's intention to develop a self-reliant system of regional collective security. The post-Cold War environment prevalent with intra-state conflicts motivated African leaders to seek a way to seize initiative over solutions to African crises like the Rwandan situation and to limit occurrences of external intervention in continental affairs while upholding the sovereignty and territorial integrity of member states (Aneme 2008:83). This intent was

³ Articles 3(a)-(c), (f) and Articles 4(a)-(c), (j)-(k), Articles 6,7, 14 and 15 of the PSC Protocol.

⁴ Article 4(j) of the PSC Protocol

effectively captured in the Preamble to the 2004 Solemn Declaration on a Common African Defence and Security Policy, paragraph 6:

‘Reaffirming our determination to endow the Union with the requisite capacity for decision-making in order to ensure effective political-military crisis management aimed at preserving peace and strengthening the security of the African continent in all aspects, including the elimination of conflicts’.

The third reason is the intervention experiences and new normative developments institutionalized by sub-regional organizations. As early as 1978, ECOWAS had already incorporated provisions for the collective use of force in the Protocol on Non-Aggression and in the 1981 Protocol Relating to the Mutual Assistance in Defence. In 1990 under ECOWAS Decision A/Dec.1/8/90, ECOWAS established the ECOWAS Cease-fire Monitoring Group (ECOMOG) and intervened in Liberia at the behest of President Samuel Doe. Intervening ECOWAS members justified the Liberian intervention as a humanitarian response to the predicament of foreign nationals in Liberia (Birikorang 2013:93). Criticisms of the legitimacy and legality of the Liberian intervention, which pitted the ECOMOG force against the National Patriotic Front of Liberia (NPFL) rebel movement, aggravated by the absence of a legal intervention framework, soon led to the adoption of the 1993 Revised ECOWAS Treaty which created decision-making structures such as the Authority of Heads of State and Government and also emphasized co-operation with the OAU.

In 1997, ECOWAS intervened in Sierra Leone to reverse the coup that had ousted President Tejan Kabbah. Between January and February 1998, what had begun as a peace-keeping deployment turned into a fighting force as the Nigerian-led ECOMOG force unseated the junta and re-instated President Kabbah (Aboagye 1999: 239). In 1999, ECOWAS adopted the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security which institutionalized structures and mechanisms for regional intervention in conflict situations, notably the Mediation and Security Council and the Executive Secretariat. In substantive terms, the 1999 ECOWAS Protocol signified crucial normative developments as seen in the creation of a sub-regional intervention framework mandated to deploy forces in the region for maintenance and restoration of peace, among other objectives (Birikorang 2013:98).

A second instance that showed the precedent set by sub-regional organizations was the highly controversial intervention by a South African-led Southern African Development Community (SADC) Task Force in Lesotho in September 1998. Although the Prime Minister of Lesotho had requested an intervention in the wake of the 1998 electoral dispute, the intervention had not been authorized by either SADC HSG or the UNSC (Likoti 1998:251). Article 11 (3c-d) of the 2001 SADC Protocol on Politics, Defence and Security Cooperation and Article 25 of the 1999 ECOWAS Protocol provide grounds for intervention similar to those in Article 4 (h) of the AU Constitutive Act (Aneme 2008:91,95).

According to Ekiyor (2007: 4), although the AU uses the phrase ‘right to intervene’ and not ‘responsibility to protect’, there are similarities between R2P and the AU’s collective right of intervention. The norms underpinning the AU’s peace and security regime are similar to R2P. Both R2P and the PSC Protocol uphold the sovereignty and territorial integrity of member states but emphasise the notion of sovereignty as responsibility. Also, in line with R2P, the AU maintains that military intervention should be a last resort after exhaustion of all non-military options (Powell 2005:12). Puley (2005:12) reiterates this noting that both the AU’s right to intervene and R2P put ‘the cardinal emphasis on the overriding importance of prevention’.

There are also differences between R2P and Article 4(h). The implementation of R2P is vested in the authority of the UNSC whereas the AU Act does not mention authorization by the UNSC. Article 4(h) is a treaty provision which is legally binding on member states while R2P is framed as a political commitment (Abiew 2014: 112). Moreover, R2P includes broader human protection implications than Article 4(h) which is often interpreted as applying to only reactive interventionism (Kuwali 2014b: 32).

Yusuf (2003:19) notes that the enshrinement of the right to intervene in the Constitutive Act of the AU can be seen as a paradigm shift with respect to ‘regional enforcement action’ under the UN Charter. Article 4(h) can also be seen as African states’ reconciliation between sovereignty-based values and human rights-based values. Additionally, the AU has been empowered to determine grounds for intervention and to subsequently undertake relevant action pursuant to authorization by the UNSC. Article 4(h) dons new meaning to the term ‘enforcement action’ and calls for a novel partnership between the UN and regional organizations.

On the question of the status of R2P within the AU, Article 4(h) has thus far never been invoked to sanction forceful intervention in a member state even in cases where the UNSC has cited existence of mass atrocity crimes such as in Libya and Côte d'Ivoire in 2011. Williams (2011a:5) contends that the reasons for the AU's dubious commitment to Article 4(h) could be linked to the power of the host state, the residual power of the norms of non-interference and anti-imperialism within the AU's norm hierarchy and the AU's lack of tenable military capacity for humanitarian intervention. Furthermore, as mentioned in Chapter 2, the status of R2P within the AU can also be elaborated by Acharya's theory of norm localization (Acharya 2004:251) whereby the norm of R2P is being adapted to fit into the context of the APSA. The essence of norm localization suggests that the AU has integrated some aspects of R2P while leaving out aspects considered contentious or incompatible, the result is an African interpretation of R2P (Edelmann 2009:2). For a norm localization process to be traced, one has to look to the existing normative structure or 'cognitive prior' and the actions of norm agents (Acharya 2009:21). In the case of the AU, the norm agents are the African heads of state and government while the OAU norm structure served as the basis of the security culture into which R2P was to be adapted to.

As discussed in Chapter 2, the security culture of the AU is made up of a number of norms such as the territorial integrity of member states; non-intervention; condemnation of unconstitutional changes of government; and the right of intervention in the case of grave circumstances among others. The right to intervene in the case of grave circumstances was the first novel norm incorporated into the security culture of the AU during the transformative process from the OAU (Williams 2007:256). As an emergent norm, Article 4(h) of the CA of the AU has been localized into the AU's security culture, going through the phases of pre-localization, local initiative, adaptation and amplification. Adaptation is the essence of the localization process in which the external norm is grafted to fit to the existing normative system. Adaptation is marked by the re-interpretation and subsequent institutionalization of the foreign norm. Given that one of the conditions for success of norm localization is the strength of prior local norms, non-intervention and territorial integrity of member states were the core of the OAU norm system. As such, grafting of a collective responsibility to intervene in a member state in grave circumstances necessitated a paradigm shift within the security culture of the AU (Melber 2006:5).

The institutionalization process of Article 4 (h) within the AU began with the adoption of the CA in 2000 given that it was the first formal AU document to enshrine the right of intervention. During the negotiations around the transformative process of the OAU to the AU, two dominant coalitions emerged led by South Africa and Libya respectively. The South African-led coalition emphasized the ‘humanitarian’ element of the APSA and ‘African solutions to African problems’ through the operationalization of Article 4 (h). In contrast, the Libyan-led coalition underscored the ‘intervention’ aspect of APSA with Gaddafi calling for a defence mechanism against neo-colonialism. Consequently, the Libyan bloc proposed amendment to Article 4(h) extending the right to intervene in *‘cases of unrest or external aggression in order to restore peace and stability to the Member of the Union’* (Baimu and Sturman 2003: 39).

In retrospect, Gaddafi’s imprint on the proposed amendments such as the launch of single army for Africa, an AU Chairman with presidential status and extension of the right of intervention in member states had been significant; given his vanguard role in the transition to the AU and the anti-imperialist tone of his campaign for a ‘United States of Africa’ (Maluwa 2004:215). The proposed amendment to Article 4 (h) had initially been tabled by the Libyan delegation during the inauguration of the AU in Durban in July 2002. This amendment was seen by some states as both precarious and untimely in the absence of an agreed AU mechanism for intervention. Other member states questioned the compatibility of the AU’s use of force with provisions in the UN Charter and within international law at large. The rejection of the initial proposal by the Permanent Representatives’ Committee and the Executive Council gave way to a watered-down version which read *‘as well as a serious threat to legitimate order to restore peace and stability in the Member State of the Union upon the recommendation of the Peace and Security Council.’* This proposal was then presented to the Assembly of AU Heads of State and Government in February 2003 where it was adopted. The acceptance of the amendment by the Assembly implied a critical change of mind that can be taken as an ‘expensive attempt to avoid conceding to controversial or regressive amendments to the Constitutive Act while keeping an influential and potentially troublesome member state inside the AU tent’ (Baimu and Sturman 2003: 39). Given the ouster of Gaddafi in 2011, accounting for the AU’s action in terms of an appeasement strategy is no longer feasible. Furthermore, at the time of writing, it has been more than a decade since the adoption of the amendment to article 4 (h) of the Constitutive Act by the AHSB. Since

2003, only 28 out of the 54 member states of the AU have deposited instruments of ratification which is still short of the two-thirds majority required for the amendment to enter into force. It is worth noting that one of the continent's pivotal states, Nigeria, is yet to ratify the amendment (AU 2014). Should the amendment enter into force upon meeting the two-thirds requirement, it will signify a regression on the AU's efforts to protect the rights of individuals particularly because of the overtones of regime security and survival present in the amendment (Baimu and Sturman 2003:44). Inasmuch as the Libyan proposition to include references to 'external aggression' and 'unrest' was rejected in both Tripoli and Lomé, the proposal stimulated a debate which led to the adoption of the 2004 *Solemn Declaration on a Common African Defence and Security Policy*.

According to Kabau (2012:77), the AU's legal structure and practice point to inconsistencies with Article 4(h) which may have led to the failure to implement it by the AU thus far. The AU conceptualizes intervention as a right. The implication of a right to intervention for humanitarian reasons is that it becomes increasingly difficult to secure the commitment of states on an issue at their discretion without the obligation to comply with it. A right-based approach emphasizes the say-so of the intervening states instead of the pressing needs of the population in target state.

On a similar note, Zähringer (2013:191) points out that it is unclear whether the AU conceptualizes the Protection of Civilians (PoC) and R2P as distinct norms. For instance, in the 2010 *Draft Guidelines for the Protection of Civilians in African Union Peace Support Missions*, PoC activities include 'activities undertaken to improve the security of the population and people at risk and to ensure the full respect for the rights of groups and the individual recognised under regional instruments...' (AU 2010: 5). The phrasing is very similar to the language of R2P. Furthermore, in terms of the 2011 Libyan intervention, the AU PSC roadmap (as will be discussed in Chapter 5) drew on the PoC in calling for the cessation of hostilities and the protection of civilians in line with the AU's application of PoC to conflict situations. Therefore, it can be argued that the AU embeds PoC within R2P as set out in the 2001 ICISS Report whereby it is taken as the full expression of R2P. The implication of this approach is that the AU focuses on the reactive component of R2P (Zähringer 2013:198). The AU's preference for mediation in resolving the 2011 Libyan crisis points to its negation of an R2P-type situation in

Libya and, by extension, absolved itself from the responsibility to intervene on behalf of the international community. Moreover, within the AU, the focus has been on PoC rather than R2P. AU treaties and mechanisms such as the CA, which outlines the responsibility to react, and the PSC Protocol which mentions prevention and rebuilding can stand as institutional affirmation of R2P (Zähringer 2013: 192). However, in practice, the AU has yet to invoke its right to intervene as per Article 4(h).

Similar to tenets of R2P, the APSA is also founded on a paradigm that highlights preventive diplomacy as crucial in tackling the peace and security challenges of Africa. Norm entrepreneurs among Africa's leaders have upheld preventive diplomacy as a key component of efforts aimed at sustainable peace, for both ethical and practical reasons. For instance, during 2011 South Africa's President Jacob Zuma asserted that preventive diplomacy efforts were more cost-effective than the deployment of peacekeepers upon the eruption of conflict. He emphasized the imperative that the 'efforts of both the African Union and the numerous sub-regional organizations across the continent working on preventive diplomacy be respected and supported by the UN and the international community as a whole' (Zuma 2011: 6). However, AU practice as seen in the decisions of the PSC in response to crises points to a lopsided focus on conflict management and resolution rather than conflict prevention. This is arguably due to lack of resources and also lack of political will, as will be investigated in Chapter Four when the case of Libya is addressed.

3.3.2. Operationalization of APSA: reality, challenges and future prospects

Having discussed the similarities and differences between R2P and Article 4(h), it is equally important to analyse the framework of the APSA in order to investigate the AU's institutionalization of, and commitment to, R2P.

APSA has both normative and institutional dimensions based on the AU's legal and policy framework such as the Constitutive Act, the PSC Protocol and the Common African Defence and Security Policy (CADSP). The normative aspect of APSA is underlined by two key concepts. The first concept is a reconfiguration of the principle of state sovereignty as seen in the

incorporation of Article 4 (h) within the CA of the AU. The second normative notion is the ascription to an interventionist peace and security regime contingent on a human security paradigm as in the CADSP. The CADSP provides a definition of security which ‘encompasses both the traditional, state-centric, notion of the survival of the state and its protection by military means from external aggression, as well as the non-military notion which is informed by the new international environment and the high incidence of intra-state conflict’ (AU 2004: paragraph 6). The CADSP acknowledges both interstate and intra-state security threats. The latter include grave circumstances; *coups d’état* and unconstitutional changes of government; flawed electoral processes; breaches to sanctity of human life; poverty and corruption (AU 2004: paragraph 8).

The PSC is the ‘standing decision-making organ for the prevention, management and resolution of conflicts’ (PSC Protocol 2002: Article 2). It is mandated to anticipate and prevent conflicts; promote peace, security and stability; implement the common defence policy of the AU; recommend intervention to the Assembly in the event of grave circumstances; promote democratic practices, good governance and respect human rights; and to take on peace-making and peace-building functions including deployment of peace support operations. The Council is composed of fifteen members elected on the basis of equal right; ten serve for a two-year term and five for a three-year term. As Aning and Atuobi (2009:98) observe, at least at a theoretical level, the mandate and powers of the PSC illustrate the institutionalization of R2P. According to Article 5 of the PSC Protocol, membership is determined by the principle of ‘equitable regional representation and rotation’ from the East, West, North, Southern and Central regions of the AU. Article 5 also lists criteria to evaluate potential PSC member states such as commitment to uphold the principles of the AU; contribution to the promotion and maintenance of peace and security in Africa; and respect for constitutional governance, the rule of law and human rights among others. In spite of the additional criteria, the current membership of the PSC (with states such as Zimbabwe, Equatorial Guinea, Egypt, Libya, Angola, Côte d’Ivoire and Gambia⁵) indicates that criteria such as respect for constitutional governance and the rule of law are subservient to the criterion of regional representation and rotation (Dersso 2013:8). Inasmuch as egalitarianism is a factor in determining PSC membership, not all PSC members hold equal clout

⁵ According to a Freedom House Report (2014), these states are classified as partly free and not free based on comparative assessment of global political rights and civil liberties.

in technical, military and economic terms. Some members who are at an advantage in terms of capital (examples are South Africa, Nigeria, and Ghana) exert more influence over the agenda and decisions (Dersso 2013:8).

The PSC's decision-making procedures are centred on consensus and majority voting in cases where consensus is untenable. The 2007 Dakar PSC Retreat, convened to review the working methods of the PSC, outlined four types of meetings: public meetings (for briefings and thematic discussions); closed meetings (which result in decisions communicated through communiqués or press statements); and informal consultations (discussions on draft proposals and briefings from the AU Commission) (PSC 2007:4).

The critical AU peace and security decision-making institutions related to the mandate of the APSA are the Assembly of Heads of State and Government; the AU Executive Council; the PSC and the Commission of the AU. Decisions with regard to intervention are made by the Assembly. As far as the relationship between the PSC and the AU Commission is concerned, Aning (2010:31) compares the PSC to a 'Board of Directors' of the AU, while the AU Commission is the 'Chief Executive Officer.' The 'CEO' implements the decisions of the PSC and is subordinate to it. The AU Commission supports the PSC by providing technical expertise, execution and evaluation of the PSC decisions as well as drafting the reports and communiqués of the PSC (Dersso 2013:13). Also of high importance is the PSC's relationship with the Regional Economic Communities (RECs) because operationalization of the APSA is dependent on regional cooperation (Vines 2013:104). Efforts have been underway to develop structures similar to the PSC within the RECs. For instance, within SADC the troika of the SADC Organ on Politics, Defence and Security is equivalent to the PSC at the regional level; and in ECOWAS, the Mediation and Security Council is the decision-making body (PSD 2010: 24).

Williams (2010:8) sets out a framework for evaluating the PSC based on categories of relevance, productivity and efficiency. These categories focus on the PSC's collective actions, content of official statements and communiqués and working methods. Relevance of the PSC can be assessed by analysing its mandate and proactivity in its pursuit of peace and security degree of inclusion of relevant issues and objectives. Productivity is assessed by examining the degree of inclusion of relevant thematic issues and objectives. The PSC's efficiency can be judged by

evaluating feasible and cost-effective implementation of objectives. Another crucial category has to do with the PSC's legitimacy in the multilateral context.

The relevance of the PSC is seen in Article 7 of the PSC Protocol which provides the mandate of the PSC as a key stakeholder in Africa's peace and security. For instance, Article 7 (a) empowers the PSC to 'anticipate and prevent disputes' and Article 7 (b) authorizes the PSC to undertake peace-making and peace-building functions in the resolution of conflicts. Relevance is also linked to image and perception of the PSC by other regional and international institutions. If there is a gap between the mandate of the PSC and implementation of said mandate, other actors are likely to take it lightly (Kingah and van Langenhove 2012:203). An analysis of the PSC's activities in 2012 showed that the PSC has been more of a 'fire-fighting mechanism' than a proactive actor in tackling structural causes of conflicts in member-states. For instance, none of the political trouble spots in southern Africa (Madagascar and Zimbabwe) and North Africa (Libya, Egypt) featured on the PSC agenda in 2012; with the bulk of meetings focusing on West Africa and the Sahel particularly on Mali and Guinea Bissau.⁶ According to Dersso (2013:84) the lop-sided focus on Mali could be attributed to the role played by ECOWAS in pushing for PSC engagement on the Mali crisis as a high-priority situation.

Productivity of the PSC is judged by examining the degree of inclusion of relevant thematic issues and objectives pertinent to peace and security. The agenda of issues handled by the PSC has been broad, ranging from traditional conflicts such as armed struggles and rebellions to non-traditional security threats such as terrorism and arms trafficking and governance-related issues such as electoral conflicts. In spite of challenges, the PSC has shown great resolve in fulfilling its pivotal role in collective peace and security decisions affecting the continent by ratifying crucial conventions such as the 2009 AU's *Non-Aggression and Common Defence Pact*, the 2009 *Pelindaba Treaty on the African Nuclear-Weapon-Free Zone* and the 2009 *Kampala Convention on Africa's Internally Displaced persons*, among others. Additionally, the PSC has increased engagement with its advisory institutions such as the Panel of the Wise, the Committee on Sanctions and the Military Staff Committee (MSC) which provide technical expertise and consultation on various peace and security issues (Williams 2010: 12).

⁶ 12 out of 40 PSC meetings in 2012 addressed the situations in Mali and Guinea Bissau.

The third category of assessment is efficiency, which entails feasible and cost-effective execution of stated objectives, and is thus inextricably linked to capacity. This brings up the matter of power struggles between the PSC and the AU Commission. The PSC is, theoretically, superior to the AU Commission as far as binding decisions on peace and security matters are concerned. The Peace and Security Directorate within the AU Commission initiates the decision-making process by asking the Conflict Management Division (CMD) of the AU to draft a report on an issue. The CMD then briefs the Commissioner for Peace and Security. It can thus be inferred that the AU Commission, especially the CMD and the Secretariat to the PSC, can implicitly influence the PSC agenda, given the fact that the former draft the issue papers for discussions and negotiations. At the level of the Commissioner, the draft report is discussed by officers of the CMD and PSC, translated to working languages of the AU and then forwarded to PSC members. Broadly speaking, the AU Commission has thus increasingly taken up an ‘agenda-setting’ role as opposed to that of implementer. The result is ‘an emerging duality’ in the PSC decision-making process which in turn casts a shadow on the overall effectiveness of the PSC’s output (Aning 2013:216-219).

The fourth category of assessment is legitimacy, determined by the partnerships between the PSC and the UN. On 16 November 2006, the *Ten-Year Capacity Building Programme for the AU* was signed, formalizing the dynamic and evolving partnership framework between the UN and the AU. Over the years, the UNSC has continued its relationship with the AU; both as an agenda item and in the content of resolutions covering thematic areas of common interest such as peace-keeping and the role of regional and sub-regional organizations in peace and security (SCR 2011:14). Moreover, the UNSC has also taken several decisions concerning AU-UN relations. For instance, in 2004 in Nairobi, the UNSC issued a presidential statement S/PRST/2044/44 on the *‘Institutional relationship with the AU’* calling for stronger links between the AU and the UN. Of special note is the emphasis on the international community’s support for peacekeeping efforts such as AMIS II and AMIB in Sudan and Burundi respectively. Article 7(k) of the PSC Protocol reiterates the need for ‘a strong partnership for peace and security between the AU and the UN.’ The partnership between the UN and the PSC has been stymied by divergent views on what such a partnership should entail in terms of type, nature and division of responsibilities as seen in the 2007 unilateral PSC sanction of peace-keeping mission

in Somalia (AMISOM) (Aning and Atuobi 2009:102). Nonetheless, there have also been successful UN-PSC initiatives such as the post-secession negotiations between Sudan and South Sudan. In April 2012, The PSC issued both a roadmap which included threat of sanctions and an implementation timeline (concluded on 27 September 2012). The UNSC adopted Resolution 2046 (May 2012) based on the PSC Roadmap (Dersso 2013: 45). The PSC has also developed formidable partnerships with the EU as a major financial donor and with NATO, which has lent logistical and technical support to AU operations (Williams 2010:18).

Overall, an examination of the PSC record since its inception in 2003 reveals both positive and negative results. In the case of Sudan, success was the outcome of a confluence of effective leadership, techno-political support from the UN and financial support from foreign donors. Failures, on the other hand, can be attributed to capacity constraints (for instance slow response to combatting the Lord's Resistance Army (LRA) in Uganda; lack of effective regional leadership (for example the delayed engagement on eastern DRC); and inconsistency in addressing emergent conflicts (Mali, Guinea Bissau) coupled with lack of follow-up as in the Madagascar crisis (Dersso 2013: 85).

A second key pillar of the APSA is the Continental Early Warning System (CEWS). Article 12 of the PSC Protocol provides for the creation of the CEWS to 'advise the PSC on potential threats to peace and security in Africa and recommend the best course of action. The CEWS consists of an observation and monitoring centre (known as the 'Situation Room') and the observation and monitoring units of the Regional Mechanisms for Conflict Prevention, Management and Resolution (RMs) directly linked to the Situation Room. The AU has adopted a comprehensive definition of early warning as 'the systematic collection and analysis of information coming from areas of crises for the purposes of (i) anticipating the escalation of violent conflict; (ii) development of strategic responses to these crises and; (iii) the presentation of options to critical actors (national, regional and international) for the purposes of decision-making and preventive action' (FEWER 1999:3).

The establishment of the CEWS corresponds with the first dimension of R2P namely, the responsibility to prevent. With the increase of intra-state crises in the post-Cold War era, there was a growing cognizance within the international community of the need for preventive

diplomacy particularly the ‘efforts at the low and incipient stages of a conflict’ (Lund 1994: 59). Given the debates around the methodologies and the production of early responses, the Conflict Management Division (CMD) of the AU resorted to a hybrid methodology of early warning that involves three phases (i) information collection and monitoring; (ii) conflict and cooperation analysis; and (iii) formulation of response options (CEWS Handbook 2008 : Appendixes). The three phases are ‘continuous, iterative and interactive’ (Wane *et al.* 2010:99).

Since the 2003 Maputo Summit when the Assembly directed the AU Commission to operationalize the CEWS, up and until 2010, several noteworthy developments are germane:

- 2006: adoption of the framework for the operationalization of the CEWS.
- compilation of a Strategic Conflict Assessment (SCA) methodology handbook to guide analysts dealing with collection and monitoring of information.
- Development of an IT-based infrastructure to aid in data collection and analysis. Software in use includes Africa Media Monitor, the CEWS portal, the Africa Reporter and Africa Prospectus.
- 2008: MoU between AU and RECs/RMs was signed to enhance coordination between CEWS and regional early warning mechanisms.
- 2008-2010: seven quarterly meetings were held between AU and RECs to improve coordination and partnership in operationalization of the CEWS at the regional and sub-regional levels.
- upgrade of the IT infrastructure in the Situation Room to increase efficiency.
- enhancement of the staff component of the CMD (Behabtu 2010:49).

In spite of the above developments, operationalization of the CEWS faces many challenges such as the paucity of human resources, particularly trained individuals. There are also technical challenges of reliable IT connectivity, trained support staff and clear protocol and procedures of data collection and processing. This is aggravated by discrepancies in the methodological approaches of the early warning systems of the various RMs. Another shortcoming is the lack of funding, resulting in a reliance on foreign donors that has proved unsustainable and unreliable. A fourth challenge is the ‘principal-agenda dilemma’ faced by the AU highlighting the tension between the political agenda of the AU and its normative undertakings. Early warning has been

perceived as intrusive by member states hence the AU has often resorted to privileging interests of member states over its CEWS. The final challenge to implementation of the CEWS is slow and complicated bureaucratic processes that hamper rapid decision-making. In light of these challenges, Behabtu (2010:54) advises that the AU should invest in human resources training to improve technical capability of existing staff. The successful operationalization of CEWS depends on clear definition of goals as set out by the AU Commission, financial sustainability and improved collaboration with the early warning systems of the RECs (PSD 2010:36).

The Panel of the Wise is the third pillar of the APSA; consisting of five distinguished African personalities. According to Article 11 of the PSC protocol, the mandate of the Panel is to advise the PSC and the Chairperson of the Commission on peace and security matters. In addition, the Panel can act independently on issues it deems as significant in the promotion of peace, security and stability. Murithi and Mwaura (2010: 79) point out that the mandate of the Panel prevents it from being weighed down by political constraints often faced by the PSC. However, they add that this independence is not sufficient if the members of the Panel are unwilling to execute its broad mandate in addressing conflict situations. The modalities of the Panel stipulate that members are elected for three years and may be reappointed for one extra term. The members may not hold active political office while serving on the Panel. In terms of its operation, the Panel engages in conflict prevention, management and resolution in several ways: it deliberates on a given conflict situation and makes recommendations to the PSC and the Chairperson; it selects up to three priority conflict situations each year that it will monitor (El Abdellaoui 2010:63); and it can engage in preventive diplomacy by establishing communication between the PSC and the Chairperson on the one end and the parties involved in a dispute on the other end. Such confidence-building missions have been undertaken to several countries, such as the Central African Republic where, in early 2007, the Panel conducted consultations with national stakeholders. It then compiled a report presented to (then) President Bozizé which recommended the convention of a national dialogue (Murithi & Mwaura 2010:88). The Panel also undertook visits to Zimbabwe and Kenya in the wake of political disputes (Williams 2011b: 166).

The thematic meetings of the Panel have focused on three areas: election-related conflicts; non-impunity; and justice and national reconciliation and women and children in armed conflicts in

Africa (PSD 2010:56). Importantly, the RECs have begun to replicate the Panel of the Wise by establishing structures such as the Council of the Wise in ECOWAS, the Committee of Elders in COMESA and the Mediation Support Unit of the IGAD among others (PSD 2010:54). Nevertheless, the Panel, like the other pillars of the APSA, is hampered by many drawbacks. For instance, it remains unclear at what stage of the prevention process the Panel is expected to intervene. The funding of the Panel's activities is through partner support which has proven sporadic; and there are issues of politicization given the fact that appointment of members of the Panel goes through the political organs of the AU (PSD 2010:57). All in all, the success of the Panel is contingent upon collaboration and buy-in from member states. As El Abdellaoui (2010:68) avers, limiting the 'culture of secrecy' would be beneficial to enhance the possibilities for collaboration.

The Peace Fund was also established as a key pillar of the APSA under Article 21 of the PSC Protocol. The purpose of the Peace Fund is to provide the necessary financial resources for peace support missions and operational activities linked to peace and security. Contributions include funds from the AU's regular budget, voluntary contributions from member states and other sources such as the private sector, civil society and the international community (PSD 2010:59). The EU specially created the African Peace Facility (APF) in 2004 as part of the AU-EU joint strategy, which has enabled the EU to contribute to peace missions. In this regard, until 2011, 100 million Euros were donated towards development of the APSA (Vorrath 2012:2). In practice, the Peace Fund has remained considerably underfunded and the over-reliance on foreign donors has turned out to be unsustainable and disempowering in the long run. African governments need to ensure that necessary funding is available within the Peace Fund, as Murithi (2012a:49) advises. This can be realized, for instance, by stipulating that all 54 member states of the AU allocate a portion of national defence budgets to the operationalization of APSA.

As part of the APSA, the AU also provided for the establishment of an African Standby Force (ASF) and a Military Staff Committee (MSC) in the 2003 *Policy Framework for the Establishment of the ASF and MSC*. The function of the ASF is to provide the AU with the deployment of peacekeeping forces and to conduct interventions adherent to Articles 4(h) of the

Constitutive Act and 4(j) of the PSC Protocol. Though not fully functional yet, the ASF is aimed at rapid deployment, preventive deployment; post-conflict disarmament, demobilization and reintegration; and humanitarian assistance. The ASF will be made up of five brigades from each of Africa's sub-regions: SADC Standby Force (SSF); ECCAS Standby Force (CSF); ECOWAS Standby Force (ESF); North African Regional Capability (NARC); and in East Africa the EASBRIGCOM. Lack of adequate funding coupled with lack of capacity at the AU level continues to impede the progress of operationalizing and consolidating the ASF (Cilliers & Pottgieter 2010:139). Hence Murithi's (2012a:47) caution that the ASF remains a work in progress. He observes that crucial logistical and infrastructural improvements and changes need to be implemented for the Force to be effective and fully functioning.

The MSC was established to advise and assist the PSC on military and security issues. It is composed of senior military officers/defence attachés (DAs) of the PSC member states. The MSC is mandated to convene prior to PSC meetings at the level of senior military officers. The MSC assists the PSC by preparing briefs on military aspects of peace support missions; by clarifying or reconsidering concepts of operations; and by undertaking field missions to conduct assessments and verifications of peace support operations. However, Lecoutre (2010:84) points out various crippling problems associated with the MSC: insufficient and irregular meetings, the absence of some DAs in meetings; lack of interpreters; lack of rules of procedure and the danger of politicization given the involvement of the MSC in the operations plans of the PSD. Therefore, it is safe to assume that the MSC will have a pivotal role to play once the ASF is completely operational (Lecoutre 2010:84).

Utilizing the framework proposed by Kingah and van Langenhove (2012:201), an assessment of the APSA as a peace and security regime ought to take into consideration three crucial factors: (i) the intention to play a role in peace and security; (ii) the degree of legitimacy; and (iii) the capacity to effectively perform as a peace and security actor. The AU's intention to play an integral role in peace and security matters on the continent is captured in Article 3 (f) of the AU Constitutive Act and the establishment of the PSC with the mandate to oversee peace and security issues such as deployment of peace-keeping troops and engagement in preventive diplomacy. Furthermore, there exists a group of leaders committed to continuous institutional

renewal and dynamism, as seen in Obasanjo with his African Leadership Forum and Mbeki's call for African Renaissance. More recently, Rwandan President Kagame argued for a more definitive role of the AU in proactively addressing mass atrocities in Africa, further arguing that the AU could have provided moral and political support for the 2011 UNSC-sanctioned Libyan intervention (Kagame 2011).

As far as legitimacy of the APSA is concerned, the AU-UN partnership in peace and security has been developing over the years, predicated on the UNSG's 1992 'An Agenda for Peace' and the 2000 Brahimi Report that emphasized the importance of cooperation between UN and regional organizations. AU-UN partnership has manifested in areas of common interest namely conflict prevention, peace-keeping operations, peace-building and the war against terrorism. In practice, this co-operation has been seen in initiatives such as the mechanisms for promotion of preventive diplomacy including the appointment of special representatives for conflict regions such as the Great Lakes region; management of conflict situations that feature on both UN and AU agendas; and in peace-keeping operations such as MONUC and UNAMID (Tehindrazanarivelo 2012: 388). In the context of R2P, the 2006 UNSG Report '*A Regional-Global Security Partnership: Challenges and Opportunities*' emphasized the centrality of UN-regional co-operation underpinned by a division labour in the implementation of R2P. It can be inferred that the UN, to an increasing extent, has been acknowledging the role of regional organizations in peace and security. On its part, the AU continues to emphasize complementarity in its partnership with the UN (Tehindrazanarivelo 2012: 405).

An evaluation of the capacity of the APSA reveals 'a prevailing and considerable gap between political ends and existing means' (Koerner and Gebrehiwot 2013:196). The shortcomings in capacity are in troop deployment to the ASF; the small number of member states contributing financially towards the APSA and the operational deficits in elements such as the ASF and the CEWS among others (Williams 2011a:166). The dependency on foreign donors for funds, coupled with the failure of institutional capacity growth in tandem with the emerging peace and security targets, has persistently hampered effectiveness of the APSA (Koerner and Gebrehiwot 2013:201).

Aning (2013: 212) points out another challenge to the APSA, namely the chasm between ‘state compliance’ and ‘regime requirements’. States such as Sudan, Ethiopia, Mauritania, Zimbabwe and Somalia have often strayed from compliance to PSC decisions. This weak compliance to PSC decisions and regional rules can be attributed to poor institutional memory among AU member states at the decision-making levels; varying momentum in states’ adaptation to rules; varying levels of understanding and a lack of consistency in state representation to the PSC (Aning 2013:213). These reasons behind poor compliance dovetail with Kingah and van Langenhove’s (2012:206) assertion that weak adherence to regional norms and rules is the result of the clashing self-interests of states and the ‘outside-in’ nature of membership to the AU which is loosely based on geo-political inclusivity.

Having discussed the APSA and its composite structures, it is imperative to provide a critical assessment of its strengths, challenges and prospects for the future. The AU has had an impressive record of making policy pronouncements with regard to its commitment to R2P but there remains an apparent gap between institutionalization and operationalization. Nonetheless, APSA has seen some level of progress given its existence for close to a decade. It has condemned unconstitutional changes of government in Guinea, Madagascar and the CAR. It has acted in conflict situations in Eritrea, Ethiopia, Guinea Bissau and the DRC. A notable contribution of the APSA is that it represents a normative space that has encouraged ‘inter-subjectively shared expectations about role behaviour or norms among AU member states’, as Aning (2008:9) puts it. Ruiz-Gimenez (2011) concurs with the normative dimension of APSA as a creation involving a wide range of actors, agendas and interests. She adds that the APSA also reflects a variety of ideas rather than just the agendas of powerful nations particularly because it is a product of negotiations and debates.

While the APSA stands as the hallmark of the AU’s rejuvenated peace and security agenda and embrace of non-indifference, it is not devoid of political, institutional and operational drawbacks. It is important to mention the debate on the ambiguity of Article 4(h) in terms of UNSC authorization for military intervention. This has raised concerns of conflict with Article 53 of the UN Charter (Omorogbe 2011:41). According to Geldenhuys (2012:62), peacekeeping operations have been the most visible aspect of the APSA given that, to date, Article 4(h) has never been

invoked by the AU. In spite of the AU's peacekeeping achievements, much of the credit goes to the UN which has taken charge of most operations in Africa, *inter alia* such as UNAMID, UNAMIS, MINURSO and MONURCO. The involvement of the UN as a partner of the AU points to the issue of the AU-UN relationship involving 'association' and 'collaboration.' Aning (2008:9) has asserted that there exist 'fundamental misconception, misunderstanding and misperception of what such partnerships entail and what should be the guiding principles of the relationship.' There needs to be a clear definition of the parameters of AU-UN partnership, covering issues such as division of responsibilities and coordination mechanisms (Aning 2008:9).

The lack of political will is another hurdle that frustrates the PSC's role in implementing R2P. Kabau (2012:60) makes the point that the AU has been ineffective in situations where 'robust enforcement action' was necessary as seen in the crises in Darfur and Libya; and has instead focused on situations that require 'peaceful and consensual' approaches as in the Comoros crisis. AU member states have continued to grasp onto the principle of non-interference based on a mutual protection of ruling elites over and above the protection of civilians. Furthermore, anti-imperialism is often cited as the reason for strong defence of the non-interference principle (Zounmenou *et al.* 2012:19). Part of the problem of political capacity to implement R2P by the AU is also seen in the recalcitrant relationship between African states and the ICC. In spite of the ICC's role in handling cases pertaining to commission of mass atrocities, and all those cases having been referred to the ICC by Africans, co-operation with the ICC has been a hotly debated issue among African leaders (Murithi 2012b: 5).

The second set of challenges faced by the APSA is of an institutional nature. The AU head office is marred with in-fighting between the Commission and member states. Furthermore, decision-making processes have not been transparent. Add to this, a fragmented institutional structure with weak leadership, poor management systems and lack of coordination mechanisms (Ayangafac & Cilliers 2011:135). A second institutional flaw is the lack of coordination between the AU and RECs. In addition to proliferation of RECs and the mismatch across various RECs, the lack of harmony between AU and RECs has been exacerbated by ambiguous division of labour, competition and disagreements over handling of conflict situations as was seen in the

2012 Mali crisis where the AU had to play catch-up to ECOWAS efforts to address the situation (Vines 2013: 104). There exists a functional overlap across institutions, mechanisms and organs of the APSA. For instance, there are duplications in the objectives of the CADSP and provisions in the PSC Protocol. It is also unclear what actions should be undertaken by the Chairpersons of the AU Union and the Commission in response to crises alongside the Panel of the Wise (Gueyou 2012:327).

Inextricably linked to political and institutional constraints are operational challenges. The first operational drawback is funding problems. As Ayangafac and Cilliers (2011:139) have contended, the AU's financial setbacks are not as a result of lack of funds, but rather from the AU's 'absorption capacity and the massive administrative burden that accompanies international assistance.' The AU has also tended to over-rely on external sources for funding which in the long run may be detrimental to the notion of African ownership of the peace and security central to APSA. Furthermore, operational capacity has been weakened due to shortages of equipment, training, transport and logistics in deployed field missions. The APSA also lacks the necessary human capacity for optimal operationalization as a result of high turnover, lack of training and slow recruitment process among other staffing issues (Ruiz-Gimenez 2011).

Ruiz-Gimenez (2011) makes a critical assertion that the APSA is highly dependent on the liberal peace complex agenda. The effect has been two-fold; in the first place, the Western donors to the APSA have tended to project their normative power on the peace-building agenda, resulting in an unbalanced relationship between AU and Western donor countries typical of the colonial era. In the second place, there has been a disproportionate focus on military solutions as opposed to early warning mechanisms, propping up the Panel of the Wise and supporting preventive diplomacy options. Consequently, there has been a securitization of peace-building which further feeds into the rebuilding of weak state orders rather than the consolidation of democracy or protection of civilians.

Inasmuch as the APSA is permeated with the notion of 'African solutions to African problems', the fundamental question of how 'Africanized' the APSA really is takes centre stage. Franke and Esmenjaud (2008:138) discuss the issue of Africanization of security, highlighting the external and internal limitations to the principle of African ownership. The rhetoric of 'African solutions

and African problems' has provided Western countries with a front for their own geo-strategic interests. Franke and Esmenjaud (2008:149) assert that the US, France, EU and the UN have realized the benefits of rallying behind Africa's emerging peace and security agenda. What stands out, according to them, is the nature of external engagement and the subsequent adverse impact on Africanization of security. There has been a Westernization of African security efforts leading to a contentious understanding of African security between Africans and non-Africans; with many African leaders continuing to prioritize regime security whilst non-African stakeholders have emphasized the new threats to security as a way of imposing their own normative agendas on the African security architecture. Also, the support of Western states such as the US and France to the notion of 'African solutions to African problems' has waxed and waned depending on whether the particular situation is in their interest or not. Another consideration is that the contributions of external parties to APSA have prioritized peacekeeping training rather than needs like military equipment thereby limiting sustainability of international support (Franke and Esmenjaud 2008:149).

Internal limitations include lack of political and financial commitment to the ideals of Africanization and African ownership; self-interested motives of support for Africanization and the on-going process of Africa's self-emancipation. The burden of Africanization rests on a few countries such as Nigeria, Rwanda, South Africa, Ethiopia, Kenya and Uganda for financial and troop contributions. In certain cases, the support for the Africanization process is a pretext used by states for using military equipment gained to bolster their own authoritarian regimes. Lastly, there exists division and rivalries among African states along lines such as the Anglophone versus Francophone power plays that hamper efforts aimed at Africanization of the APSA (Franke and Esmenjaud 2008:153). The bottom line is that given these limitations, African ownership in the area of peace and security will continue to remain nothing more than a rhetorical mantra.

APSA has the structures and processes to address the peace and security challenges of the continent. However, for the APSA to realize its full potential, there needs to be a significant boost on its capacities. Enhancing the capacity of the APSA not only implies technical improvements and recalibrations, but also a political dimension, in the sense that political will

needs to be mobilized at the African level (Ayangafac & Cilliers 2011:143). At the international level, the international community should be encouraged to support APSA in implementing R2P by addressing constraints wherever possible (Chitima 2010:192). The AU itself should be at the forefront in strengthening the institutional framework of APSA through initiatives such as ‘prevention plus’ while assisting member states to develop institutions dealing with human rights violations so that they do not escalate to mass atrocities (Geldenhuys 2012:65). Finally, apart from the role of political leadership, African citizens should be encouraged to hold their governments accountable for the norms that they claim to promote (Murithi 2012a:51).

3.4. Conclusion

This chapter set out to provide a detailed analysis of the linkage between R2P and the AU. The initiatives and processes that informed the transformation of the OAU to the AU including a commitment to a policy of non-indifference, emphasis on African solutions to African problems and the need for a rewired peace and security regime to address the security challenges were noted as crucial aspects of the normative framework of the AU. The codification of a right to intervene in article 4(h) of the Constitutive Act and the adoption of the 2005 Ezulwini Consensus were also highlighted as evidence of the AU’s affirmation of R2P. The *raison d’être* of Article 4(h) in the AU CA and its comparison to R2P were explored as a backgrounder to understanding the status of R2P in the AU. The comparison and contrast between Article 4(h) and R2P revealed that in spite of the difference in wording, Article 4(h) is mostly in tandem with R2P. The amendment to Article 4(h) in February 2003 which extends the grounds for intervention to include situations that are seen as ‘a threat to the legitimate order’ (yet to be ratified by two-thirds of AU member states) was cast as potentially detrimental to the AU’s human security agenda given the possibility of its abuse by authoritarian regimes.

A recap of norm dynamics (as explored in Chapter 2) underscored the utility of constitutive localization with respect to understanding the status of R2P in the AU. Within the AU, a continued prioritization of primary state responsibility over collective responsibility; the embedding of PoC within R2P and over-emphasis on PoC were seen as reasons for the non-invocation of Article 4(h) by the AU to date. Furthermore, the incorporation of Article 4(h) into

the CA of the AU can be seen as the product of minimal consensus, which is the essence of continental politics. African contributions to UN debates on R2P as well as the Ezulwini Consensus also stand as indications of the prevalence of norm contestation between sovereignty as responsibility vs. sovereignty as possession.

The APSA, a means for the AU to realize its mandate with respect to the responsibility to protect, was examined given the inclusion of the AU's right to intervene in the APSA's legal founding documents: the Constitutive Act and the 2002 Protocol Relating to the Establishment of the Peace and Security Council. The composite structures and the working methods of the APSA were discussed in view of their correspondence to the responsibilities to prevent, react and rebuild. The APSA was assessed based on the criteria of its intention to play a role in peace and security; its degree of legitimacy; and its capacity to effectively perform as a peace and security actor. Furthermore, a balance sheet of the APSA's strengths and weaknesses revealed a considerable gap between policy and operationalization in the decade after its creation. Recommendations on the way forward were outlined, key of which is the mobilization of political will of AU member states in addition to technical enhancements of the institutional and operational capacities of the APSA.

Overall, the chapter showed that the APSA is a work in progress and the ultimate functioning of its components holds much promise in conflict prevention, management and resolution on the continent. One of the biggest drawbacks of the operationalization of the APSA is the continued prioritization of regime security over human security and the self-interested motives of some AU member states in holding on to the doctrine of non-interference. The subsequent Chapters highlight both the AU and international community response to the 2011 UNSC-sanctioned intervention in Libya, in the light of the AU's alleged inability and/or unwillingness to invoke Article 4(h).

CHAPTER 4: THE UPRISING IN LIBYA AND THE INTERNATIONAL RESPONSE TO THE CRISIS.

4.1. Introduction

The 2011 NATO-led intervention in Libya marked the first time that the UNSC had authorized military intervention for protection of civilians against the consent of a functioning target state. The Libyan uprising had its roots in a country marred by authoritarianism, brutal repression and revolutionary ideology under the 42-year regime of Gaddafi. Nonetheless, the dynamics at play under Gaddafi's rule also find resonance in an earlier time, before the *coup d'état* that brought him to power. This chapter will therefore commence with examination of the recent history of Libya in order to understand the underlying causes of crisis in the country, and then proceed to situate these root causes within the wider 'Arab Spring' that arguably triggered the uprising in Libya.

This historical and geopolitical contextualisation will facilitate analysis of the international response to the crisis, in terms of R2P-guided action. The diplomatic engagements between key international actors namely the UNSC, the Arab League and the AU will be explored in gauging the applicability of R2P to the adoption and implementation of UNSC Resolution 1973. As concerns the diplomatic position of the AU, its manifestation at the continental level will only be discussed in brief, as a more detailed analysis of the AU's handling of the crisis will follow in Chapter 5.

4.2. Background to the crisis: a brief political history of Libya

Any analysis of Libya's history must begin with reference to a dominant theme that has had lingering effects on modern Libya, namely the tension between traditional ties and the modern state that threatened the centrality of tribe and family in the country's historical narrative (Vandewalle 2006:3). Of further importance, as Vandewalle (2006:5) points out, is the incomplete nature of state-building in Libya – the result of a confluence of factors that resonate throughout Libya's history: a reluctant monarchy; the legacy of the Italian colonial period; the discovery of oil and subsequent impact on the economy; the political exclusion of certain regions

within Libya; the centrality of tribe and family and the role of ideology in pursuit of ‘statelessness’.

4.2.1. Libya, pre-Gaddafi

Libya’s geography played an important role in divisions among its population and subsequent political exclusion of certain groups. Historically, the territory of Libya comprised of three main regions: Tripolitania in the west, Cyrenaica in the east and Fezzan in the south. Though these regions were politically unified in 1951, tribal diversities and geographical characteristics continued to keep them apart. For instance, Tripolitania and Cyrenaica are separated by a 483 km desert stretch, causing surface travel between these regions to take weeks or months and thus further hampering interaction across regions (Vandewalle 2006:15). Lack of integration was also exacerbated by tribal differences between east and west. Cyrenaica retained structures created by the Sanusi brotherhood, Tripolitania’s culture leaned towards the Maghreb region while Fezzan was largely semi-nomadic (Vandewalle 2006:15). Bell and Witter (2011a: 15) point out that the strength of rebellion in Cyrenaica as opposed to the loyalty to the regime in Tripolitania and Fezzan during the 2011 Libyan uprising can be traced to the political history since the colonial period. The Ottoman Empire occupied Cyrenaica in 1517 but Tripolitania and Fezzan resisted until 1842 when they fell to the second Ottoman occupation. Meanwhile, from Cyrenaica there emerged the Sanusiyya, a revival Islamic movement that emphasized puritan and orthodox aspects of Islam. The Sanusi became the *de facto* political authority in Cyrenaican hinterland under the Sanusiyya founder, Sayyid Muhammad bin Ali al-Sanusi (Joffé 1988: 617).

During the expansion of European imperialism in the early 20th century, the Sanusi were at the forefront of resistance against Italian invasion first in 1912 and again in 1923 upon Italy’s re-attempt to capture Cyrenaica, Tripolitania and Fezzan as part of Italy’s ‘Fourth Shore’ (Ahmida 2009: 134). In 1951, the United Kingdom of Libya gained independence under King Idris al-Sanusi, who had developed strategic relations with Britain since Libya’s trusteeship under the Allies, with identities deeply rooted in family, tribal and regional affiliations (Vandewalle 2006:42).

From the outset, King Idris had expressed his reluctance to rule the three provinces but accepted leadership out of patriotic duty. While vesting a significant amount of power in the king, the country adopted a federal system of governance, with two capitals in Benghazi and Tripoli respectively, and a delineation between provincial and federal governments (Vandewalle 2006:48). The discovery of oil in 1959 forever changed the course of Libya's history. European markets were driven by rapid industrialization and Libyan oil had distinct advantages: its quality (light and low in sulphur) and the oil fields' proximity to Europe. Oil trade with Libya was made even more attractive by the 1955 Libyan petroleum law that offered mutually beneficial conditions (Vandewalle 2006:54). The impact of oil on the political landscape of Libya was seen in the change from a federal to a unitary system in 1963, in an attempt to ensure equitable distribution of oil revenues through the creation of centralised bureaucratic and administrative institutions. However, the unitary system came with a new set of challenges that sowed the seeds of the 1969 revolution. The decision-making power of the centralized political system was concentrated in the hands of Cyrenaican elites; the bureaucracy's capacity to regulate the Libyan economy continued to diminish and there was increased corruption as a result of patronage and cronyism along tribal lines. Therefore, the 1969 revolution that overthrew the Sanusi monarchy came not unexpectedly. As Khadduri (1963, cited in Vandewalle 2006:71) observes: 'Libya's political system after the abandonment of the federal formula in 1963 remained characterized by intrigue, by personal, family and royal *diwan* politics, and by a growing inability to control the extensive corruption that existed leading to what one sympathetic observer euphemistically called "a deterioration in administration" .

4.2.2. Libya under Colonel Muammar al-Gaddafi

Muammar Gaddafi led the 1969 coup executed by the Free Officers Movement which overthrew King Idris, effectively ending the Libyan monarchy. Gaddafi then began to institute a regime characterized by a dominant ideological agenda, premised on the *Third International Theory* detailed in his 'Green Book'. This book, which first emerged in 1975, comprised of Gaddafi's plan of action for the social, political and economic transformation of Libya. The new state would be known as the *Jamahiriya* ('state of the masses') and its governance would be based on

consultation with the masses rather than on political representation. The three volumes of the Green Book reiterated the trilogy of statelessness, Nasserist nationalism and abhorrence for bureaucratic structures (Vandewalle 2012:101). Politically, the Green Book emphasized the citizen's participation in people's congresses and committees while economically; the Libyan economy was to run on equal division of wealth and abolition of wage labour. In the social sphere, family was prioritized over the state. The stated overarching aim was to ensure political power was in the hands of the people (Paoletti 2011: 315). Gaddafi cited *inter alia* the negative legacy of Italian colonialism to justify his ideologies in the Green Book, and advocated the pursuit of Arab nationalism to counter the (as he alleged) enduring imperialism of the West. Another aspect of Gaddafi's quest for legitimacy emphasized the tribal affiliation of the young revolutionaries who belonged to tribes that had been marginalized by the monarchy. The final element of legitimacy were the patronage networks that formed around booming oil revenues, arguably as a result of the economic directives of the Green Book which realized large-scale distribution of land to farmers, housing subsidies and issuance of tenders to local Libyan entrepreneurs (Vandewalle 2012:88). As far as Islam was concerned, under Gaddafi's regime there was an alleged return to 'true Islam' that involved rejection of Islam as preached by the Sanusi (Anderson 1986 cited in Paoletti 2011: 315).

One of the key pillars of the Gaddafi regime was the revolutionary committees established in 1977, which differentiated 'popular' authority as in the Basic People's Congresses (BPCs) from 'revolutionary' authority. The essence of popular authority was seen in the popular congresses and committees, headed by the General People's Congress (GPC) and the General People's Committee which constituted the legislative and executive institutions of the Jamahiriya (Vandewalle 2012:118). The revolutionary committees consisted of individuals, completely loyal to Gaddafi and responsible for mobilization and indoctrination. Gaddafi declared that the main function of the revolutionary committees was to 'consolidate the revolution' thereby separating those in power from those 'guiding the revolution' (Vandewalle 2012:119). The paramilitary wing of the revolutionary committees, known as the Revolutionary Guard Corps (RGC), enabled the committees to act collectively as the security apparatus of the regime.

In order to further strengthen his regime, Gaddafi sought to suppress any form of opposition using the ideologies in the Green Book. Under Law 71 of 1972, any person engaging in activity against the directives of the revolution was liable for execution on the basis of treason. Moreover, under the *Jamahiriyah* system, a state of depoliticization emerged whereby Libyans became complacent with the role of the state as the main economic provider and a political system that was seemingly impossible to reform. The ban on dissent and the creation of revolutionary committees led to a persistent dynamic in Libyan politics up until the uprising in 2011. As Vandewalle (2012:117) puts it, ‘the persistence of a formal structure of government centred around the popular congresses and committees and an informal structure of power and authority based on patronage networks and tribal affiliations’. These informal power networks were kept in power by the intelligence units and paramilitary wings.

To ensure his survival, Gaddafi also made use of overlapping power structures namely his own family, his regime’s inner circle, tribal affiliations, and the political configuration of the state of the masses. Gaddafi’s inner circle, also known as *Rijal al-Khaimah* (‘the men of the tent’) was made up of family members as well as key members of Gaddafi’s tribe, that is, the Qadadfa tribe. The inner circle also comprised of loyal individuals who had been part of the original Revolutionary Command Council including Mustafa Kharroubi, Abu Bakr Yunis and Khalifa Khanesh among others (ICG 2011:10). Libya is estimated to have close to 140 tribes, however only 30 are said to have significant political influence. Gaddafi relied on his own Qadadfa tribe for support alongside allies such as the Warfalla (the largest tribe in Libya) and the Magarha in Fezzan region of Libya. Most members of paramilitary forces emerged from the loyal tribes in Tripolitania and Fezzan (Bell & Witter 2011a:13). The centrality of the tribe in political dynamics was seen in political processes such as the nomination system which benefited loyalist tribes (Al-Obeidi 2010, as cited in ICG 2011:11). Gaddafi’s family played an integral role in maintenance of political authority. Saif al-Islam, Gaddafi’s second oldest son, often played a dominant role in publicizing rehabilitation and reform initiatives of the 1990s. Weakening the army was another strategy employed by Gaddafi, going to great lengths to keep the army relatively small, under-trained and ill-equipped so it could not effectively stage a coup (Cordesman and Nerguizan 2010: 56). Given the economic boom as a result of oil revenues in the immediate aftermath of the revolution, Gaddafi established patronage networks among tribes

and the elite, resulting in a welfare system to distribute benefits to families as leverage for political loyalty (ICG 2011:14).

The Arab nationalist leanings in Gaddafi's ideology pre-disposed him to an activist and revolutionary foreign policy that was determinedly anti-West. In the 1970s and 1980s, he supported various insurgencies, *inter alia* in Angola, Niger, Guinea-Bissau, Mozambique, Ireland, Namibia, South Africa, Cape Verde and Algeria. The epitome of Gaddafi's military adventurism particularly in sub-Saharan Africa was the 1973 Libyan army annexation of the Aouzou Strip on the Chadian border. Gaddafi also funded various Sudanese militia groups such as the Justice and Equality Movement (JEM) in Darfur (De Waal 2013a: 366). A large part of Gaddafi's notoriety in the global arena stemmed from his tumultuous relationship with the US. Confrontation between the US and Libya reached new heights under the Reagan Administration with termination of diplomatic relations in 1981 and a US ban on Libyan oil imports in 1982 (Chorin 2012:44). As Gaddafi mounted his efforts in forging a totalitarian state by brutally eliminating opponents both at home and abroad, Libya's recourse to terrorism also increased in altercations with the West; particularly after the 1986 US bombing of Tripoli and Benghazi. Consequently, the 1988 bombing of Pan Am flight 103 over Lockerbie in Scotland and the 1989 bombing of French airline UTA 772 set the path to imposition of sanctions on Libya (Vandewalle 2012:168). These lasted from April 1992 to April 1999, when Libya complied with demands of the UNSC by handing over the suspects involved in the bombing for trial in the Netherlands.

Declining oil prices and worsening living conditions in Libya during the 1990s led to a growing cry for reform from the youth. The announcement by Gaddafi in 2003 that he would give up Libya's WMD opened the way for the country's international rehabilitation. Saif al-Islam al-Gaddafi took a leading role in publicizing domestic reforms to an international audience. The Libyan government increased salaries of government employees, several companies in the financial and telecommunication sectors became privatized and free economic zones were declared (Vandewalle 2012:190). At the political level, reforms allowed for the establishment of semi-independent media and human rights organizations. In spite of an emerging reformist current, Libyans were still compelled to adhere to ideologies of the Green Book and Gaddafi's

personal, often eccentric, wishes. At best, the reforms were piecemeal and ineffectual in view of the *Jamahiriya* system - centralized control over economic wealth, informal power networks dominated by patronage and highly personalized political authority that sealed off any fundamental reform (Vandewalle 2012:190).

From the discussion above, it is apparent that the seeds of the 2011 uprising in Libya lay in the socio-economic and political configuration of the country's history, shaped by the persistent dynamics of ideology, tribes and oil that collectively fostered a 'statelessness' and eventually led to an environment ripe for uprising.

4.3. The 2011 Libyan uprising

Literature on the 2011 Libyan uprising generally depicts it as part of the wider 'Arab Spring' – the mass civilian demonstrations and protests that began in Tunisia in December 2010 and soon spread to Egypt, Syria, Yemen and Bahrain. There were some similarities in the grievances and challenges faced by citizens of these countries, including high rates of unemployment, scarcity of housing, rising food prices, oppression under authoritarian governments and corruption, among other issues. However, there were also distinct differences among the states involved in what is known as the Arab awakening. The latter concept encompasses a large spectrum of phenomena, and analysis of the distinct socio-economic legacies and dynamics in the various countries that formed part of the Arab Spring would be imperative to further understanding of the trajectory and end result of each of the different uprisings.

In many ways Libya was an exceptional case. Given its massive hydrocarbon reserves and possession of the largest oil reserves in Africa, it was a relatively wealthy state compared to Egypt, Syria and Tunisia. Unlike in Egypt where political parties, trade unions and other civil society institutions existed prior to the revolution, in Libya the notion of civil society was rudimentary, at most. Moreover, Libya's Muslim identity is homogenous (Sunni) unlike Egypt (Muslim Brotherhood, Salafists) and Tunisia (Ennahda, Al Qaeda in the Islamic Maghreb) (St John 2012:1). The Libyan uprising began with armed rebels in the eastern provinces (an indictment on the tribal rivalries in existence for years) and spread to other cities. In contrast,

Tunisia's revolution spread from the rural areas to the capital led by the labour movement, and Egypt's revolution was the brainchild of urban youth (Anderson 2011:1). Finally, it is only in Libya where the uprisings morphed into civil war and resulted in intervention by the international community (Guttentag 2012: 2).

The dynamics at play in Libya's uprising point to its structure as an 'inclusionary' state, that is, states which 'thrive on populism, perpetuating and then relying on a myth of popular participation in order to survive' (Kamrava 1998: 65). According to Kamrava (1998:71), when inclusionary states are rocked by an economic or legitimacy crisis, the resolution is often repression rather than liberalisation. The reason for the resort to violence is the prevalence of authoritarianism, diametrically opposed to populist movements. As seen in Libya, in the institutional structure of inclusionary states, the state is equated with the leader. Gaddafi's personality stretched across all political and military institutions whereby he was seen as continuously engaging in revolutionary exercises to feed into populist currents of the masses. Closely linked to the centrality of the leader's traits is the leader's cult of personality manifested by a charismatic authority. The masses are rallied around the political project in the name of the leader as was the case in the Jamahiriya system in Libya (Kamrava 1998:73).

Cultural manipulation is also widely used in inclusionary states whereby the state uses cultural symbols and ideals to promote and protect the revolutionary project in question. The manipulation of culture is conducted through ideological 'brainwashing' and the transformation of the individual's identity into oneness with the novel society (Kamrava 1998:19). Vandewalle (2012:85) attests to this indoctrination when he notes:

'From the opening speeches of the revolutionary regime in September 1969, it was clear that a strong ideological agenda, deeply infused with a number of traditional, historical, cultural and symbolic references that resonated within Libya's history, would become part and parcel for the leader's quest for legitimacy'.

The Libyan revolution's escalation into civil war can thus be attributed to its character as an inclusionary state. Gaddafi had groups sympathetic to him among the Libyan population, a

pointer to the extensive effect of the leader's networks of patronage and tribal affiliations. The support base in Tripoli and among the Warfallah, Tarhūna, al-Aṣābiah and Gaddafi's own Qadadfa tribe resulted in the breakdown of social cohesion and relative national cohesion; unlike in Tunisia and Egypt where the rest of the uprising stemmed from shared widespread sentiments and national unity (El-Din Haseeb 2012:188).

The Libyan uprising erupted in Benghazi on 15 February 2011 after the arrest of Fathi Tarbil, a human rights lawyer, and the protests soon spread to the eastern region of Libya. The protesters met lethal resistance from security forces, resulting in a death toll of 150 during the first three days. Nonetheless, the rebel movement soon spread to Cyrenaica, against the background of defections by several Libyan diplomats and top civil servants, such as Abdel Fattah Younis, the Libyan interior defence minister.

4.4. International Response to the Libyan uprising

As the situation on the ground worsened, international condemnation of the Gaddafi regime escalated. The UN Human Rights Council suspended Libya's membership on 25 February 2011, with UN High Commissioner for Human Rights Navi Pillay pointing out the widespread and systematic violence while urging the UNSC to take necessary action to halt the bloodshed (UN News Centre 2011). On 26 February 2011, in response to growing reports of violent crackdown on protesters, the UNSC imposed sanctions on the Gaddafi regime, by means of UNSC Resolution 1970 (Bell & Witter 2011b:15). The sanctions on Gaddafi and his affiliates included an arms embargo and travel bans. The UNSC also referred Libya to the ICC for an investigation into crimes against humanity, in view of the violence used against civilians (UNSC 2011a). On 28 February 2011, the EU followed suit and imposed sanctions on Libya. Aid agencies on the ground indicated that the country was in the throes of a humanitarian crisis. By the end of February, the death toll had reached 1000, medical and food supplies were growing thin and over 200,000 migrant workers had fled Libya to Tunisia, Egypt and Niger. Humanitarian agencies like the Red Crescent and countries like Turkey and the UK set up aid plans for Libya as the situation approached emergency status (Al Jazeera 2011a).

By early March, Gaddafi's forces had seized control of the oil crescent towns of Ras Lanuf, Brega and Zawiya. These cities were of strategic importance as they were epicentres of oil supply and were close to the rebel stronghold of Benghazi (Chorin 2012: 206). On 5 March 2011, the Libyan rebels announced the formation of the National Transitional Council (NTC). It consisted of former regime officials and Libyan expatriates, and positioned itself as the main representative of the Libyan people. The authority of the NTC was bolstered when several states (first France, followed by the UK and Qatar) moved to recognize it as the legitimate government of Libya. The NTC leaders immediately called for international military aid with Mustafa Abdel Jalil (Chairman of the NTC) cautioning that if Gaddafi's forces were to gain control of Benghazi, the result would be the death of half a million people (McGreal 2011). Confirming the regime's intentions, on 16 March Saif al-Islam stated: 'the military operations are finished. In 48 hours everything will be over. Our forces are close to Benghazi'. On the same day, UN Secretary-General Ban Ki-Moon called for a ceasefire as the UNSC considered a new resolution to intervene. Saif al-Islam dismissed the UNSC's imminent response by declaring: 'it will be too late' (Al Jazeera 2011b). The following day, on 17 March 2011, the UNSC passed Resolution 1973 sanctioning a no-fly zone over Libya and the use of 'all necessary means to protect civilians and civilian populated areas under threat of attack' (UNSC 2011b).

As Gaddafi's forces moved into Benghazi, the coalition forces began air strikes on 19 March 2011 targeting the Libyan air defence network, various military setups and crippling the loyalist ground onslaught on Benghazi.⁷ NATO took control of military operations on 31 March 2011, under *Operation Unified Protector* in order to transfer control from US command to formal NATO command as per the discussions between US Secretary of State Hillary Clinton and her counterparts from Britain, France and Turkey (Branigin *et al* 2011). Gaddafi's forces bolstered their resistance, shelling cities and laying siege on towns such as Zawiya and Misurata (Lewis 2011). The siege on Misurata was particularly disastrous: it lasted two months and sealed off humanitarian access while the population was subjected to indiscriminate use of cluster munitions and anti-personnel mines powered by GRAD rockets which are fired from a launch

⁷ US Operations were under *Operation Odyssey Dawn*; the French element was *Operation Harmattan*, British operation was *ELLAMY* and Canadian operation was *Operation Mobile* (see Vira & Cordesman 2011: 11).

vehicle at high frequency⁸ (HRW 2012). After a bloody encounter, on 11 May rebel forces with NATO air cover successfully captured Misurata (BBC News 2011a).

By June 2011 Gaddafi's opposition came from the west from Misurata towards Ziltan, Zawiya and Tripoli; and from Adjabiya towards Brega, Ras Lanuf and Sirte. The battle for Sirte would be particularly daunting for opposition forces mainly because it was Gaddafi's hometown and housed a significant portion of pro-Gaddafi forces. Between the fall of Tripoli in August and Sirte in October, there was sustained fighting between the rebels and loyalist forces, augmented by regime towns affiliated to Gaddafi by tribal loyalty (HRW 2012). On 20 October 2011, NTC forces captured Gaddafi and his son Muattasim, with last public images showing a beaten Gaddafi with a bullet hole in his forehead (Chorin 2012:257). The NTC later said it would launch an investigation into the circumstances of Gaddafi's death (HRW 2012).

4.5. Rationale for, and critique of, the International Response to the Libyan uprising

The analysis that follows focuses on the diplomatic build-up to adoption of UNSC Resolution 1973 and the debate for intervention among the key international stakeholders. The rationale for intervention is provided, as is the critique thereof, and the intervention is viewed through the lenses of the six ICISS-stipulated criteria for intervention. This is important given portrayal of UNSC Resolution 1973 as implementation of pillar three of R2P. Finally, the contentious issue of NATO's role in the intervention, amidst allegations of mandate creep, will be examined.

4.5.1. Build-up to the UNSC Resolution 1973

The international community was quick to condemn Gaddafi's crackdown of protesters shortly after the protests commenced in February 2011. On 25 February, the Human Rights Council condemned the 'gross and systematic violence in Libya' and urged the international community to uphold their responsibility to protect the Libyan people from mass atrocities (UN News Centre 2011). And, as alluded to earlier, on 26 February 2011 the UNSC adopted S/RES/1970 which

⁸ The BM-21 Grad rocket system entails a truck-mounted 122 mm multiple rocket launcher (Military Today 2014).

imposed a series of sanctions on the regime of Gaddafi. In the resolution, the UNSC also referred the situation in Libya to the ICC, granting the court jurisdiction over crimes against humanity and war crimes committed as from 15 February 2011.

In an unprecedented regional initiative, Arab organizations from 18 countries called for protection of civilians and implementation of a no-fly zone over Libya. In an open letter to global leaders on 25 February 2011, an appeal was made for ‘immediate contingency plans for international intervention, under regional Arab leadership, to provide protection for civilians on the ground and to enable the rapid imposition of a UN-mandated no-fly zone over Libya should such steps be necessary to protect civilians from further atrocities’ (Rogin 2011). On the African continent, the AU PSC held a meeting on 23 February 2011 and issued a communiqué in which it strongly condemned ‘the indiscriminate and excessive use of force and lethal weapons against peaceful protesters, in violation of human rights’ (PSC 2011a). The AU PSC also decided to dispatch a mission to Libya to assess the situation on the ground; which it never did. This slow and uncoordinated response of the AU, coupled with dissent on how to address the situation in Libya, set the basis for subsequent marginalization by the UNSC’s P3 (US, UK and France), who took the lead in the intervention (Kasaija 2012:147). A critical analysis of the AU handling of the Libyan crisis, which shall be covered in detail in the next chapter, will explore the diplomatic marginalization of the AU in spite of its pivotal international legal authority *vis-à-vis* humanitarian crises in Africa.

In the light of the fast developing escalation of the crisis, and explicit threats by the Libyan regime against its own population, leaders in the US, UK and France faced domestic pressure to intervene in the crisis. On 25 February 2011, French President Sarkozy made the first step in calling for Gaddafi’s ouster stating that the French position was ‘Gaddafi must go’ (Shahine *et al* 2011). Following Sarkozy’s hawkish stance, discussions began in earnest among Sarkozy, US President Obama, UK Prime Minister Cameron, German Chancellor Merkel, Italian Prime Minister Berlusconi and Turkish Prime Minister Tayyip Erdogan, to align their range of policy responses towards Libya (Fraser 2011).

On 28 February 2011, Hillary Clinton confirmed that there was ‘active consideration’ of a no-fly zone over Libya, a point that was reiterated by David Cameron who said his defence staff was

looking into the feasibility of a no-fly zone (Dombey 2011). As the debate over intervention progressed, Obama re-emphasized on 7 March 2011 that the US was in negotiations with NATO allies about the full range of military operations in Libya (O'Brien & Sinclair 2011:9). The US and its allies were reluctant to undertake intervention without the firm backing of Arab states, authorization from the UNSC and operationalization under the NATO umbrella (Bell & Witter 2011b:16). The first signs of Arab buy-in came on 11 March when the Gulf Cooperation Council (GCC) condemned the Gaddafi regime as illegitimate and called on the UNSC to undertake all measures to protect Libyan civilians, including imposition of a no-fly zone (Al Jazeera 2011c). The following day, on 12 March, the Arab League unanimously endorsed the establishment of a no-fly zone over Libya. Arab League Secretary-General Amr Moussa noted that the intervention was to be based on humanitarian emergency and was the only way to protect Libyan people from a 'disdainful regime' (Freeman 2011). Additionally, the Organization of Islamic Conference (OIC) indicated its support for the no-fly zone (Shaheen 2011).

In a bid to avoid seemingly unilateral action in Libya, Obama and NATO articulated preconditions for military intervention in Libya. In a speech addressed to the general public on 28 March 2011, Obama outlined the rationale for intervention in Libya. Dubbed the 'Obama Doctrine' (Lexington 2011), the US President indicated that the decision to intervene was based on 'prospect of violence on a horrific scale'; 'an international mandate for action'; support from a coalition of forces; regional support and the Libyan pleas for help (Obama 2011). Similarly, through its Secretary-General Anders Fogh Rasmussen, NATO declared the presence of three preconditions for military intervention in Libya: 'demonstrable need for action, clear legal basis and firm regional support' (Xinhua News Agency 2011).

Against the background of debate over intervention, allied naval and air forces had already begun setting up in the Mediterranean in preparation for quasi-military operations in late February. The US moved the *USS Barry*, a guided missile destroyer and *USS Kearsarge* towards the Libyan coast (Lander & Shanker 2011). The UK had warplanes prepared in Malta (De Young & Warrick 2011) while the French sent out helicopter carrier *Mistral* and frigate *Georges-Leygues* to the Libyan coast (*Agence France Presse* 2011). In the US, the Obama Administration was caught up in a quandary over the Libyan situation with strong arguments in both the

proponents' and opponents' camps. Defence Secretary Gates was against intervention from the outset, arguing that a no-fly zone operation in Libya would be 'a big operation in a big country' (Sanger & Shanker 2011). Gates' views on the impracticability of a no-fly zone were echoed by the chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, and commander of US Central Command Gen. James Mattis (US Department of Defense 2011). The advocacy camp was spearheaded by Hillary Clinton, Samantha Powers (foreign policy advisor to Obama) and US Ambassador to the UN, Susan Rice, who extensively lobbied the UN and NATO for implementation premised on the principle of R2P (Chorin 2012:231).

On 14 March 2011, a G8 meeting in Paris saw France fail to garner support for a no-fly zone amidst opposition from Germany and Russia. Russian foreign minister Sergei Lavrov requested more information on the feasibility of a no fly-zone, stressing involvement of the Arab League on any key decisions. German foreign minister Guido Westerwelle indicated that Germany was wary of the military option and danger of being 'sucked into a war in North Africa' (Irish & Hepher 2011). UN Secretary-General Ban called for a ceasefire on 16 March 2011 as the US intensified its lobbying in the UNSC for support of the draft resolution authorizing a no-fly zone over Libya (Bâli & Abu-Rish 2011). On 17 March 2011, the UNSC passed Resolution 1973 which 'authorized member states, acting independently or through regional organizations or arrangements, the authority to use all necessary means to protect Libyan civilians under threat of attack from military forces' (see *Appendix 1: S/RES/1973*, 17 March 2011). The Resolution was passed with 10 votes in favour and five abstentions from Russia, India, China, Brazil and Germany. Notably, the three African non-permanent member states on the UNSC all voted in favour of the Resolution, a move that served to strengthen the international community's perception that there was regional buy-in.

Notwithstanding the adoption of UNSC Resolution 1973, military intervention was not devoid of vociferous critics. One major criticism was that inasmuch as humanitarian grounds provided the casing for intervention, other reasons also presented a mixed bag of motives. These reasons allegedly included the need to re-assert US leadership in the region; response to domestic pressure; preventing spill-over of a refugee crisis into Europe and the stabilization of world oil markets (Bâli & Abu-Rish 2011). Drawing on history, the point was also raised that regime

change accompanied the alleged claims of interveners and was often closely linked to economic and strategic interests. Additionally, the potential failure of the no-fly zone was also raised given the probability of massive collateral damage to civilians (Bâli & Abu-Rish 2011). A third major criticism was the risk of fragmentation in Libya by ‘supporting narratives of external domination and knee-jerk reactions that could easily lead to a dismemberment of the country or that could be perceived as a partisan move in a country where tribal loyalties remained keen and memories long’ (Vandewalle 2011, as cited in Chorin 2012: 200).

The ICC referral was also seen as counter-productive, according to Bâli and Abu-Rish (2011), who contend that by immediately referring the Gaddafi regime for ICC investigation; the international community may have unintentionally strengthened Gaddafi’s resolve to stick to the end, given the unavailability of a regime exit strategy such as that offered to Egypt’s President Mubarak. The exclusion of the evacuation of African migrant workers and civilians from the agenda appeared to be a grave indication of distorted priorities, in addition to non-prioritization of stockpiling medical and food supplies. Finally, there was the danger of subordinating the interests of the Libyan people to international interests by supporting the rebels without fully examining the situation on the ground and the gamut of post-intervention consequences (Bâli & Abu-Rish 2011). The existence of alternatives is reiterated by Zunes (2011), asserting that the smarter strategy to countering the Gaddafi regime would have been through non-violent means such as intelligence sharing and non-cooperation tactics such as boycotts and slow-downs. Walzer (2011) also pointed out that the lack of an endgame, with no clearly-defined goal was the main weakness of the Libyan intervention plan, as it was vague whether the intervention was aimed at supporting the rebellion until rebels got momentum to overthrow Gaddafi themselves or whether it was to change the course of conflict or even to ensure Gaddafi’s ouster.

4.5.2. Resolution 1973, R2P and NATO’s involvement

R2P proponents have gone to great lengths to validate their claim that the Libyan crisis was a solid test case for application of R2P. The Libyan intervention has been cited as the opportune convergence of ‘will, speed and gold-plated legality’ (APR2P 2011). Gareth Evans (2011) has

also pointed out that Resolution 1970 and Resolution 1973 were textbook cases of the sequence of action from pillar two to pillar three on the continuum of responses envisaged. In order to assess the applicability of R2P to the international community's responses in the Libyan crisis, it is necessary to revisit the six criteria for intervention formulated by the ICISS Report (2001: xii). These are: seriousness of harm; right intention; last resort; proportional means; reasonable prospect and the right authority.

(I) Seriousness of harm

The ICISS considered just cause in the case of 'large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation...' (ICISS 2001: xii). The UN Human Rights Council (HRC) revealed in its 2011 report on Libya that the Gaddafi regime committed a range of atrocities including the targeting of civilians, indiscriminate use of weapons such as anti-personnel mines and explosives, abuse and killing of detainees and use of rape as an instrument of war. However, the 2011 HRC Report also revealed that the rebel forces engaged in killings, torture and looting. By early March 2011 as Gaddafi's forces appeared to gain ground, it became apparent that the Libyan crisis had morphed from an armed rebellion to civil war. There was a clear east-west divide in Libya; with a larger support base for Gaddafi in western Libya (Chorin 2012:210). Furthermore, Gaddafi employed African mercenaries and the Khamis 32nd Brigade in a show of defiance and assertion of control over Tripoli and western pro-regime towns (Fahim & Kirkpatrick 2011). The intent of the Gaddafi regime to crush the opposition was made clear on 20 February when his son Saif al-Islam warned the protesters that 'thousands would die, rivers of blood would flow' and that the government would 'fight to the last man, woman and bullet (Walt 2011). Two days later in a televised speech, Gaddafi urged his supporters to attack the 'cockroaches and greasy rats' (Stalinsky 2011). The rising body count in the thousands by 5 March signalled Gaddafi's clarity of intent and the possibility of escalation of violence (Downie 2011a). While the verifiability of the death toll figures was debatable, the ghost of Rwanda and Srebrenica proved a viable panic factor in galvanizing action on Libya.

(II) Right intention

The intention must be to halt human suffering. Considering the gross and systematic killing of civilians which amounted to crimes against humanity, the intention of Resolution 1973 (paragraph 4) was framed as ‘the protection of civilians under threat of attack in Libya.’ As the attack on Benghazi drew close and calls for help by the rebels grew desperate, civil society groups and aid agencies pointed to a humanitarian crisis in Libya (Cowell 2011). The UNSC was persuaded by the humanitarian crisis in Libya to authorize a no-fly zone, a consensus that was quickly shattered days after implementation as the NATO-led operation began to overstep its mandate and take on an approach aimed at regime change. China and Russia led the criticism levelled at interveners, and was soon joined by India, Brazil and South Africa, which had earlier voted in favour of the Resolution. The backlash over Libya has raised difficult questions about R2P implementation, particularly at the sharp end of the R2P response continuum (Evans 2012b).

(III) Last Resort

The condition of last resort reserves military action for last, upon failure of other non-military measures. The failure of Resolution 1970 to detract Gaddafi’s forces from indiscriminate killings of protesters, coupled with the alleged failure of talks, were given as some of the key reasons for the pursuit of the military option. Critics such as Roberts (2011:12) counter the claim that all non-violent options were exhausted. He adds that the P3 did not earnestly pursue non-military options because this would have gone against their interests of regime change. Moreover, the inclusion of non-violent policy proposals would have made the resolution incoherent and weakened the P3’s narrative that demonized Gaddafi thereby making securing a majority all the more difficult (Roberts 2011:12). O’Connell (2011:16) concurs that sanctions had hardly been implemented than the military operation begun. Furthermore, the UNSC had not attempted to create a humanitarian corridor near the Libyan coast for the safe evacuation of civilians (Johansen 2011).

(IV) Proportional means

The fourth ICISS (2001: xii) criterion, proportionality of means, requires that ‘The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective’. The proportionality of means in the operationalization of Operation Unified Protector has been a controversial subject particularly due to alleged ‘mission creep’ and distortion of NATO’s mandate into regime change in concert with the rebels. In terms of operational feasibility, the topographic characteristics of Libya which consisted of ‘flat to undulating plains, plateaus and depressions’ (CIA World Factbook 2011) presented optimal conditions for aerial strikes with expected minimal collateral damage to civilians (Vira & Cordesman 2011:18).

According to the International Institute for Strategic Studies (IISS 2011), the objective of protecting civilians had been realized within the first three days. Two months after NATO airstrikes began; it became apparent that NATO had underestimated the strength of resilience of loyalist forces. The question emerged whether amplification of NATO targets such as bombing of infrastructure and targeting of command and control centres would be within the confines of the mandate under UNSC Resolution 1973. On 15 April 2011, Cameron, Obama and Sarkozy co-authored an opinion piece that confirmed the endgame of NATO operations as regime change (BBC News 2011b). Another source of criticism of NATO’s operation was the contravention of arms embargo provisions under Resolution 1970. Both France and Qatar later admitted to supplying weaponry to NTC militias (Charbonneau & Hassan 2011, Dagher *et al* 2011). The mission creep criticism levelled against NATO was succinctly captured by an anonymous IBSA ambassador (as cited by Zifcak 2012: 69) who quipped: ‘the resolution was always concerned with the protection of civilians. It did not mean that NATO could decimate one side, arm rebels, worsen tribal animosities, declare victory and look the other way from extrajudicial killings.’

The controversial nature of implementation was acknowledged by even the most ardent of R2P advocates, who admitted that the mandate was stretched to ‘the absolute limit and maybe beyond

it' (Evans 2011b:41). The implication of mission creep and regime change agendas has been the detrimental effect on future interventions as seen in the UNSC quandary over the Syrian crisis (ongoing at the time of writing). Furthermore, more ammunition has been handed to critics who have been quick to sound the death knells over R2P and recount the adage: the road to hell is paved with good intentions (David Rieff 2011b). Edward Luck, former Special Adviser to the UNSG on R2P, reacted to the link between R2P and regime change by clarifying that regime change is not the goal of R2P *per se*, although in some cases, the goal of protecting civilians can only be attained through regime change (Luck 2011). Weiss (2011:291) asserts that the challenge for R2P is centred on implementation of R2P as opposed to building consensus for the principle. If anything, intervention in Libya was primarily aimed at protection of civilians and in spite of imperfections, it showed that 'we can say no more Holocausts, Cambodias and Rwandas; and occasionally mean it' (Weiss 2011:291).

Further afield, the Libyan intervention revealed the lack of consensus even among NATO member states on the terms of the mandate and on the issue of whether it overstepped its mandate. France, the UK and the US adopted a more offensive stance towards the mandate whereas Poland and Germany voiced a more non-offensive approach (Davis 2011:2). NATO is yet to collectively endorse R2P, and based on the Libyan model, there is room for NATO to affirm R2P as an 'actionable norm' and to incorporate guidelines into alliance doctrine and training (Davis 2011: 5).

(V) Reasonable prospects for success

The criterion of reasonable prospects entails a balance of consequences measuring action versus inaction. In weighing the costs of inaction in Libya; based on history and rhetoric, there was a strong likelihood that Gaddafi would continue to use warplanes in crushing the opposition. The projected result would be a rise in the death toll, eventually leading to mass atrocities given the mismatch in military strength between Gaddafi's forces and the rebels (Singh 2011). There was also the risk of extremist groups becoming involved in the conflict, which would have adverse

effects on stability in the region (Singh 2011). R2P provided rationale for action by the international community in Libya to protect civilians and counter Gaddafi's threat to turn the Libyan situation into a 'giant Somalia' (Clinton 2011).

Depending on one's standpoint, the benefits for the Libyan intervention can either be seen as outweighing the consequences of inaction or exacerbating the gravity of the crisis. At the time, the prospects for success of the Libyan intervention were regarded as favourable in view of factors such as the military and non-military resources of interveners; global and regional support for the mission; existence of a comprehensive strategy, and NATO's fidelity to principles of *jus in bello* (Pattison 2011:275). Conversely, the intervention can be seen as a failure in view of unintended consequences of civilian deaths and the prolonging of the intervention period from weeks to months contrary to what had been expected (Chorin 2013: 373). Given the difficulties in assessing the long-term consequences of intervention in complex cases like Libya, there has been growing emphasis on 'comprehensive and judicious analysis of the possible consequences of military action' prior to use of force as put forward in the Brazilian initiative of RWP (Brazil 2011b).

(VI) Right authority

UNSC Resolution 1973 was implemented under Chapter VII of the UN Charter in which the UNSC is authorized to 'determine the existence of any threat to the peace, breach of the peace or act of aggression' and take military and non-military action to restore international peace and security. It was under Chapter VII that France, UK and Lebanon tabled the draft resolution on implementation of the no-fly zone over Libya (UNSC 2011b). Schmitt (2011:55) affirms the robustness of Resolution 1973 from a legal perspective whilst noting that the no-fly zone in Libya authorized military action to include 'civilian populated areas' that allowed for protection of cities and other areas held by rebel forces regardless of whether Gaddafi's forces were targeting civilians therein.

In assessing the role of NATO in the Libyan intervention, Daalder and Stavridis (2012:4) observe that NATO is ‘uniquely positioned to respond quickly and effectively to international crises’. This is linked to the notion that legitimacy of joint interventions stems from its multilateral, coalescent characteristic (Fiott 2012:4). The role of NATO in Libya can also be connected to NATO’s ‘institutional globalization’ implying that in the post-Cold War era, NATO can be considered ‘a concert of democracies’ in maintaining international order (Bunde and Noetzel 2010: 296). In Libya, under Operation Unified Protector, NATO coordinated action of 14 member states and four partners. The US played a key role in provision of intelligence and targeting capabilities. The UK and France provided 40% of the sorties. Italy and Greece supplied aircraft for reconnaissance missions, while Belgium, Canada, Denmark, Norway and the UAE provided jet aircraft. Jordan, the Netherlands, Spain, Sweden, Turkey and Qatar aided in enforcing the no-fly zone. Bulgaria and Romania were also instrumental in supplying naval vessels to implement the arms embargo (Daalder & Stavridis 2012:4). NATO also had the support of states in the region having fostered ties through the Mediterranean Dialogue and the Istanbul Cooperation Initiative⁹ (NATO 2012).

The involvement of NATO in implementation of the no-fly zone in Libya has also raised important questions about its relationship with the UNSC. The lack of reference to NATO in Resolution 1973 was an indication that it was not intended as a devisee of the Resolution 1973 mandate, mostly because NATO is not a Chapter VIII organization but a mutual defence pact (Abass 2011b). Under Chapter VIII of the UN Charter, regional organizations are required to keep the UNSC ‘fully informed of activities undertaken or in contemplation, under regional arrangements or by regional agencies for the maintenance of international peace and security’. The result has been a ‘cherry-picking’ relationship between the UNSC and NATO where NATO has responded to questions about certain UNSC Resolutions (for instance Resolution 781 in 1992) and not to others. The ‘cherry-picking’ approach can be avoided by adapting more specific formulae in drafting of UNSC resolutions to include the phrase ‘other international organizations

⁹ The Mediterranean Dialogue was initiated in 1994 to foster ties with countries in the region, it involves Algeria, Egypt, Israel, Jordan, Mauritania, Morocco and Tunisia. Istanbul Cooperation Initiative was launched in 2004 to foster regional security. It involves Bahrain, Qatar, Kuwait and the UAE

or alliances’. Hence, as Abass (2011b) proposes, paragraph 8 of Resolution 1973 would have stated:

‘Authorizes Member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, or other international organizations or alliances to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above...’.

Inasmuch as the UNSC is the principal authority when it comes to authorizing the use of force in cases where R2P is applicable, the UNSC has been susceptible to double standards, selectivity and interest-driven politics by its very composition. As Nadin (2014) observes: the UNSC ‘is an inherently selective political state-driven body and with every member intent on preserving its own interests, these interest-based concerns will almost always override any deference to altruism or universal values.’ The UNSC members that abstained from voting for Resolution 1973 justified their apprehension for the use of force in the Libyan situation raising several concerns such as the ambiguity of the language of the resolution in terms of the limits of enforcement action (India 2011); the preference for political efforts before recourse to military means (Germany 2011); uncertainty about the long-term consequences of enforcement action (Brazil 2011a, Russian Federation 2011); and the need to uphold the sovereignty and territorial integrity of Libya (China 2011). These concerns proved real a few weeks into the implementation of Resolution 1973 when it became increasingly clear that NATO was overstepping its mandate of protecting civilians as per the confines of the Resolution and that the primary objective of the operation had become regime change.

4.6. UNSC deliberation on Resolution 1973 (2011) and normative implications for R2P

Having weighed UNSC Resolution 1973 against the criteria for action under pillar three of R2P, it is imperative to review the invocation of R2P in the actual deliberations of the UNSC. In these deliberations, only France and Colombia made reference to Libya’s responsibility to protect its citizens, which falls under pillar one of R2P tenets. There was no explicit reference to pillar three which calls on the international community to act in a ‘timely and decisive’ manner in the case

of manifest failure by the state in question. The limited direct mention of R2P can be attributed to two key reasons. The first reason is that it may have been deemed counterproductive to cite R2P, especially in pillar three terms, due to the controversy that shrouds it (Dunne & Gifkins 2011: 521). The second explanation is a pointer to the stage at which R2P is as an emergent norm. R2P can be said to be in the stage of norm cascade but is yet to reach the third stage of norm internalization (see Chapter 2 for more details on the life cycle of norms). The omission of R2P or R2P-related language in the contributions by the UK and the US lend credence to the notion that R2P remains contested in several human security policy circles (Morris 2013: 1274). The point is dovetailed by Loisele (2013: 341) who maintains that the omission in UNSC Resolution 1973 of an explicit mention of the responsibility of the international community is an indication that measures implemented under the Resolution do not constitute an *opinio juris* which endorses the responsibility of the international community as a legal obligation under customary international law. Loisele (2013: 340-1) adds that while R2P may have been the essence of arguments by UN officials to garner support of the UNSC for intervention in Libya, the language used during deliberations on Resolution 1973 allude to a mix of considerations behind the decisions of various UNSC states, *inter alia* national interests, provisions under Chapter VII of the UN Charter, PoC, international humanitarian law and reluctance to make Libya a precedent that would constrain discretion in future interventions on humanitarian grounds.

The deliberations of the UNSC over Resolution 1973 also point to the role of emerging powers, particularly the BRICS, in cascading R2P. For instance, Brazil's concept of Responsibility while Protecting (RwP) is an illustration of Brazil's distrust of R2P being used as a pretext for regime change (Kolb 2012). The backlash against the Libyan intervention bolstered the BRICS' mistrust of P3-led military intervention. As Welsh (2010:426) contends, if agreement is reached on UNSC reform and should the shift in global power secure permanent seats for emerging powers, there might be a significant impact on development of R2P with the possibility of the dominant return of the principle of sovereign equality.

The abstentions by Russia, China, Brazil, India and Germany also bear important lessons. The first attests to the high premium accorded to regional support for the no-fly zone. Russia, China, India and Brazil referred to the buy-in for the no-fly zone by the Arab League (Jones 2011:54). Such preference for regional consent over sovereign consent with regards to the Libyan intervention alludes to the emergent role of regional organizations as gatekeepers of international enforcement action. However, a caveat must be mentioned: the choice by Russia and China (permanent members) not to use their veto power may have been as a result of ‘rhetorical entrapment:’ that is they were caught between the lack of a strong argument to justify vetoing or voting against Resolution 1973 in light of mounting evidence of mass atrocities on one hand; and not wanting to be seen as going against the regional position (Glanville 2013: 337). A second key lesson is the diplomatic clout held by emerging powers and their limited military power. In the end, the responsibility fell to the US, and as a global superpower the US would have been blamed had it chosen not to act in Libya; regardless of the position held by emerging powers (Jones 2011:55). The intensive lobbying by US diplomats in courting the votes of Gabon, South Africa and Nigeria and the abstentions from Russia and China indicate just how high the stakes were for the US and the fact that inaction was not presented as an option.

4.7. Conclusion

This chapter offered a brief historical context as a precursor to understanding the 2011 Libyan crisis. A glance at the socio-economic and political history of Libya revealed dynamics of continuity and change that persistently featured in pre-Gaddafi Libya and in Gaddafi’s Libya. The persistent dynamics are ideology, tribes and oil; seen through the lens of Libya as both a rentier state and an inclusionary state. Many commentators have linked the Libyan uprising to the broader Arab Spring of 2011 that commenced earlier in Tunisia and Egypt. Libya stands out as the sole situation which escalated into civil war, following the violent crackdown on opposition forces by the Gaddafi regime and the resilience of pro-regime forces. The imminent threat of mass killings coupled with the brutal rhetoric from an intransigent regime motivated a response from the international community. The flurry of diplomatic activities that realised the adoption of UNSC Resolution 1973 checked all the criteria for action under pillar three of R2P.

The international response to the Libyan crisis was informed by previous reactions to the uprisings in Egypt and Tunisia and the extent to which Libya deviated from the other cases of the Arab Spring. Aside from the humanitarian grounds for intervention and the capricious crackdown on protesters by Gaddafi's forces, Libya proved to be a 'black swan' (Cole 2011) in at least seven aspects. First, there was clarity of intent to commit mass atrocity crimes by the Gaddafi regime. Second, the escalation of the uprising into crisis point occurred within a very short time frame. Third, regional organizations such as the GCC, the OIC and the LAS played a crucial role in pushing for implementation of a no-fly zone. Fourth, Libya presented a geopolitical challenge to multilateral efforts due to the overlap in membership on both the AU and the Arab League. The AU was seen as being marginalized in the diplomatic engagements building up to adoption of Resolution 1973. Fifth, there was abstention but not vetoes from China and Russia in the UNSC. Sixth, NATO oversaw implementation of the no-fly zone operation under Operation Unified Protector, and finally, a seventh consideration is that the feasibility of a no-fly zone was favourable in view of the aim to protect civilians. Months into the operation, backlash grew at the nature of implementation with critics citing mission creep and imperialistic agendas of the P3, cloaked under regime change. The deliberations in the UNSC on Resolution 1973 pointed to the lack of reference to the controversial elements of pillar three of R2P. Recriminations and criticism aside, R2P provided the rationale for international response in Libya in the face of crimes against humanity and war crimes under a brutal regime. Libya also raised important questions on the future of R2P, re-opening the debate on implementation of pillar three and re-focusing on the tenets of R2P responsibilities: responsibility to prevent, responsibility to react and the responsibility to rebuild.

The 2011 Libyan crisis revealed how the defunct North African REC, Arab Maghreb Union, was unable to take up the lead in dealing with the crisis thereby exposing a vacuum that was taken up by the LAS as the lead regional security actor (Vines 2013: 106). In light of divided international opinion in a case as complex as the Libyan situation, the AU's handling of the Libyan crisis, and its subsequent marginalization by key stakeholders will be covered in more detail in the subsequent chapter.

CHAPTER 5: THE AFRICAN UNION'S RESPONSE TO THE 2011 LIBYA CRISIS

5.1. Introduction

The Libyan crisis of 2011 highlighted the large diversity of international stakeholders in the response to the situation. At the inter-governmental level, this included among others NATO, the UNSC, OIC, the LAS and the AU, with the latter organisation carrying a particular mandate for attending to the regional peace and security implications. As the crisis unfolded, African leaders voiced their concern at the perceived marginalization of AU initiatives and the relegation of the AU to an observer role in a conflict on the African continent.

This chapter investigates these concerns by offering an in-depth analysis of the AU's handling of the Libyan crisis. It does so primarily through an assessment of the AU's diplomatic engagement by means of its Peace and Security Council (PSC), as the main body responsible for peace and security in Africa, as well as the broader activities of the African Peace and Security Architecture, of which the PSC forms part. With regard to UNSC Resolution 1973, the voting behaviour of the three African non-permanent members on the UNSC at the time – South Africa, Nigeria and Gabon – will also be analysed in view of their votes that seemingly ran contrary to the AU position on Libya. Ultimately, the chapter will discuss the key factors to be considered in accounting for the AU's actions related to Libya, against the background of the AU's stated shift from a policy of non-interference to one of non-indifference in cases of grave humanitarian emergencies.

5.2. Intra-AU dialogue on Libya

Peace and security is addressed by the 2002 PSC Protocol. As discussed in Chapter 3, the PSC is the core of the APSA which is the AU's 'operational structure for the effective implementation of decisions taken' with respect to peace and security matters and conflict management (PSC 2002 par.17). The APSA is premised on the human security paradigm which embraces a broad and holistic approach to security. Moreover, the peace and security regime of the AU also

espouses the concept of ‘sovereignty as responsibility’ captured in Article 4(h) of the AU Constitutive Act. In addition to the notion of ‘African solutions to African problems’, Dersso (2012a: 8) points out that the APSA’s normative and policy frameworks are based on three crucial values and principles: human-centred socio-economic development premised on social justice; democracy, human rights and good governance; and peace and security in Africa. Taken together, the existing normative and policy frameworks adequately position the AU to respond to crises such as the 2011 North African uprisings. Notwithstanding these legal provisions, and as will be discussed later in this chapter, there are certain gaps and shortcomings that have vitiated the AU’s ability to respond to crises. Most prevalent of these shortcomings is the dearth of appropriate mechanisms to address security threats such as systematic violation of citizens’ human rights; and democratic deficits (Dersso 2012a:13).

Article 7 of the 2002 PSC Protocol identifies the powers of the PSC that endow it with primary responsibility to address peace and security crises on the continent. With regard to conflict prevention, management and deployment, the PSC is expected to (a) anticipate and prevent conflict including situations that can escalate to genocide and crimes against humanity; (b) undertake peace-making and peace-building functions; and (c) authorize deployment of peace support missions. Other crucial powers of the PSC are captured in Article 7(k) which mandates the Council to forge working partnerships between the AU and the UN; and Article 7(l) which mandates it to ‘develop policies and actions required to ensure that any external initiative in the field of peace and security on the continent takes place within the framework of the Union’s objectives and priorities’ (PSC 2002).

The following section of the Chapter is an analysis of the dialogue on Libya within the context of the APSA and its institutional components. Considering the overarching normative underpinnings of the AU’s legal framework, the crisis and eventual intervention in Libya will also be examined as an agenda item in AU institutions that are not part of the APSA; including the Pan-African Parliament, the AU Commission, the Assembly of Heads of State and Government and the African Commission on Human and Peoples’ Rights (ACHPR).

5.2.1. Libya enters the APSA agenda

The PSC first addressed the situation in Libya during its 261st meeting on 23 February 2011. In a communiqué issued after this meeting, the Council expressed deep concern about the Libyan situation and strongly condemned the indiscriminate and excessive use of force and lethal weapons by the government against protesters. The PSC also decided to send out a fact-finding mission to assess the situation on the ground (PSC 2011a). However, as Kasaija (2012:146) observes, it did not urgently dispatch the mission to Libya and this delay set the basis for the AU's marginalization by the key actors within the UNSC. As it later turned out, the PSC only reacted on 10 March 2011 by establishing the AU *ad hoc* High Level Committee on Libya which first met on 19 March 2011, two days after the implementation of UNSC Resolution 1973 had already begun (Cilliers & Handy 2013: 38).

On 10 March 2011 at its 265th meeting, the PSC re-addressed the situation in Libya. A noteworthy development was Paragraph 6 of the resulting communiqué in which the PSC rejected the notion of foreign military intervention in Libya. In addition, Paragraph 7 is crucial because it informs what was set out as the 'AU Roadmap' (endorsed at the consultative meeting of 25 March 2011). In this paragraph the PSC called for:

- i. the immediate cessation of all hostilities,
- ii. the cooperation of the competent Libyan authorities to facilitate the timely delivery of humanitarian assistance to the needy populations,
- iii. the protection of foreign nationals, including the African migrants living in Libya, and
- iv. the adoption and implementation of the political reforms necessary for the elimination of the causes of the current crisis (PSC 2011b).

Additionally, the PSC established an AU *ad hoc* High Level Committee on Libya which comprised of five heads of state and the Chairperson of the Commission, who at that stage was Jean Ping (PSC 2011b). The following day, on 11 March 2011, Ping announced that the *ad hoc* Committee would consist of the Heads of State of Mauritania, Republic of Congo, Mali, South Africa and Uganda (PSC 2011c). Its mandate would be to engage with all parties in Libya while continuously assessing the evolution of the situation on the ground and to facilitate an inclusive

dialogue among the Libyan parties on appropriate reforms. An important additional element of its mandate would be to engage the AU's partners, in particular the LAS, the OIC, the EU and the UN, to facilitate coordination of efforts and seek their support for the early resolution of the crisis (PSC 2011b).

According to De Waal (2013a:370), during the PSC meeting of 10 March, several African leaders privately admitted that Gaddafi had to step down in order for the crisis to be defused. But President Déby of Chad also warned against 'opening the Libyan Pandora box', and the outcome of the meeting appeared to be based on the assumption that the AU *ad hoc* High Level Committee would have the necessary clout to facilitate a negotiated solution in Libya and to garner international support for the AU initiative. However, in a critical further delay, the first meeting of the *ad hoc* Committee was scheduled to take place in Nouakchott only on 19 March 2011, after which its members were expected to travel to Libya (De Waal 2013b: 66).

Meanwhile on the international diplomatic front, on 11 March the EU demanded that Gaddafi step down, and recognised the rebel-founded National Transitional Council as representative of the Libyan people. The next day, on 12 March, the LAS urged the UNSC to impose a no-fly zone over Libya to ensure the protection of civilians. In a convincing show of solidarity, the bid for imposition of a no-fly zone was also backed by the GCC and the OIC (PSC 2011c). On 17 March 2011 (and two days before the first scheduled meeting of the AU's *ad hoc* High Level Committee on Libya) the UNSC adopted Resolution 1973 which imposed a no-fly zone over Libya. Gabon, Nigeria and South Africa, the non-permanent African member states on the UNSC, all voted in favour of the Resolution. Their voting behaviour exposed the absence of a common African position because it went against the PSC's call on 10 March for a politically negotiated solution, and its rejection of foreign intervention as a solution to the crisis (Mangu 2012:7). Resolution 1973 only made a cursory reference to the AU's efforts, noting the PSC Communiqué of 10 March which established *ad hoc* Committee on Libya 'with the aim of facilitating dialogue to lead the political reforms necessary to find a peaceful and sustainable solution' (UNSC 2011b).

During its 275th meeting on 26 April 2011, the PSC indicated that it remained seized of the Libyan situation and noted Gaddafi's acceptance of the AU Roadmap but made no comment on the NTC's insistence that Gaddafi step down. Following the sessions of the Assembly of Heads of State and Government held on 25 May 2011 and 30 June - 1 July 2011 respectively, the PSC issued press statements (281st meeting on 6 June 2011 and 285th meeting on 13 July 2011) which endorsed the decisions of the Assembly, reaffirmed the AU's dedication to the pursuit of a political solution to the Libyan crisis and reiterated the PSC's continued engagement on the matter (PSC 2011d, PSC 2011e).

The next communiqué of the PSC on Libya followed on the meeting of 26 August 2011, at which the Chairperson of the AU Commission presented his report on the efforts and proposals of the *ad hoc* Committee on the Libyan situation (PSC/AHG/3(CCXCI)). At this 291st meeting, the PSC refused to acknowledge the NTC calling instead for 'the formation of an inclusive transitional government, the establishment of a constitutional and legislative framework for the democratic transformation of Libya, as well as for support towards the organization of elections and the national reconciliation process' (PSC 2011f). According to the Mail & Guardian (2011), the snub from the PSC revealed the contradictions and incoherence within the AU given that 20 out of 54 member states of the AU had already recognized the NTC as Libya's government (Mail & Guardian 2011). Moreover, the PSC's refusal to recognize the NTC also highlighted Gaddafi's influence on the continent with one western diplomat reportedly remarking that the 'AU Peace and Security Council is weighted with countries who have backed Gaddafi in the past or owe him favours; they will not recognize the NTC' (Al Jazeera 2011d). It is telling that only three heads of state, from Djibouti, Uganda and South Africa, attended the PSC meeting; of which Ugandan President Museveni and South African President Zuma (both at that stage also members of the *ad hoc* Committee on Libya) were vocal supporters of Gaddafi; and therefore most likely influenced the group's decision (Ajibaili 2011).

On 21 September 2011, the PSC issued a communiqué of its 294th meeting which noted the AU's recognition of the NTC as per the statement issued by the chairperson of the AU, President Teodoro Obiang Nguema of Equatorial Guinea on 19 September 2011, the eve of the 66th session

of the UNGA in New York (PSC 2011h). The formal endorsement of a NTC seat on the AU – in the NTC’s capacity as the government of Libya – was realized a month later, on 20 October 2011. The PSC also raised its concerns about the impact of the Libyan crisis on the region, particularly the detrimental effect of arms trafficking on regional stability (PSC 2011i).

Overall, the PSC’s engagement on the Libyan crisis was an indication of the AU’s willingness to act on its policy of non-indifference to mass atrocities and the language used in its various communiqués reflected deep commitment to protection of civilians caught up in the conflict (Swart 2012: 166). The Council’s Chairperson during April 2011, Rwandese Minister for Foreign Affairs, Louise Mushikiwabo (2011), gave the most forthright call for the AU to act on its R2P mandate stating:

‘It is our collective duty as the leadership of this continent to take timely and collective actions... It is impossible to elude our responsibility as a continental organization of which we all are members. There is considerable consensus that the Union has to play a leading role in safeguarding the lives and the wellbeing of its people; it is therefore our duty to deliberate on these’.

However, as analysed in subsequent sections in this chapter, the AU’s commitment to human security values was challenged by various weaknesses in its APSA and by undermining agents in the context of the Libyan crisis. On its part, the PSC failed to move beyond timid condemnation by sanctioning tougher measures on Gaddafi’s forces in Libya as the violence worsened. This was a result of weak consensus among PSC members comprised of states who held divergent positions on how to deal with Gaddafi (Dersso 2012a: 19). Another issue within the Council and indeed the AU at large, was the lack of political will to respond to state-sponsored violence against civilians. Kituyi (2011) reiterates the point stating: ‘The circus of African inadequacy plays out even more glaringly in the case of Libya. With the exception of Rwanda and The Gambia, African states have been very slow in their responses to the criminal violence Col Muammar Gaddafi has visited upon his own people’.

With regard to other pillars of the APSA, of particular note are the activities of the Panel of the Wise. The Panel issued a communiqué issued a Communiqué on 12 May 2011 in which it

reiterated the AU's push for a political solution and endorsed the AU Roadmap for the Resolution of the Libyan Crisis as put forward by the PSC on 10 March 2011. The Panel (2011) also urged international partners to work toward immediate ceasefire as the only way to halt human suffering of the Libyan people and to facilitate a political solution to the crisis as per Resolution 1973.

The notable absence from the picture of the other APSA pillars such as the Continental Early Warning System (CEWS) and the African Standby Force (ASF), due to their incomplete operationalization, is an indictment of the AU's ability to fully realize its mandate with respect to prevention and response to mass atrocities. This has serious implications for the effectiveness of APSA as a peace and security regime; and feeds into the perception, held by pivotal international stakeholders, of the AU as a 'toothless dog' (Kingah & Langenhove 2012: 201). It is therefore scarcely surprising that the P3 chose to marginalize the AU in the course of international efforts to find solutions to the Libyan crisis.

5.2.2. The AU *ad hoc* High Level Committee on Libya

The first meeting of the AU *ad hoc* High Level Committee on Libya was held in Nouakchott, Mauritania, on 19 March 2011. The meeting was attended by Presidents Mohamed Ould Abdel Aziz (Mauritania), Amadou Toumani Touré (Mali), Dennis Sassou Nguesso (Congo), Ministers representing President Jacob Zuma (South Africa) and Yoweri Museveni (Uganda); and the Chairperson of the AU Commission, Jean Ping. The meeting was to facilitate the exchange of views on the situation in Libya and implementation of the mandate of the *ad hoc* Committee, which included, *inter alia*, engaging with all the parties in Libya and engaging with the AU's partners in the search for a solution (AU *ad hoc* High Level Committee 2011a).

The members of the *ad hoc* Committee were scheduled to fly to Libya on 20 March 2011, as mentioned earlier, but were unable due to the operationalization of Resolution 1973 which had taken effect on 19 March 2011. The *ad hoc* Committee had in fact sought permission from the

UN to travel to Libya but had been denied permission by the UNSC Sanctions Committee (AU *ad hoc* High Level Committee 2011a).

In its Communiqué of 19 March 2011 the *ad hoc* Committee appealed to Libyan parties to observe a cessation of hostilities and to take measures that would ensure civilians were protected. The Committee also reiterated the crucial aspects of the AU Roadmap as put forward by the PSC on 10 March 2011, and invited the NTC and Libyan authorities for a meeting to deliberate said Roadmap. In addition, the Communiqué requested the convening of a consultative meeting on 25 March 2011, comprising of the AU and relevant international stakeholders. Finally, the *ad hoc* Committee also announced that it planned to set up a regional consultation made up of the foreign affairs ministers of Libya's neighbouring states and relevant bilateral and multilateral AU partners. Overall, the *ad hoc* Committee urged the AU member states to provide humanitarian and logistical assistance to the African migrant workers fleeing Libya and to heavily-burdened neighbouring states (AU *ad hoc* High Level Committee 2011a).

The meeting of 19 March coincided with the 19 March 'Paris Summit for the Support of the Libyan People' organized by then French President Sarkozy. Though invited to the event, Ping did not attend indicating that it clashed with the meeting of the AU *ad hoc* High Level Committee in Nouakchott. Amr Moussa, the Secretary-General of the LAS, attended the Paris meeting, much to the disapproval of Ping who later stated that it would not have been right for him (Ping) to attend and support an agenda different from the AU's (De Waal 2013a:371). The AU's non-attendance played into the hands of the Arab regional organizations, whose notable presence lent 'regional institutional credibility to the process including an Arab 'buy-in' for the expressed use of force' (Hengari 2011 as cited in Swart 2012: 140).

Following the 19 March meeting of the *ad hoc* Committee, on 25 March the planned AU consultative meeting on the situation in Libya was held in Addis Ababa. The meeting was called with the aim of searching for a timely solution to the crisis; in tandem with UNSC Resolutions 1970 and 1973. This was to be achieved, on the one hand, by promoting an international consensus on the ways and means for an early resolution of the crisis and, on the other hand, by

agreeing on the establishment of a mechanism for continuous consultation and coordination among partners and for joint actions to be implemented (AU 2011). The participants of the consultative meeting included the *ad hoc* Committee; the PSC, heads of Libya's neighbouring states (Algeria, Chad, Egypt, Niger, Tunisia, Sudan); the African members of the UNSC in 2011 (Gabon, Nigeria and South Africa) the UNSC's P5, and high-level representatives of the EU, LAS, OIC, NATO and other partners. The meeting served as a platform for the AU to brief participants on its initiatives in the quest for a solution to the Libyan crisis, reiterating the AU Roadmap and the mandate of the *ad hoc* Committee. In the course of the meeting, consensus was achieved over the key elements of the AU Roadmap, namely the protection of civilians and cessation of hostilities; humanitarian assistance; political dialogue between the Libyan parties; establishment of an inclusive transitional period and implementation of political reforms (AU 2011).

The second meeting of the *ad hoc* Committee was held in Nouakchott on 9 April 2011. The meeting reviewed developments made in advancing its mandate including the technical consultation on the procedures for an early ceasefire and the launch of an operational monitoring mechanism. It also urged the Libyan parties to commit to negotiations, following the Committee's visit to Libya on 10 and 11 April (AU *ad hoc* High Level Committee 2011b). During the meeting, Jean Ping briefed the other members of the *ad hoc* Committee on his various meetings with relevant EU and NATO officials on the search for a political solution to the Libyan crisis (PSC 2011c).

It is important to note that the AU did not attend the 29 March conference on Libya in London. At this London conference, the Libya Contact Group was established as the principal contact point with the Libyan people. Pinfari (2012: 147) casts the AU's absence as an attempt to distance itself from the position of the Contact Group. He adds that on the other hand, the complexities of the Libyan situation also made it difficult to distinguish between the AU's genuine desire to be a front-line actor in international initiatives and the organisation's accommodation of pro-Gaddafi sentiments among some of its members (Pinfari 2012:147). McKaiser (2011) points out that the AU's lack of public diplomacy was becoming more and

more apparent as the organisation missed several opportunities to articulate its policy. Its so-called alternative plan and the motivation for the opposition to NATO's actions as an authentic desire for regional self-reliance was sold neither locally nor internationally, culminating in the failure of public diplomacy and the sidelining of the AU as a crucial player in the quest for a solution to the Libyan crisis (McKaiser 2011). The AU, by virtue of its contradictions, was thus never considered a formidable interlocutor; a weakness that was further illustrated by the fact that the first contact between the AU *ad hoc* High Level Committee and the UNSC only happened on 15 June 2011, four months after the start of the crisis. Hengari (2011) pulls no punches over the AU's performance arguing that its call for mediation was too little too late and no more than a 'face-saving exercise' for a gathering of 'self-congratulatory' African leaders minus the requisite political resources.

On 10 April, the *ad hoc* Committee travelled to Libya, where they met with Gaddafi in Tripoli. Gaddafi accepted the AU Roadmap but the next day when the Committee flew to Benghazi, the NTC rejected the Roadmap, partly because it did not mention Gaddafi's exit (McElroy *et al.* 2011) and also because the NTC viewed the AU as beneficiaries of Gaddafi's largesse, casting a shadow on its impartiality (Koko and Bakwesegha-Osula 2012:5). On 25 April, the Committee met with representatives of the NTC and Libyan government but the meeting yielded no favourable outcome.

On 26 April, the PSC and the *ad hoc* Committee (at the ministerial level) received the report of the Chairperson of the AU Commission on the activities of the Committee on the situation in Libya (PSC/PR/2CCLXXV 2011). The Chairperson's Report *inter alia* reflected growing concerns of the AU about the plight of African migrant workers in Libya, the use of mercenaries by Gaddafi and the spill-over effects of the crisis in the region with regard to arms proliferation, terrorism and transnational crime (PSC 2011c: paragraph 57-58). In his statement to this ministerial meeting, Ramtane Lamamra, the AU Commissioner for Peace and Security, noted the marginalization of the AU by non-African actors in the Libyan crisis and emphasized the pressing need for the AU to move swiftly and assertively in making sure that African solutions such as the AU Roadmap 'work on the ground' (Lamamra 2011).

The AU *ad hoc* High Level Committee held its fifth meeting at the level of Heads of State and Government in Addis Ababa on 26 May 2011, during which it reviewed the situation in Libya and updated participants on its activities since its ministerial meeting on 26 April 2011. The representatives of the Libyan government clarified the document they had earlier submitted to the AU Commission titled *Mechanisms and Means of Implementing the Roadmap of the African Union*. The substantive elements of the document highlighted the following: a ceasefire, including confidence-building measures and the monitoring mechanism; humanitarian assistance to Libyans and African migrant workers; political dialogue and other related measures. The NTC representatives presented a document titled *Framework for negotiations on meeting the legitimate demands of the Libyan people in the establishment of democratic constitutional rule* (AU *ad hoc* High Level Committee 2011c). This was followed by an exchange of views on the document during which the NTC presented a roadmap for a transitional process and urged the international community to recognize it as the ‘legitimate and sole interlocutor’ of the Libyan people (Al-Khatib 2011).

The AU *ad hoc* High Level Committee reported on its activities to the Extraordinary Session of the Assembly of the Union on 25 May 2011. The Committee also agreed on several steps to further advance the implementation of its mandate such as an additional visit to Libya to engage in further dialogue with the Libyan parties; sending out a ministerial delegation to meet with the UNSC and to bring on board specific AU bilateral partners on the Roadmap and other international actors (AU *ad hoc* High Level Committee 2011c).

On 15 June 2011, the Committee’s ministerial delegation met with the UNSC. Speaking on behalf of the delegation, the Mauritanian Minister of Foreign Affairs, Hamady Ould Hamady (2011) briefed the Council on the activities of the *ad hoc* Committee and the AU at large in pursuit of a resolution to the crisis. Minister Hamady reiterated the AU’s preference for a political solution as detailed in its proposed Roadmap. He also indicated to the UNSC that the Committee on Libya was committed to pursuing dialogue with the Libyan parties. The abuse of the UNSC resolutions on Libya as a pretext for regime change and the alleged mandate creep of

Resolution 1973 were also raised as a concern of the AU's. Moreover the all-round disappointment at the marginalization of the AU's efforts was emphasized, particularly when seen in light of the brief mention of the role of the AU *ad hoc* High Level Committee in paragraph 2 of Resolution 1973. Overall, Hamady (2011) expressed the determination of the AU to push for a political solution to the Libyan crisis, indicating that the next steps in this regard would be explored at the AU Summit in Malabo on 1 July 2011.

On 26 June 2011 the *ad hoc* Committee met in Pretoria, at the level of heads of state. President Zuma briefed the Committee on the outcome of his visit to Libya on 31 May 2011, during which Gaddafi had agreed to a ceasefire but declined to step down. The Committee also reviewed the outcome of the ministerial delegation meeting with the UNSC on 15 June 2011 as well as the meeting held by the AU and international partners on 18 June 2011. Furthermore, the Committee reiterated the AU's insistence on a political solution as the only viable solution to the crisis in Libya. With regard to its mandate, the Committee presented *Proposals for a Framework Agreement on a Political Solution to the Crisis in Libya* in which it urged Libyan parties to commit to cessation of hostilities; acknowledged the exclusion of Gaddafi in the negotiations process; called for national dialogue following cessation of hostilities and the formation of an inclusive transitional government; and reaffirmed continued cooperation with international partners in resolving the Libyan crisis (AU *ad hoc* High Level Committee 2011d).

On 14 September 2011, the Committee held its final meeting in Pretoria at the level of heads of state. The discussion was built on the *Report of the Chairperson of the Commission on the Situation in Libya and on the efforts of the African Union for a Political Solution to the Libyan Crisis* (PSC/AHG/3(CCXCI) presented on 26 August 2011; as well as briefs by individual members of the Committee based on their engagement with the Libyan parties and various international partners. The Committee acknowledged the letter sent by the NTC leadership to the Chairperson of the AU Commission which outlined the NTC's commitment to prioritize national unity and protect African migrant workers in Libya. It also called on the Chairperson of the Commission to organize an urgent PSC meeting on the margins of the 2011 UNGA meeting to push for a unified African position on developments in Libya. Regarding the PSC's conditions

for an all-inclusive transitional government prior to its granting recognition to the NTC, the Committee requested the Chairperson of the AU Commission to submit a report to the PSC detailing developments in this regard. Finally, the Committee thanked the PSC and the AU Commission for their support and reaffirmed its commitment to cooperate with international stakeholders in supporting the Libyan people (South Africa 2011a).

The formal recognition of the NTC by the PSC came only a month later after a statement by the AU Chairperson, announcing the AU's recognition of the NTC on 19 September 2011, the eve of the 66th session of the UNGA. In the Communiqué of the PSC's 297th meeting on 20 October 2011, the AU decided to 'authorize the current authorities in Libya to occupy the seat of Libya in the AU and its organs' (PSC 2011i). The delayed recognition of the NTC by the AU pointed to the 'hedging' strategy that the AU had been prone to throughout the course of the Libyan crisis. According to Maru (2011), the AU was straddling between its adherence to the principle of not accepting unconstitutional changes of government on the one hand, and the recognition of the reality on the ground in Libya. Bachmann and Gelot (2011:15) build on the alleged 'straddling function' of the AU in the Libyan case, maintaining that the Chairperson of the AU Commission, Jean Ping, personified the juggling act of the AU. Ping was often at pains to balance the pro-Gaddafi position of some AU member states with the notion of continental solidarity on Libya.

The subsequent section examines the dialogue on the Libyan crisis within the AU institutional framework by examining the engagement by other AU organs that work closely with the APSA. These organs include the Pan-African Parliament, the Assembly of Heads of State and Government, the AU Commission and the African Commission on Human and Peoples' Rights.

5.2.3 Dialogue on Libya within the wider AU body

The situation in Libya also featured on the agenda of other AU institutions apart from the APSA. The AU Commission, in particular, was deeply involved with meetings regarding the establishment of a ceasefire in Libya as demanded by the AU and international partners. On 31 March 2011, the Commission organized an experts' meeting with representatives from the UN,

LAS, EU and the OIC (Hamady 2011). Following the Ordinary Session of the Assembly in Malabo on 1 July 2011, which realized the adoption of the *Proposals for a Framework Agreement on a Political Solution to the Crisis in Libya*, the AU Commission invited Libyan parties for a technical meeting to discuss plans to advance the proposals. The meeting was held on 19 July 2011 in Addis Ababa, during which the Libyan government requested clarification of the AU Proposals. An in-depth discussion of the AU Proposals took place on 9 August 2011 between the AU *ad hoc* High Level Committee and NTC leadership. Both the Libyan government and the NTC communicated their positive responses to the AU Proposals and pledged cooperation with the AU in finding a political solution to the crisis (PSC 2011g).

On its part, the African Commission on Human and Peoples' Rights, in an unprecedented move, instituted proceedings in the African Court on Human and Peoples' Rights in the case *African Commission on Human and Peoples' Rights v. Great Socialist Peoples' Libyan Arab Jamahiriya* (Application No. 004/2011). The application filed by the ACHPR on 25 March 2011 cited 'serious and massive violations of human rights guaranteed under the African Charter on Human and Peoples' Rights' and urged the Libyan authorities to refrain from these violations. The complaints against Libya, including allegations of violent repression of peaceful protesters and the indiscriminate use of lethal weapons against demonstrators, were brought before the ACHPR by the Human Rights Watch, Interights and the Egyptian Initiative on Personal Rights (EIPR) (International Federation for Human Rights (FIDH 2011). The move by the ACHPR to lodge a complaint with the court was hailed by several commentators as a progressive development for the human rights protection architecture on the continent (Belhassen 2011; Baldwin 2011).

The African Court on Human and Peoples' Rights subsequently ruled on 25 March, ordering provisional measures requiring that Libya refrain from violating rights guaranteed by the African Charter on Human and Peoples' Rights and other international human rights instruments. The Libyan government ignored the order; and the act of non-compliance was then reported to the Assembly of the AU as required of the Court. Nonetheless, the language of the Court mentioning 'situation of extreme urgency' and the risk of 'irreparable harm to persons' drew on international consensus about the gravity of the humanitarian situation in Libya. Additionally, the reliance of

the Court on evidence supplied by NGOs to ACHPR is an indication of the resourcefulness of NGOs in urgent situations of conflict (Dolidze 2011).

The report of the ACHPR and the verdict of the Court featured on the agenda of the AU Summit in Malabo on 1 July 2011. In a setback, however, the ACHPR was criticized by several member states for openly chastising the Gaddafi government, and the outcome document of the Summit did not mention either the ACHPR or the Court ruling; a signal of the troubling disconnect between the AU's human rights architecture and its security architecture; whereby the latter was unduly accorded primacy (Stensland *et al.* 2012: 39).

As concerns the AU's Pan-African Parliament, on 20 May 2011 it adopted a motion calling for the cessation of hostilities and reaffirmed the need for an 'African solution' as endorsed by the PSC. The motion also called for solidarity with the Libyan people and criticized the 'media's evil propaganda' whilst urging media to depict true events as they unfolded in Libya (African Press Organization 2011). Despite its intentions, this statement by the PAP may have been taken as a tacit nod by Gaddafi apologists and served to heighten the AU's ambivalence about the crisis.

The Assembly of the Union addressed the Libyan crisis in two key sessions. The first of these was an extraordinary session held on 25 May 2011. The session took into account the *Report of the Chairperson of the Commission on the Situation in Libya and on the efforts of the African Union for a Political Solution to the Libyan Crisis* dated 26 August 2011 (PSC/AHG/3(CCXCI)) as well as the brief by the *ad hoc* Committee. The Assembly endorsed the AU Roadmap and called for a ceasefire followed by an inclusive transitional period and elections. The Assembly also raised its concerns about the mandate creep in certain aspects of the implementation of UNSC Resolution 1973 and pressed for a halt in the NATO-led air campaign. Furthermore, it directed the PSC to dispatch an AU Observer Mission to come up with an independent assessment of the situation on the ground and lay the groundwork for a larger international mission. With reference to Resolutions 1970 and 1973, the Assembly decried the unfavourable precedent set by one-sided interpretations and the stretch over and above the designated

mandates of these resolutions. As such, the Assembly requested the Africa group¹⁰ and the African members of the UNSC at the time to organize a meeting of the UNSC and UNGA to assess the implementation of Resolutions 1970 and 1973. The Assembly also denounced the marginalization of the AU proposals in considerations for the resolution of the Libyan crisis and urged cooperation between international stakeholders and the *ad hoc* Committee (AU Assembly 2011a).

From 30 June to 1 July 2011, the Assembly held its 17th Ordinary Session in Malabo, Equatorial Guinea. During this session, the Assembly adopted the *Proposals for a Framework Agreement on a Political Solution to the Crisis in Libya* which had been submitted the *ad hoc* Committee following its meeting of 26 June 2011 in Pretoria. The Proposals included aspects such as the cessation of hostilities; Gaddafi's exclusion in negotiations; national dialogue followed by reconciliation and democratic elections; establishment of a transitional government; humanitarian efforts; and a halt in NATO bombings (AU *ad hoc* High Level Committee 2011d). These Proposals were presented to Libyan parties, whose responses though positive, were non-committal at best (PSC 2011g). As was becoming the norm in AU meetings with Libya on the agenda, the Assembly reiterated its support for a political solution to the crisis and requested international stakeholders to support the AU's efforts (AU Assembly 2011b).

Around the time that the AU presented its Proposals to Libyan parties, the conflict had reached a stalemate with rebels facing mounting resistance from Gaddafi's forces. The stalemate provided a window for talks on a political solution, with the AU's Proposals being the most comprehensive plan on the table. Following endorsement of the Proposals by its Assembly, the AU table was divided with Ethiopia, Rwanda, Senegal and Nigeria in favour of Gaddafi's departure, while others such as Zimbabwe, Chad and Niger were more sympathetic to Gaddafi (De Waal 2013a:372). In the UNSC, although the AU Proposals received considerable support from Russia, the lack of African unity on the issue countervailed AU efforts and contributed to its marginalisation particularly by the P3. The UK and France sent envoys to meet privately with

¹⁰ The Africa Group at the UN refers to the regional grouping of 54 African member states that accounts for over a quarter of UNGA membership. The Africa group often serves as a voting bloc on UNGA agenda items and contact point between African member states and the UNSC on issues pertinent to African interests. (CCR 2013: 16).

African leaders to indicate their rejection of a ceasefire, and insisted on Gaddafi's departure. During its fourth meeting in Turkey, the Libya Contact Group (LCG) also side-lined the AU's plan, giving priority to the leading role of the UN in facilitating dialogue and supporting an inclusive political transition period; mentioning the AU only in passing (Turkey 2011). The AU Plan was thus dismissed by several key parties and was never given a working chance, sealing the AU's role as an observer in its own backyard.

By late August 2011, the course of the war had tilted in the rebels' favour with their capture of Tripoli on 20 August 2011. While the PSC and the AU *ad hoc* High Level Committee discussed the formation of an all-inclusive transitional government, some AU member countries granted the NTC recognition. Ethiopia, Nigeria and Rwanda were among the first 20 African countries to recognize the NTC. The haphazard recognition process further demonstrated the persistent lack of coherence among AU member states and lack of a common African position on the issue of NTC recognition (Rupiya 2012: 174). Tostevin (2011) observes that in addition to emotional and historical links in explaining the irregular recognition of the NTC among AU member states; the mistreatment of African migrants in Libya also bore significant weight. Another factor is the AU's mixed record in dealing with unconstitutional changes of government, whereby the AU suspended countries until elections were held; and worked with military juntas as was the case in Madagascar.

5.3. Non-permanent African member states on the UNSC during 2011 and the debate about intervention in Libya

The three African members of the UNSC during 2011 (Gabon, Nigeria and South Africa) arguably broke ranks with the AU by voting in favour of Resolution 1973. This section is a juxtaposition of the positions of the three states with the AU position and an analysis of their motivations for supporting the Resolution.

5.3.1. South Africa's, Nigeria's and Gabon's voting on Resolution 1973.

In a statement to the UNSC during the deliberation on UNSC 1973, South Africa (2011b) stated that it supported the Resolution:

... with the necessary caveats to preserve the sovereignty and territorial integrity of Libya and reject any foreign occupation or unilateral military intervention under the pretext of protecting civilians. It is our hope that this resolution will be implemented in full respect for both its letter and spirit'.

Nigeria indicated that it had voted in favour of the Resolution because of 'the magnitude of the humanitarian disaster' and the 'regional import' indicated by the LAS and AU's condemnation of the Libyan situation. Moreover, Nigeria believed that the Resolution provided a pathway for the political solution put forward by the AU *ad hoc* High Level Committee on Libya (Nigeria 2011a).

Gabon's vote was elaborated by Gabonese President Ondimba in a speech during the 66th session of the UNGA on 22 September 2011 outlining that Gabon's support for UNSC Resolution 1973 'was necessary to prevent a bloodbath in Benghazi' (Gabon 2011a). He also emphasized the importance of support of the international community in the post-conflict reconstruction and recovery of the Libyan state (Gabon 2011a).

5.3.2. Holistic perspective on the AU members' UNSC behaviour

(i) South Africa and the UNSC debate on intervention in Libya

South Africa's stance on Resolution 1973 can be better understood by examining its foreign policy principles. The 2011 White Paper on South Africa's Foreign Policy outlines the country's international priorities as pursuit of its 'African Agenda', South-South cooperation, North-South dialogue, economic diplomacy and multilateralism (South Africa 2011c). Inherent within South Africa's foreign policy is the notion of Ubuntu 'humanity towards others' which implies keen

focus on values such as democracy, human rights, freedom and equality and upholding of international law.

Given the ethical thrust within South Africa's foreign policy, the country's engagement on the Libyan crisis can also be interrogated in view of its role as a key African proponent of R2P. South Africa played a leading role in conceptualisation of the 2000 AU Constitutive Act, with then President Mbeki spearheading the 'African Renaissance', a neoliberal agenda and a Pax Africana premised on sovereignty as responsibility (Tieku 2004: 255). A key manifestation of the policy transformation from the erstwhile OAU was the adoption of Article 4 (h) of the Constitutive Act of the AU which espouses intervention on grounds of mass atrocities (see Chapter 3). Similarly, in line with its foreign policy principles, South Africa affirmed the 2005 Ezulwini Consensus including the emphasis on the pivotal role of regional organizations in maintaining international peace and security. Furthermore, South Africa was instrumental in lobbying countries of the global South in endorsement of R2P at the 2005 World Summit (Aboagye 2012a:29).

During its first ever term as non-permanent member of the UNSC (2007-2008), South Africa controversially shielded regimes (including those of Zimbabwe and Myanmar) that were accused of R2P contraventions. South Africa's position was largely seen as negation of its own foreign policy postulates, and its previously stated support for the primacy of the UNSC with respect to R2P (IGD 2010:6). South Africa 'reversed' its voting behaviour on R2P-related issues when, during its second tenure (2011-2012), it voted in favour of Resolution 1973. This elicited criticism from another perspective, with some factions of South Africa's ruling party (including the ANC Youth League and the Communist Party) accusing South Africa of selling out to the West's 'imperialist lust for oil' (New Zimbabwe 2011a). The heated international debate about NATO's military campaign signalled disintegration of the delicate consensus around the Libyan intervention, and South African President Zuma promptly joined the chorus of criticism. A few days after the adoption of Resolution 1973, he expressed regret over the manner in which the Resolution was being implemented and called for an immediate ceasefire and halt to attacks on civilians (Ferreira 2011). South Africa's change of heart was fully realized during a BRICS

meeting in China where it joined its allies in voicing their opposition to foreign military intervention in Libya and the abuse of the mandate for regime change (Moore 2011).

Critics of South Africa's vote in favour of Resolution 1973 considered it a contravention of key pillars of the country's foreign policy: its commitment to sovereignty of states, belief in peaceful resolution of conflict, belief in the notion of African solutions for African problems and its international reformist agenda, including its challenge to hegemony of western states on the UNSC (Landsberg & Moore 2011:72). The country's vote irked several African states, considering that it was the AU's support that secured South Africa's return onto the UNSC for a second term in 2011. Landsberg and Moore (2011: 73) assert that although South Africa had subsequently distanced itself from the vote, no specific reason was provided for its original positive vote. The vote on Resolution 1973 thus strengthened criticism that South Africa's foreign policy was fraught with ambiguity (Landsberg and Moore 2011: 74) and that it revealed competing foreign policy agendas (Kornegay 2012: 16). All in all, the South African response revealed the effects of 'norm subsidiarity' - a phenomenon described by Acharya (2011: 96) as 'the process whereby local actors develop new rules, offer new understandings of global rules or reaffirm global rules in the regional context'. This also accounts for South Africa's (and the wider AU's) support for the norm of anti-imperialism; resisting the hegemonic intervention of powerful states (Neethling 2012: 38). The point was reaffirmed by South Africa's Permanent Representative to the UN, Baso Sangqu, in a speech during the UNSC *Open Debate on the Protection of Civilians* on 9 November 2011. Amb Sangqu expressed South Africa's concern over the abuse of R2P for regime change and added South Africa's voice in the call for greater accountability by interveners (South Africa 2011d).

(ii) Nigeria and the UNSC debate on intervention in Libya

Nigeria's foreign policy has been driven by a *Pax Nigeriana* which emphasizes Nigeria's role as 'Big Brother' to African states (Adebajo 2010: 421). The country's foreign policy is underpinned by Afrocentrism (commitment to Africa); African unity and independence; Nigeria's regional and sub-regional hegemonic aspirations; peaceful settlement of conflicts; non-alignment and

non-intentional interference in internal affairs of other states; promotion of regional and international economic cooperation; promotion of a just global economic order and respect for international law (Nigeria 2013).

Nigeria's commitment to international peace and security has been proven by the fact that (as of 2013) it had become the fifth largest troop contributor to UN peacekeeping and the leading troop contributor to African peacekeeping missions (Ashiru 2013). Like South Africa, Nigeria's advocacy for R2P can be traced to its vanguard role in the transformation of the OAU to the AU. Former Nigerian President Obasanjo, through his Africa Leadership Forum (ALF), presented the reform package of the OAU under the aegis of the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) which was adopted in July 2002 and consisted of four calabashes of security, stability, development and cooperation (AU 2002). In substantive terms, the security calabash emphasized a broad approach to security and the notion of sovereignty as responsibility. The stability calabash underscored respect for rule of law, good governance and human rights. The cooperation and development calabashes emphasized pan-Africanism and African solutions for African problems (AU 2002). The CSSDCA, alongside Mbeki's African Renaissance, thus formed the basis of the APSA as seen in the PSC Protocol and Article 4(h) of the AU Constitutive Act (Tieku 2004: 258).

Nigeria's prescription to its responsibility to protect in Africa can also be linked to its quintessential role in the formation of the ECOWAS Ceasefire Monitoring Group (ECOMOG) in 1990 and the subsequent interventions in Liberia (1993) and Sierra Leone (1999). Although these ECOMOG interventions arguably failed the legitimacy test, both were carved out of a *Pax Nigeriana* and Nigeria's desire to assert its responsibility to protect 'younger siblings' in pursuit of its leadership aspirations (Adebajo 2010: 425). A Nigerian-led ECOWAS can thus be seen as a trendsetter for the regional intervention model in the context of R2P. However, the credibility of Nigeria's leadership role entailing a responsibility to protect Liberians, Sierra Leoneans and more recently Malians, has come under fire for displaying, as Adebajo (2010: 421) terms it, 'a penchant for a unilateral diplomatic style' and a 'paternalism' that belittles smaller states. More recently in November 2013, Nigeria pulled its troops out of the UN Multidimensional Integrated

Stabilization Mission in Mali (MINUSMA) arguably as a result of domestic imperatives, particularly the need to deal with the Islamist terrorist group Boko Haram that has been wreaking havoc within Nigeria since 2009 (Kane 2013). The pull-out by Nigeria is just one indication of the need for Nigeria to deal with domestic political and socio-economic challenges in order to realize its leadership aspirations in the region and on the continent (Adebajo 2010: 433).

The vote was thus in line with Nigeria's support for sovereignty as responsibility but its contravention of the AU position provided critics with ammunition to label Nigeria's vote on Libya as a 'foreign policy *faux pas*' (Abidde 2011). Abidde points out that the vote on Libya went against the country's belief in respect for sovereignty of fellow states and that in supporting the NATO-led intervention, President Goodluck Jonathan was merely acting as a lackey of the West, betraying the AU position in the process (Abidde 2011). Baba-Ahmed (2011) builds on this observation noting that Nigeria's vote in favour of Resolution 1973 not only proved a deterioration of the country's foreign policy, but also showed the decline in Nigeria's prominence on the continent. Nigeria was locked out of the AU *ad hoc* High Level Committee on Libya (Okereke 2012: 12) and it failed to utilize the Libyan crisis as an opportunity to exert leadership by rallying Africa behind a common position at the onset of the crisis. What's more, Nigeria could have abstained on the vote and led the mobilization of international diplomatic support for a political solution (Baba-Ahmed 2011).

Nigeria's pro-Resolution 1973 vote can also be seen against the backdrop of Gaddafi's historical meddling in the affairs of Nigeria. In March 2010, during Gaddafi's chairmanship of the AU, Nigeria recalled its envoy to Tripoli following Gaddafi's pronouncements that Nigeria should be split into Muslim and Christian parts in order to end the religious clashes (BBC News 2010). There are claims that in order to see this happen, Gaddafi 'funded the construction of mosques and other Islamic centres of worship in Kano and other cities of the North' (Omonobi 2011). Security forces also revealed that there were several unofficial visits by prominent Northerners to Libya upon invitation by Gaddafi. The Libyan leader was also said to have visited Kano and northern states several times to bring humanitarian donations. Given such reports of several destabilization plots by Gaddafi, it came as no surprise when Nigeria acted swiftly in August

2011 in recognizing the NTC, well before the AU (Omonobi 2011). Nigeria's move irked South Africa, prompting Secretary-General of the ANC, Gwede Mantashe, to remark that 'Nigeria is jumping the gun by recognizing the rebels as the representatives of Libya' (Abidde 2011). Unbeknownst to South Africa; a post-Gaddafi Africa provided an apt environment for Nigeria's reassertion of its economic and political influence in its own region and across the continent as Kalu (2011) contends.

Overall, it can be argued that Nigeria's approach to R2P is informed by its endorsement of sovereignty as responsibility and belief in promotion of principles such as human rights, democracy and the rule of law. Consequently, the Nigerian stance on Libya was based on Nigeria's foreign policy priorities and principles; a democratic Libya that was in Nigeria's national interest and 'the quest for the protection of human rights and freedom in Libya' (Ashiru 2011). The Nigerian Minister for Foreign Affairs remarked that Nigeria's stance on Libya was also informed by 'the symbolic aspect of Nigerian foreign policy driven by a substantive component turning on sets of values as expressed in the nature of its domestic structures' (Ashiru 2011). The Minister was referring to the thematic focus on democracy, human rights, freedom and the rule of law within Nigeria's foreign policy.

(iii) Gabon and the UNSC debate on intervention in Libya

Gabon's foreign policy prioritizes non-alignment; peaceful settlement of disputes; African regional integration and political stability within its neighbourhood and beyond. Historically, Gabon has supported mediation efforts in Chad, CAR, Congo- Brazzaville, Angola and the DRC (International Business Publication 2007: 61). In neighbouring Congo-Brazzaville, former President Bongo was at the forefront of the peace initiative in January 2000 that saw an end to the armed rebellion that had rocked the country since 1997 (ISS 2001). Gabon also generously contributed troops to the UN Peacekeeping Mission to the Central African Republic (MINURCA) (International Business Publication 2007: 61).

During the UNSC *Open Debate on the Protection of Civilians in Armed Conflict* on 9 November 2011, Gabon (2011b) rehashed its firm belief in R2P including the equal importance attached to all three pillars of the concept. Alongside South Africa and Nigeria, Gabon's vote in favour of UNSC Resolution 1973 was informed by the humanitarian imperative to end the suffering and killing of civilians in the Libyan crisis (Gabon 2011a). The country's vote drew surprise in some quarters mainly because of the close ties between Gaddafi and President Ali Bongo Ondimba and his father, former president Omar Bongo. Omar Bongo ruled Gabon for 42 years before his death in 2009 and is said to have converted to Islam under the tutelage of Gaddafi (Mahjar-Barducci 2011). Gabon's vote could thus perhaps be better examined in light of *Françafrique* – the looming spectre of French influence in its former African colonies. It can be argued that Gabon's vote was reflective of its loyalty to France, a typical case of not wanting to 'bite the hand that feeds it'. The point is reinforced by one of Gabon's presidential advisors who quipped: 'the French protect our system against internal and external threats. In exchange, we support their policies in Africa and elsewhere' (Sharife 2011).

Just days after the adoption of Resolution 1973, Gabon joined its African counterparts on the UNSC in deploring their votes in favour of the no-fly zone that had inadvertently led to killing of civilians in their numbers by NATO bombings. Interestingly, Gabonese President Ali Bongo disputed South Africa's claims of dupery by the implicit language in Resolution 1973 maintaining that: '(From) the wording of the resolution – 'the protection of the people by all necessary means' – I understood that there might be use of force. The use of force was not a surprise for me. I had already contemplated the prospect of the use of force, therefore when I voted for the resolution it was knowingly that I was doing so' (Langeni 2012). Nonetheless, Gabon has indicated its support of initiatives that emphasize accountability of interveners such as the Brazilian-initiated RwP and commitment to national reconciliation and post-conflict reconstruction in the aftermath of intervention (Gabon 2011b).

Breaking with the AU position, Gabon granted the NTC recognition in August 2011 alongside 20 AU member states who had acknowledged the NTC a month ahead of the continental body (Mail & Guardian 2011). Gabon's recognition reaffirmed the argument that as far as handling the

Libyan crisis was concerned, the AU was not acting as a monolithic entity in both policy and action.

5.4. Accounting for the AU's response to the Libyan crisis

The AU has categorically rejected criticisms that it did nothing to end the Libyan crisis; a claim that has some truth considering the Roadmap presented by the PSC on 10 March 2011 and the formation of the AU *ad hoc* High Level Committee on Libya. However, the slow-footedness of the AU and its questionable credibility are just some of the factors that account for the dismissal of its Roadmap and the marginalization of the organisation by other international stakeholders in the crisis.

The implementation of Resolution 1973 evoked strong criticism from several African leaders, including leaders of Nigeria, South Africa and Gabon, the very same states that had broken ranks with the AU by voting for the Resolution but that were later concerned about the manner of its implementation. Zimbabwe's President Mugabe hurled criticism at 'naïve' South Africa, Nigeria and Gabon for siding with the West who, according to him, had ulterior imperialistic motives all along (New Zimbabwe 2011b). Uganda's President Museveni blasted the West for double standards in instigating military intervention in Libya while similar crises loomed in Bahrain and Somalia. Noting the history of Gaddafi's regime, Museveni concluded by remarking that he preferred 'nationalists to puppets of foreign interests' (Mukasa 2011). Notably, the AU position was not monolithic as countries like Rwanda and Ethiopia supported the NATO-led air campaign in Libya. Rwandan President Kagame remarked that 'the Libyan situation had degenerated beyond what the AU could handle' (Butagira 2011). Sudan, also a member state of the AU, played a key role in providing military support to the Libyan rebels in the form of weapons and ammunition, communication equipment, intelligence officers and trainers (Sudan Tribune 2011).

Kasaija (2012: 136) maintains that in the Libyan case, 'the marginalization of the AU was self-inflicted' mostly because of its 'half-hearted' measures in its reaction. He adds that, 'the AU was

saddled with problems including fissures within its ranks, which prevented it from playing a very active and meaningful role in the crisis, and caused it to be relegated into a mere bystander to a game being played within its own backyard’.

The AU’s handling of the Libyan crisis must also be viewed apropos its engagement in the preceding electoral crisis in Côte d’Ivoire, which unfolded barely two months before the former. In Côte d’Ivoire, UN and France overtook mediation efforts by the AU and ECOWAS, launching an armed intervention that ousted the incumbent President Gbagbo and consolidated President-elect Ouattara’s claim to the presidency (Kasajja 2012: 138). Therefore, it can be inferred that when the Libyan crisis broke out, the AU was reeling from its marginalization in the Ivorian crisis and as such the leitmotifs of division and ambivalence were carried over to the Libyan crisis.

(i) Failure of the AU Roadmap

Nathan (2011) has drawn out that the AU Roadmap, which was rejected by NTC leadership, never had prospects for success particularly because its approach of preventive diplomacy was ill-timed once the rebellion had begun in earnest. The point is confirmed by Sithole (2012: 126) who terms the AU *ad hoc* High Level Committee’s insistence on a ceasefire during the infancy of the crisis as ‘premature’ and ‘unrealistic’.

A second key factor for the failure of the AU Roadmap was its lack of support from the international community, especially the P3. The hard-line stance of the P3 in favour of regime change in Libya meant that the AU’s alternative plan never really stood a chance once lobbying for the draft resolution on a no-fly zone had been set in motion (Koko & Bakwesegha-Osula 2012:4).

The third reason for the failure of the AU Roadmap lies in the murky credibility of the AU, in light of Gaddafi’s dominant role in AU politics. As a result, the NTC leadership had no trust in the AU as a non-partisan interlocutor (Nathan 2011). Additionally, the AU Roadmap did not

indicate Gaddafi's departure as a prerequisite thereby going against the demands of the NTC as one of the terms for negotiations (Koko & Bakwesegha-Osula 2012: 5). The NTC leadership was also sceptical of some of the members of the *ad hoc* Committee such as Mauritania's Abdel Aziz who had close ties to Gaddafi. The detrimental pro-Gaddafi bias was reinforced in light of the fact that the visit of the *ad hoc* Committee to Tripoli was not the Committee's own initiative, but happened at the invitation of Gaddafi (Pack 2011).

(ii) Limitations of the APSA

As set out in Chapter 3, in view of the framework proposed by Kingah and van Langenhove (2012:201), an assessment of the APSA as a peace and security regime ought to take into consideration three crucial factors: (i) the intention to play a role in peace and security; (ii) the degree of legitimacy; and (iii) the capacity to effectively perform as a peace and security actor. Inasmuch as the APSA mandate and willingness to promote peace and security is effectively articulated in Article 3 (f) of the AU Constitutive Act, the Libyan crisis cast a shadow over the APSA's legitimacy and capacity as a formidable peace and security regime.

A crucial aspect of legitimacy is the recognition and support of regional initiatives by at least three permanent members of the UNSC. In the case of Libya, not only did the P3 (France, UK and US) fully support the regional initiative of the LAS to impose a no-fly zone over Libya as opposed to the AU's Roadmap, but they also held back from inviting the AU to partner with NATO in implementation of the intervention mandate. The marginalization of the AU was compounded by the fact that there was no functioning REC/RM in the North African region, a vacuum that allowed foreign actors to take the lead in determining the outcome of the Libyan situation (Dersso 2012a: 18).

Another crucial factor in assessing APSA's effectiveness in handling the Libyan crisis is capacity, an issue that has proved to be a persistent challenge for the AU. Capacity implies strong institutional frameworks, sustainable financial resources and the ability to deploy troops within sophisticated command structures (Kingah and van Langenhove 2012:212). The AU

Peace Fund, which is envisioned to fund operations linked to peace and security, has remained relatively under-funded which means that the AU lacks funds necessary to oversee operations (Murithi 2014:147). Moreover, the CEWS, which is not yet fully operational, was not able to anticipate the Libyan crisis. To be fair, no other international early warning system was able to accurately project the Libyan crisis (Bellamy and Williams 2011: 832). In the case of the AU, CEWS continues to be impaired by limited capacity in terms of expertise and material resources, weakening its effectiveness as an early warning system in the prevention of mass atrocities (Iyi 2014: 166).

The incomplete operationalization of the ASF is another factor that dents the APSA's capacity to match political mandate with enforcement capacity. The ASF was originally envisaged as the APSA's coercive tool in dealing with complex humanitarian emergencies. Particularly relevant to R2P is Scenario 6, under which the ASF would be deployed in response to grave emergencies such as genocide, particularly in cases where the international community fails to intervene. However, the complete operationalization of the ASF has been a moving target since 2010 and the deadline has been moved to 2015 upon finalization of phase Exercise AMANI AFRICA II in 2014 (ISS 2012) The AMANI AFRICA exercises, which began in 2010, are simulation exercises to build the capacity of the ASF whilst gauging its interaction with various pillars of the APSA in subsequent processes from early warning, to decision-making and eventual deployment of an intervention force (Murithi 2014: 144). Several challenges militate against the ASF's capacity to function as the APSA's coercive tool including intra and extra-African tensions around issues of political command; lack of clarity of principal authority in issuing of mandates between AU's PSC and UNSC; problems in sustainable funding and logistics support; unequal troop support capacity among member states; and disparities in mission-readiness of various sub-regional brigades (ISS 2012). For as long as complete operationalization of crucial pillars such as the ASF and the CEWS is pending, the APSA will be held back from realizing its full potential as a peace and security regime. As seen with the Libyan case, such institutional unpreparedness means that the AU's hands are tied when it comes to preventing and responding to mass atrocities within the confines of Article 4(h) (Kuwali 2009b).

With regard to timely and decisive responses as per Article 2 (1) of the PSC Protocol, the AU lacked clear guidelines and mechanisms to determine the legitimacy of the Libyan crisis thereby hindering effective response. Aside from unconstitutional changes of government covered by Article 30 of the AU Constitutive Act, Dersso (2011: 39) contends that the APSA ‘does not lay down actions or measures that the AU needs to take in relation to serious deficiencies in member states’ compliance with AU norms on democracy, constitutionalism, rule of law and respect for and protection of human rights.’ Furthermore, there is lack of coherence and systematic cooperation between the APSA and the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights. For instance, the ACHPR considered the Libyan situation to be ‘grave circumstances’ necessitating robust intervention by the AU yet the AU Commission and the PSC held different views (Tungwarara 2011: 4). Lastly, there is need for effective communication to the public with regard to its policy response. The AU’s failure at public diplomacy in communicating its efforts via the media ‘failed to sell its plan to the world’ (McKaiser 2011).

(iii) Divisions within AU and lack of a unified voice on the Libyan crisis

The Libyan crisis brought into sharp relief the divisions within the AU and the outright lack of a common African position on the crisis. There were several positions on how to handle the situation. The first position held by Uganda, South Africa and Kenya among others; was supportive of UNSC Resolution 1973 but was wary of the manner in which NATO was implementing operations in Libya with undertones of regime change. The second position was advanced by Ethiopia, Gabon, Rwanda and Senegal, who supported the NATO-led intervention arguing that the AU lacked the capacity to handle the crisis given the stage it had reached. The third position pushed by Zimbabwe and Algeria totally opposed the attacks in Libya and labelled the no-fly zone operation an imperialistic attack aimed at ending Gaddafi’s regime (Kasaija 2012:151).

Greater illumination on the cracks within the AU occurred as the NATO operation unfolded and some AU member states broke ranks with the AU in recognizing the NTC as the representative of the Libyan people. The first of these countries to recognize the NTC were Gambia, Senegal and Mauritania; followed by Nigeria, Botswana and Ethiopia. The 20 member states of the AU who recognized the NTC before the AU as an organisation did so directly challenged the AU's principles on non-recognition of unelected and unconstitutional changes of government and deepened the disunity and lack of policy cohesion within the AU's political machinery (Rupiya 2012: 174).

As one of the pivotal states on the continent, Nigeria's recognition of the NTC aggravated the power struggles between itself and South Africa. South Africa may have felt threatened by Nigeria's influence given the large following of countries that sided with its recognition of the NTC. Nigeria's leadership in this regard arguably reduced the status of the AU to that of 'a follower and not a forger of the African stance on Libya' (Kalu 2011). The rivalry between the two African powerhouses was extended to the 2012 elections of the Chairperson of the AU Commission pitting a Nigerian-backed Jean Ping against South Africa's candidate Nkosazana Dlamini-Zuma. The ensuing stalemate after several rounds of voting was an indication of the growing dissension between member states, carried over from the contentious handling of the Libyan crisis. Commentators have portrayed South Africa's fielding of its candidate *inter alia* as a display of its disapproval of Ping's handling of the Libyan crisis and an extension of its power agenda to upstage Nigeria in the quest for a permanent seat in a reformed UNSC (Ojo 2011).

(iv) Gaddafi's imprint on AU member states and continental politics

The AU's handling of the Libyan crisis was partly informed by its links to Gaddafi, whose personal clout on the continent inspired both awe and disdain. Gaddafi's influence on the continent was largely through 'chequebook diplomacy' amassing huge favours from his benevolence. Through the Libyan Arab African Investment Company (LAAICO) with a \$65 billion sovereign wealth fund, Gaddafi invested in hotels, telecommunications companies, mosques and mining companies across the continent (Rosen 2011). Gaddafi's Libya was also

one of the top five African countries that contributed to 15% of the AU budget, alongside South Africa, Algeria, Egypt and Nigeria (Adebajo 2011).

In addition to his economic largesse, Gaddafi is also remembered for his aggressive political strategy; pushing for a ‘United States of Africa’ during the transformation of the OAU to the AU in 2000. Gaddafi’s ideals were in competition with the reform packages proposed by Mbeki and Obasanjo at the Sirte Summit on 9 September 1999. Gaddafi’s plan for a ‘United States of Africa’ was side-lined in favour of the other two leaders’ neo-liberal package and a gradualist approach to African integration. Evidently, his disappointment resulted in Libya tabling various proposed amendments to the AU Constitutive Act at the AU’s inaugural ceremony in 2002, including a single army for Africa, an AU Chairman with presidential powers and extended grounds for intervention in member states (Tieku 2004: 263; Baimu and Sturman 2003:38). Gaddafi’s political imprint is also seen in his historical engagement in various liberation movements in Africa as an avid supporter of the ANC in South Africa, the Eritrean Liberation Front and the National Resistance Movement in Uganda among others. Military adventurism had historically been part of his sub-Saharan Africa policy with Libyan forces occupying the Aouzou Strip in Chad in 1972. Sudan also felt the impact of Gaddafi’s military adventures with Gaddafi financing the Justice and Equality Movement (JEM), thus aggravating the destabilization in the country (De Waal 2013b:62). Many of the mercenaries recruited by Gaddafi during the Libyan crisis originated from Sudan, Niger, Chad and Mali and were the product of his military engagements on the continent, both within and beyond the Sahel region (Downie 2011b).

Given the tangled legacy of the self-proclaimed ‘king of kings’ in Africa, it should not be surprising that several African leaders were glad to see him ousted; in the midst of the many who owed him favours. The argument that Gaddafi’s departure could debilitate the AU budget has some validity among pro-Gaddafi camps, however a post-Gaddafi future for the AU could also mean the entry of other private sector funders (Rosen 2011).

(v) Lack of resources

One of the AU's major shortcomings in relation to addressing crises is its lack of hard power. The AU Roadmap contained proposals for a ceasefire including monitors and an inter-positioning force. However, member states lacked the capacity to contribute the military personnel needed, and even after the *ad hoc* Committee presented its proposals at the Extraordinary Summit on 25 May 2011, no AU member state volunteered to send troops to implement a ceasefire (De Waal 2013b:69). In addition to the failure of institutional preparedness, Handy (2011: 9) links the AU's failure in Libya to a lack of leadership in the organization. He argues:

‘...the Libyan crisis has again outlined the need for some large African states to create an informal, mini-lateral forum to help create consensus through regular exchanges on major issues facing the continent. If such a framework had existed, some of the publicly expressed divergences between South Africa and Nigeria over Libya could have been avoided and the African position would have appeared stronger and more credible’.

(vi) Partial failure of norm localization within the APSA

In line with the research objectives of this study, it would be remiss not to point out that one of the largest contributing factors to the AU's failure in handling the Libyan crisis is the failure of norm localization of R2P within its APSA; thus its subsequent failure to invoke Article 4(h).

As discussed in Chapter 3, the AU's codification of Article 4(h) largely coheres with the central tenets of R2P. The AU has largely held the position that it is necessary to ‘make outside norms more congruent’ with the existing APSA normative framework which essentially translated to localization of R2P in the African context (Acharya 2004: 244). This localization process is what former Chairperson of the AU (2011-2012), President Teodoro Obiang Nguema, may have been referring to when he remarked that the concepts of democracy, human rights and good governance ‘should be adapted to African culture’ (Amev 2011). This claim by President Obiang (and echoed by a host of African leaders) is hugely ironic given the fact that several African

states continue to exist under authoritarian regimes and African leaders have made rhetorical commitments to uphold R2P while tenaciously favouring an absolute interpretation of state sovereignty and regime security.

The ambivalence between anti-imperialism and sovereignty as responsibility was witnessed in the AU's stance on Libya; defending sovereignty against foreign intervention on one hand and justifying the AU's policy of non-indifference to mass atrocities on the other. The Libyan case demonstrated that whenever the AU tries to balance its protection norms with anti-imperialism; the anti-imperialist paradigm takes preference (Bachmann & Gelot 2011: 15). African leaders have displayed a culture of 'peer-shielding' and solidarity, reinforced by the notion of African solutions to African problems (Kasaija 2012:127). The situation was further complicated by the fact that Libya was a member of the PSC during 2011, testimony to the fear of many leaders that the protests would spread to their similarly autocratic regimes hence giving them all the more reason to hold on to the notion of non-interference (Sturman 2012:5).

Credible local insider proponents are a requirement for norm localization to occur yet the cause of an African responsibility to protect lacks contemporary bold champions on the continent. The departure from active politics of visionary leadership by the likes of Mbeki and Obasanjo, who spearheaded the reform of the AU, has revealed lacunae of norm entrepreneurship needed to enhance localization of R2P within the AU and the actual invocation of Article 4(h) in response to grave circumstances within the confines of the AU Constitutive Act and the UN Charter. It is crucial to note that had the AU wielded the political will to act on Libya, it would have instigated intervention in Libya and then sought UNSC approval *ex post facto* as per the Ezulwini Consensus (Akonor 2011).

Summatively, the AU's handling of the Libyan crisis embodies an on-going tension between emergent norms of sovereignty as responsibility and long-held traditions of anti-imperialism and mutual protection of cronies. The failure of the AU to invoke Article 4(h) in response to the crisis points to the incomplete process of norm localization within APSA as far as R2P is concerned and the lack of catalysts to fast-track the process.

5.5. Conclusion

The AU's handling of the Libyan crisis was the essence of this chapter. Commentators have picked the AU apart for its slow and weak response to the Libyan crisis, which eventually led to the AU's marginalization in international efforts and take-over by foreign actors. An analysis of the intra-AU dialogue on Libya illustrated that in spite of the comprehensive and normatively-sound framework that is the APSA, the AU failed to take up a leading role in response to the humanitarian and political crisis in Libya. Consequently, an analysis of the PSC's response to the Libyan crisis revealed aspects of continuity in the AU's methodological approach to crises similar to the Libyan situation - the AU's rejection of foreign military intervention, the unwillingness to intervene in a member state against the consent of the target state, preponderance of a 'fire-fighting' approach and the prioritization of African solutions to African problems. The AU Roadmap for the peaceful resolution of the Libyan crisis, the centrepiece of the AU's response, failed to see the light of day mostly due to its rejection by NTC rebels and lack of support from the P3 and inarticulacy by the AU vis-à-vis the international public.

The Libyan crisis proved to be a missed opportunity for the APSA as the peace and security regime of the AU, as a result of challenges and weaknesses that range from capacity problems to incomplete operationalization to lack of political will. Further compounding the picture was the pro-UNSC Resolution 1973 of the three African members on the UNSC, *au contraire* the AU's proposed plan. The votes by Gabon, Nigeria and South Africa not only revealed the blatant lack of a common African position on the Libyan crisis, but also served to enhance the AU's sidelining in the matter.

Regarding R2P, it was seen that little success of norm localization of R2P within APSA as a result of several factors; key among which is the preponderance of the norm of anti-imperialism; non-interference; a strong tradition of mutual peer-shielding; lack of credible local norm entrepreneurs and lack of political commitment. Ultimately, the AU and particularly the PSC, failed to realize its R2P mandate *vis-à-vis* the Libyan people largely because it failed to anticipate and enact a timely and decisive response in response to mass atrocities.

CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

6.1. Introduction

As explained in the introductory chapter, this study set out to critically analyse the consolidation and localization of R2P within the APSA in the context of the AU's handling of the 2011 Libyan crisis. In concluding the study on the AU and R2P, this chapter will first surmise key findings and arguments from previous chapters. Thereafter, the dominant lessons learnt from the AU's handling of the 2011 Libyan crisis and the implications thereof for the norm localization of R2P within the APSA, will be discussed. Following on that, the chapter will link the initial research assumptions of the study with the actual findings of the research. Finally, the chapter will relay challenges experienced in the course of the research, and will offer recommendations for a future research agenda on the theme.

6.2. Overview of the Research

The essence of the study has been R2P as an emerging norm that sets out a collective international responsibility to protect civilians from the evils of genocide, ethnic cleansing, crimes against humanity and war crimes. R2P has a long historical genealogy, a testament to the claim that norms are scarcely created *de novo* but emerge out of collectively held ideas and discursive negotiations resulting in novel understandings of pre-existing ideas and concepts (Kowert & Legro 1996: 469n37). Premised on elements such as sovereignty as responsibility, the just war tradition and international humanitarian law among others, R2P has strong linkages to the human security paradigm with strong emphasis on the rights of the individual alongside the rights of the state.

Chapter 1 contextualized the emergence of R2P against the backdrop of the 1990s during which the world witnessed conscience-shocking atrocities in Rwanda, former Yugoslavia, Kosovo and East Timor, among others. It became clear to the international community that there was a pressing need for a normative architecture with a framework for dealing with mass atrocities whilst upholding the sovereignty of states (Knight 2011: 15). The Canadian government took up a leading role in response to Kofi Annan's (2000) challenge to come up with a way to address

future ‘Srebrenicas and Rwandas’ by establishing the ICISS. The ICISS, which consisted of 12 high-profile panellists, produced its ground-breaking ICISS Report in 2001. This report was the premier, comprehensive conceptual framework of R2P and outlined the key tenets of the principle as well as the criteria for R2P-guided action.

Chapter 2 provided the conceptual and theoretical underpinnings of R2P, assessing the ‘evolving narrative’ of R2P’s trajectory from idea-take off to institutionalization (Knight 2011:5, Björkdahl 2002:38). Also discussed was the three-stage life cycle of norms proposed by Finnemore and Sikkink (1998: 895) which entails norm emergence, norm cascade and norm internalization. According to this life-cycle, the norm emergence stage signifies the conception of the norm, aided by norm entrepreneurs who promote, maintain and protect ‘new’ norms (Müller & Wunderlich 2013: 36). The second stage is norm cascade which is realized once the ‘tipping point’ has been realized, at which a critical mass of actors adopt the norm and norm acceptance grows through socialization and contagion (Finnemore & Sikkink 1998: 902). The final stage is norm internalization where norms take on a ‘taken-for-granted’ quality and conformance with its tenets is ‘routinized, reflexive and non-reflective’ (Knight 2011: 21). According to Knight (2011:19), with regards to R2P, two more stages can be added to the life cycle. In between stage 1 (norm emergence) and stage 2 (norm cascade), there is the ‘normative contestation or normative fit’ stage where the potential adjacency of the new norm is tested with pre-existing ones. As far as R2P is concerned, it can be argued that this stage was seen in the immediate aftermath of the 2001 ICISS Report in the context of the post-9/11 counter-terrorism agenda and the 2003 Iraq war. The inhospitable normative environment proved challenging for R2P’s uptake in the 2001-2004 period as crucial actors pushed the perception of R2P as old wine [of humanitarian intervention] in a new bottle’. Nonetheless, norm entrepreneurs such as Kofi Annan and Gareth Evans and states such as Canada continued to advocate the principle through coalition-building and discursive negotiations (Welsh 2013:371). Additionally, the ‘resistance, accommodation or dissolution’ stage follows internalization and is where the influence of the norm is tested. The outcome is two-fold: accommodation of the norm as established or decay and degeneration of the norm through its gradual weakening (Knight 2011:21).

The key moments of R2P's evolution were also highlighted, starting with the publication of the 2001 ICISS Report *The Responsibility to Protect* which set out the normative framework for R2P and paved the way for further development of the principle. The second noteworthy stage in R2P's trajectory came in 2004, during which the High Level Panel on Threats, Challenges and Change published a report which endorsed R2P as the 'emerging norm that there is a collective international responsibility to protect' (Badescu 2011: 105). The next milestone for R2P was the 2005 UNSG report *In Larger Freedom: Towards Development, Security and Human Rights for All*, which set out a number of proposals for discussion at the 2005 UN World Summit.

The 2005 World Summit was a watershed moment for R2P with over 150 states endorsing the principle in Paragraphs 138 and 139 of the WSOD. R2P as formulated in the WSOD was markedly different from that presented in the 2001 ICISS Report, limiting the concept to the four crimes of genocide, crimes against humanity, war crimes and ethnic cleansing. Moreover, Paragraph 139 also clarifies grounds for intervention based on 'manifest failure' of a state to protect its population. The 2005 WSOD also framed R2P as a political commitment, sanctionable by the UNSC (Welsh 2013: 376). Overall, the WSOD was seen as a 'testament to the range of debate, the coalition-building and the North-South compromises' undertaken to achieve broad consensus on R2P (Knight 2011: 25). Post-2005 WSOD, normative cascade of R2P was further seen in the 2009 Report of the UNSG which introduced the three-pillar approach to R2P, laying the base for more intensive dialogues and debates on R2P. It was highlighted that regardless of continued contestation over some aspects of R2P such as implementation and applicability, its status post-2005 WSOD is reflective of the broad consensus and 'convergence in expectations about the meaning and application of the norm' (Welsh 2013:379).

Summing up the conceptual analysis of R2P, Chapter 2 also highlighted the interface between the human security paradigm, outlining the 'intellectual and empirical connection' between R2P and the narrow definition of human security (Kerr 2010: 115). The concepts of security culture and norm localization were also pinpointed as central to understanding the AU's approach to R2P. Article 4 (h) of the 2000 Constitutive Act of the AU which stipulates '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’, was underscored as the illustration of the AU’s enshrinement of R2P as part of its security culture. Moreover, an analysis of norm localization, as put forward by Acharya (2004: 248), was highlighted as vital to understanding the AU’s conceptualization of R2P. The conditions for successful localization were also discussed and placed in the context of AU’s institutional framework. It was deduced that the AU’s approach to R2P is influenced by various factors such as the effect of world political culture; the soft law quality of R2P; the history of colonialism; anti-imperialism; security challenges facing the AU and continued preponderance of regime security over human security (Dembinski & Reinold 2010: 14).

The subject of Chapter 3 was the institutionalization of R2P within the African context. The historical connection between the AU and R2P was traced to the codification of what amounted to a responsibility to protect in Article 4 (h) of the 2000 AU Constitutive Act. In addition, in the Ezulwini Consensus of March 2005, the AU asserted its right to undertake enforcement action with *ex post facto* UNSC approval. This claim by the AU to act without express UNSC authorization was justified by references to exceptional cases. However, the AU’s handling of crises in Darfur, Côte d’Ivoire and Libya typify the AU’s on-going inability to take on enforcement action. Furthermore, these cases reinforce the argument that the AU’s claim to undertake Article 4(h) action without UNSC approval has no footing in customary international law (Abass 2014: 49).

Establishing the congruence between Article 4(h) and R2P, it was highlighted that although Article 4(h) uses the term ‘right to intervene’ as opposed to responsibility to protect, it largely resonates with the core tenets of R2P as outlined in the 2005 WSOD. Article 4(h) is in tandem with the third pillar of R2P and covers similar grounds for intervention (Kuwali 2014a:13). However, differences can also be discerned between the two concepts. For instance, Article 4(h) is a treaty provision which is legally binding on member states while R2P is not (Abiew 2014: 112). Moreover, R2P includes broader human protection implications than Article 4(h) which is often interpreted as applying to only reactive interventionism (Kuwali 2014b: 32).

In view of an AU distinct in both policy and vision from its predecessor the OAU, the African Peace and Security Architecture (APSA) can be said to be the infrastructural manifestation of

R2P as envisaged by the 2000 AU Constitutive Act and the 2002 PSC Protocol. At the heart of the APSA is the PSC, which is complemented by the Panel of the Wise, the Continental Early Warning System (CEWS), the African Standby Force (ASF) and the AU Peace Fund. An analysis of the APSA's role, legitimacy and capacity as a peace and security regime revealed several drawbacks and shortcomings in its operationalization, specifically with regard to Article 4(h). The PSC has been seen as a 'fire-fighting mechanism' rather than a pro-active actor in addressing peace and security issues (Dersso 2013: 84). The CEWS is being hampered by a lack of trained personnel and lack of coordination with the early warning systems of the various RECs (PSD 2010: 36). The Panel of the Wise has the powers to act as the primary catalyst towards implementation of Article 4(h) given its broad preventive diplomacy mandate. However, the Panel has not acted on its preventive diplomacy role but has instead engaged in pre-election country visits and remarks on thematic issues such as justice and reconciliation; and women and children in armed conflict (Murithi 2014:146). The biggest challenge for the AU Peace Fund has been inadequate funding coupled with over-reliance on foreign donors. On its part, the ASF has faced delays and constant shifts in timelines meaning that its operationalization remains long overdue. There are considerable disparities in 'mission readiness' across the various regional brigades with varying levels in structure development and staffing. Furthermore, existing tensions over political command and deployment of ASF within Africa and between the PSC and the UNSC have contributed to further delays in realizing full-functioning capacity (Aboagye 2012b :4). Overall, an assessment of the APSA's functioning revealed a tendency of the various components to operate in silos, capacity gaps and financial unsustainability all of which revealed a pressing need for 'less talk and more action' towards a fully-functioning APSA (Brett 2013:7).

A key development with regard to Article 4(h) is its proposed amendment to extend the grounds for intervention by the AU in a member state to include situations considered 'a serious threat to legitimate order' (AU 2003). The implications of this amendment (introduced in February 2003 and yet to enter into force) are far-reaching and ominous for consolidation of R2P within the AU peace and security regime. Baimu and Sturman (2003: 42) observe that the amendment can be seen as a move to privilege regime security over human security; a point reiterated by Witt (2013:12) who asserts that the amendment is an illustration of the continuous norm contestation that is part and parcel of continental politics.

In sum, the prospects for the implementation of Article 4(h) by the AU are bleak in view of the AU's handling of past conflicts and the fact that since its creation, the AU is still yet to invoke Article 4 (h). The permeation of states under authoritarian regimes even within the membership of key organs such as the PSC and the preponderance of regime security values over and above human security values continue to compromise normative internalization of Article 4(h) (Abiew 2014:120). Another impediment to full realization of the AU's intervention clauses is the conceptualization of Article 4(h) as a right as opposed to a responsibility. Kindiki (2003:106) clarifies this inconsistency noting that the AU's approach to Article 4 (h) as a right deprives it of a sense of legal obligation whereby it is cast purely as a matter of discretion at the hands of AU member states whether to intervene or not in the case of grave circumstances.

Chapter 4 constituted of a historical overview of Libya; with the aim of understanding the underlying causes of the 2011 Libyan uprising. The influential dynamics in Libya's history, both persistent and enduring, found resonance in pre-Gaddafi Libya and also during the Gaddafi regime. These dynamics included the legacy of the Italian colonial period; the discovery of oil; the political exclusion of some regions in Libya; the centrality of tribe and family in political life and the role of ideology in shaping the political system. A history of pre-Gaddafi Libya revealed discontentment with the monarchy under King Idris in the post-independence period. Col. Muammar Gaddafi and his Free Officers Movement, spurred on by public dissatisfaction, executed a coup in 1969 effectively overthrowing the monarchy and instituting what turned out to be a 42-year long authoritarian regime under Gaddafi. The regime was based on the ideologies contained in the Gaddafi's Green Book; a blueprint for the political, economic and social make-up of Libya under the *Jamahiriya* system. To ensure the continued survival of the regime, Gaddafi made use of overlapping power structures including patronage networks formed around family and loyalist tribes. The ban on dissent and the use of state machinery to repress any form of opposition partly helped fuel the aggrievement that gave rise to the Libyan uprising of 2011.

A caveat was noted that inasmuch as the Libyan uprising has been seen as part of the larger phenomenon of the Arab Spring that spread from Tunisia and Egypt, Libya was distinct in several aspects. For instance, Libya was the only case that escalated into civil war that prompted intervention by the international community. Moreover, in Libya systematised weakening of

state institutions and civil society over decades meant that the initiators of the uprising were armed rebels from the eastern region of Libya; a region that had suffered political exclusion throughout Gaddafi's rule. Unlike in Egypt and Tunisia, the protesters called for regime change as opposed to an overhaul of the political system (St John 2012:2). Overall, the nature of the Libyan uprising can be largely attributed to the character of the Libyan state as an 'inclusionary state' identifiable with authoritarianism, a cult of personality around the leader and manipulative ideology (Kamrava 1998: 71).

An analysis of the diplomatic activities across the international community revealed the high premium accorded to regional support from organizations such as the Arab League and the Gulf Cooperation Council (GCC). By early March 2011, a few weeks into the uprising, reports of a humanitarian crisis were mounting in the wake of escalating brutal crackdown on protesters by regime forces. The looming humanitarian crisis; unrelenting rhetoric from Gaddafi and the call for implementation of a no-fly zone by a collective Arab voice motivated timely action from the UNSC. Notably, the apparent failure of UNSC Resolution 1970 (passed 26 February 2011) to deter the lethal crackdown of protesters by pro-Gaddafi forces also set the pace for the adoption of UNSC Resolution 1973.

UNSC Resolution 1973 was adopted on 17 March 2011 with 10 votes in favour and 5 abstentions from Russia, India, China, Brazil and Germany. The Resolution, which authorized a no-fly zone over Libya, was a landmark in that it presented the first time the UNSC authorized intervention without the consent of a functioning state. R2P proponents have dubbed the Libyan intervention an opportune convergence of 'will, speed and gold-plated legality' (APR2P 2011). Gauging the applicability of R2P against the response by the international community to the Libyan crisis, it was demonstrated that Resolution 1973 checked all the six criteria for R2P type action: seriousness of harm; right intention; last resort; proportional means; reasonable prospects and right authority.

On a different tack, critics of R2P have been quick to dub the Libyan intervention as the beginning of the end for R2P particularly because of the abuse of R2P as a pretext for regime change. O'Connell (2011:15) has asserted that military intervention in Libya was not employed as the last resort considering that sanctions, negotiations and other non-military options were

hardly attempted before NATO stepped in. Hehir (2011: 18) adds that geopolitical interests drove the response of the UNSC, particularly the P3, to the Libyan crisis. The backlash against R2P-Libya-like intervention may hold sway amongst R2P naysayers and undoubtedly brings to the fore key issues about the contentious aspects around implementation of R2P. The post-Libya debate on R2P spurred the Brazilian proposal of Responsibility While Protecting (RWP), a complementary approach to R2P that emphasizes accountability by implementers of R2P; ‘comprehensive and judicious analysis of the possible consequences of military action,’ exclusive authority of the UNSC and strict adherence to implementation mandates (Brazil 2011b).

Chapter 5 built on Chapter 4 by zeroing in on the AU’s handling of the Libyan crisis. From the outset, it was brought out that the AU was marginalised in the flurry of diplomatic engagements that birthed the eventual adoption of UNSC Resolution 1973. An analysis of intra-AU dialogue on Libya rehashed the engagement on the crisis by the APSA and its component structures as well as dialogue on Libya within other AU institutions that are not part of the APSA, namely the Pan-African Parliament, the Assembly and the African Commission on Human and Peoples Rights.

A noteworthy decision of the PSC was made at its 265th meeting on 10 March 2011 which included formulation of an AU Roadmap for resolution of the Libyan crisis and the establishment of an AU *ad hoc* High Level Committee on Libya comprising of 5 Heads of State and the Chairperson of the AU Commission. The *ad hoc* Committee was mandated to engage all relevant parties in the conflict and to coordinate efforts with AU partners toward resolution of the crisis. It is telling that the Committee on Libya only met with the Libyan parties on 10 April 2011, due to flight restrictions by the UNSC in view of the fact that implementation of Resolution 1973 had begun on 19 March 2011. The meetings with Gaddafi first, and with the NTC the following day, bore little success with the rebels outrightly rejecting the proposed Roadmap. The key elements of the latter included cessation of hostilities; cooperation of Libyan authorities in facilitating delivery of humanitarian assistance; protection of foreign nationals in Libya and the adoption of necessary political reforms with a view of ending the crisis. The NTC

rejected the AU Roadmap on the basis that it did not stipulate Gaddafi's exit and also because they viewed the AU as a partial interlocutor under significant influence of Gaddafi.

With respect to other AU institutions, a significant move by the ACHPR was highlighted in its opening up of a case against Libya in the African Court on Human and Peoples' Rights on 25 March 2011, citing the violent crackdown of peaceful protesters and the indiscriminate use of lethal weapons as key concerns. Though Libya did not comply with the ruling of the Court regarding the case against it, the case itself was seen as a progressive moment for the African human rights protection architecture.

The voting behaviour of the 3 African members on the UNSC during the Libyan crisis (Gabon, Nigeria and South Africa) revealed that they broke ranks with the AU by supporting Resolution 1973. An analysis of the motivations behind the positive votes *vis-à-vis* the respective foreign policy priorities and principles of the respective states revealed that the vote for Resolution 1973 was influenced by an array of factors; not precluding support for R2P. These factors included Gaddafi's historical influence on the continent; national interests; the bandwagon of regional buy-in from Arab regional organizations and condemnation of violence by the AU; and the scale of humanitarian crisis in Libya. Overall, the votes by Gabon, Nigeria and South Africa were taken as a manifestation of the lack of a common African position on Libya, and of the intra-AU divisions on how to handle the situation. The dissent within the AU was carried on to the process of recognizing the NTC, with several member states recognizing the NTC months before the AU did. Perhaps an even more glaring argument for the poor showing of the AU is the organisation's lack of resources. Counterfactuals to the AU's handling of the crisis will have a difficult time excusing the blatant lack of hard power had the AU been at the frontline of conflict resolution. The Libyan crisis also exposed the limitations of the APSA particularly the lack of clear guidelines in the enactment of timely and decisive responses. Not surprisingly, the AU's stance on Libya was reflective of an on-going ambivalence between anti-imperialism and sovereignty as responsibility. Commentators have remarked that in the case of Libya, the AU's marginalisation was self-inflicted stemming from its slow response, perfunctory measures and failure at public diplomacy.

6.3. Lessons learnt from the AU's handling of the 2011 Libyan crisis: implications for norm localization of R2P

In line with the fundamental research problem covered by the study, several key lessons can be gleaned from the AU's handling of the Libyan crisis. The first is the role of regional organizations as 'gatekeepers' of interventions by the international community (Bellamy & Williams 2011:839). In the Libyan case, it was the GCC and the LAS that first framed the international response by calling for imposition of a no-fly zone over Libya (Rogin 2011). Further signs of the Arab buy-in came when the OIC also indicated its support for implementation of a no-fly zone (Shaheen 2011). The appeal of regional support was emphasized by NATO whose conditions for military intervention included 'firm regional support' among others (Obama 2011; Xinhua News Agency 2011). During the UNSC deliberations on the adoption of Resolution 1973, several states justified their positions on the basis of regional support for enforcement action. For instance, the US, UK, France and Lebanon all declared their support for Resolution 1973 as based on the call for the no-fly zone by the LAS (UNSC 2011b). Although the AU was recognized for its efforts in forming a High Level panel, at the end of the day it was the LAS that carried the day in terms of persuading pivotal states that the no-fly zone had sufficient support in the region (Bellamy & Williams 2011: 843).

Glanville (2013: 327) asserts that the Libyan case indicated a shift from reliance on 'sovereign consent' toward reliance on 'regional consent' as far as UNSC deliberations on protection of civilians were concerned. Libya thus demonstrated that 'regional consent was a pragmatic requirement for those Western states seeking a strong international response to the crisis' (Glanville 2013: 327). However, Glanville (2013: 337) is cautious about labelling Russia and China's lack of resistance to Resolution 1973 as the trump of regional consent over sovereign consent. He adds that this acquiescence may have been the result of 'rhetorical entrapment', that is, linking their abstention to the position of regional organizations and not wanting to be seen as going against the regional stance (Glanville 2013: 337).

The emergent gatekeeping role of regional organizations in influencing the framing of issues and voicing the range of policy options available to the UNSC is undoubtedly a commendable development. However, several questions may arise around *which* regional organization to give priority to, especially in complex situations where there is a plurality of organizations or where there is inter-regional overlap as was the case in Libya, cutting across North Africa and the Middle East. Furthermore, it is not a given that the UNSC will continue the trend of passing resolutions in line with requests of regional organizations; Libya may have been the exception in this regard (Glanville 2013: 338). Another factor compounding the emerging role of regional organizations as gatekeepers is the issue of priority in which states may be uncertain as to which regional organization to give priority to. The result may be ‘forum shopping’ whereby states align their positions to the position of the organization most similar to their own (Bellamy and Williams 2011: 846).

A second key lesson that has been highlighted while tracing the normative trajectory of Article 4(h) within the AU framework is that norm contestation is the essence of continental politics. The inclusion of Article 4(h) in the norm hierarchy of the AU started with a process of discursive bargaining between two interpretive frames: ‘sovereignty as responsibility’ versus ‘sovereignty as possession’ (Witt 2013:20). The ‘sovereignty as responsibility’ frame is hinged on the notion that states have a ‘performative responsibility’ that checks sovereignty against fulfilment of their responsibility to uphold rights of citizens within their territory. Strong advocates in this camp include South Africa, Nigeria, Rwanda and Botswana. The second schema, ‘sovereignty as possession,’ is adopted by states that have historically been apprehensive of R2P and its implementation in Africa. States such as Zimbabwe, Libya and Sudan have been wary of R2P being used as a Trojan horse for neo-colonial imperialistic ventures in weak states by the powerful ones. The debate between these two interpretive frames has been carried onto debates on amendments to the Constitutive Act of the AU as well as debates about the embeddedness of the APSA and its normative components. Therefore, norm contestation is invariably part and parcel of continental politics and sheds light on the discursive bargaining that often yields common African positions on issues borne out of minimal consensus (Witt 2013:30). The lack of a common African voice on the Libyan crisis can thus be traced to the back-and-forth dynamics

of norm contestation around the emergent norm of R2P, resulting in divergent positions on ways to deal with the crisis.

Closely linked but distinct from norm contestation, is the notion of norm subsidiarity. Norm subsidiarity, as explained, is ‘the process whereby local actors develop new rules, offer new understandings of global rules or reaffirm global rules in the regional context’ (Acharya 2011:96). The process is applicable to peripheral or weaker actors who turn to subsidiarity in cases where there is ‘big power hypocrisy’ or a trampling of their autonomy by powerful actors (Acharya 2011: 96). Norm subsidiarity therefore implies a challenging or resisting effect to marginalization and/or abuse of global norms by powerful states. In the case of the Libyan crisis, the formulation of RWP by Brazil attests to the application of norm subsidiarity. The abuse of UNSC Resolution 1973 for purposes of regime change in Libya raised concern among Russia, China and emerging powers about the implementation of R2P and its potential for abuse by intervening states with ulterior motives. In response to the mounting backlash against intervention in Libya, in November 2011, Brazil introduced a concept note on RWP to the UNSC. In the concept note (UN Doc A/66/551-S/2011/701), Brazil’s representative to the UN, Amb Viotti, unpacked the elements of RWP as a complement to R2P highlighting key aspects such RWP including the idea that all ‘three pillars of R2P must follow a strict line of political subordination and chronological sequencing’; ‘comprehensive and judicious analysis of the possible consequences of military action’; explicit authorization by the UNSC with respect to use of force; and accountability on the part of implementers of enforcement action. Consequently, the Brazilian initiative can be regarded as a form of agency and feedback that is pivotal to R2P’S normative development in the aftermath of the Libyan intervention (Evans 2012b).

Taken together, norm subsidiarity and norm contestation stem from the school of critical norm dynamics which emphasizes the effect of agency and feedback in norm decay or its opposite, norm strengthening (Deitelhoff & Zimmermann 2013:3). The NATO-led intervention in Libya fleshed out the substantive contestation around the application of R2P which in turn opened up the discourse on further development of the norm in terms of precision and scope, without questioning its actual validity (Deitelhoff & Zimmermann 2013: 9). With reference to the

Brazilian concept of RWP, the supportive/strengthening effect of subsidiarity is seen as progressive to the development of R2P, by opening up learning processes in the applicatory discourse of the norm to both emerging and powerful states as mutual stakeholders in a dynamic normative order (Thakur 2013: 71).

The third lesson relates to the normative status of R2P post-Libya. At the time of application in the Libyan crisis, the status of R2P was short of a legal norm. In fact, Bellamy and Reike (2010: 269) clarify R2P's status as 'a political commitment to act upon shared moral beliefs, much of which is embedded in already existing international law.' The WSOD marked the broad consensus garnered around R2P as a normative framework with formal acceptance, however contestation from some states and the fact that its application is not prevalent enough exclude it from being considered part of customary international law (Africa and Pretorius 2012: 400). Put differently, R2P is an emerging norm whose consolidation is contingent upon its institutionalization in guaranteeing consistent compliance by states (Badescu & Weiss 2010: 355). The adoption of UNSC Resolution 1973 was heralded as a triumph for R2P in view of the UNSC's authorization of use of force in a functioning sovereign state. However, the delicate consensus around the Resolution was soon shattered as recriminations abound about the over-reach of NATO in implementing its mandate and the pursuit of regime change in aiming for Gaddafi's ouster.

Indeed the Libyan case brought to the fore issues around implementation at the sharp end of the R2P response continuum (Evans 2012b) as well as the phenomenon of 'foreign imposed regime change' and its tacit linkage to R2P application (Walt 2011b). With regard to the specifics of the language of the UNSC Resolution 1973, both Morris (2013: 1273) and Loisel (2013: 331), raise the crucial point that statements made by states during UNSC deliberation on Libya were only evocative of pillar one responsibility, that is, the responsibility of the Libyan state to protect its citizens. The omission in UNSC Resolution 1973 of an explicit mention of the responsibility of the international community is in Loisel's (2013: 341) view an indication that measures implemented under Resolution 1973 do not constitute an *opinio juris* which endorses the

responsibility of the international community as a legal obligation under customary international law.

For all the hullabaloo about Libya, there remain solid reasons to be optimistic about the future of R2P. The first reason is that the core elements of R2P remain relatively unchallenged and the continued broad consensus has been seen in annual UNGA debates on R2P with steady number of participating countries. The second reason is evidence of growing institutional preparedness and commitment by states to mainstream R2P at national, regional and global levels. In 2010, the governments of Denmark and Ghana kick-started the R2P Focal Points Initiative, later joined by Australia, Costa Rica and over 30 other countries. R2P Focal Points are senior government officials responsible for analysis of mass atrocity risk situations and crafting suitable early responses to prevent occurrence of mass atrocities. Since then, the Global Network of R2P Focal Points has held three meetings (at the time of writing) building on experience and lessons from peacekeeping, SSR and peace-building. Initiatives such as the R2P Focal Points and the mainstreaming of R2P within the UN System including efforts such as the creation of the office of the Special Adviser on R2P, point to the ‘community of commitment’ which is actively working toward normative progress of R2P (Adams 2014).

The third reason for an optimistic future of R2P is that in spite of murky, power-tainted politics of civilian protection within the UNSC, since the intervention in Libya, R2P has been referenced in several resolutions on Côte d’Ivoire (Resolution 1975); Mali (Resolutions 2085, 2100); South Sudan (Resolution 2109) and the Central African Republic (Resolutions 2121, 2127 and 2134) among others (GCR2P 2014). Furthermore, the Brazilian initiative of RWP and the Chinese proposal of ‘Responsible Protection’ signal efforts aimed at salvaging consensus on tough cases within the UNSC. Both RWP and Responsible Protection touch on issues of strict criteria, accountability of interveners and prevention as cardinal emphasis of R2P. Therefore, there appears to be willingness, at least on the part of China and Russia, of permanent members of the UNSC to engage on the controversial, sharp-end cases of R2P and address the contentious aspects thereof (Evans 2014).

The AU has often been recognized as the premier regional organization to systematically institutionalize R2P as embodied in the APSA. However, a 2010 Assessment Study of the APSA revealed numerous drawbacks to the process of norm localization pertaining to R2P within the structures of APSA. According to Kuwali (2009b), the challenges faced by APSA in implementing R2P fall into four categories. The first category of challenges is conceptual in the sense that the extent to which R2P has been internalized by AU member states is widely different. The conceptual disparity is further compounded by the AU's ambiguous approach to R2P as a distinct concept from PoC. Zähringer (2013:198) points to this conceptual ambiguity by highlighting the language of the AU Roadmap in the Libyan crisis which drew heavily on PoC in calling for a cessation of hostilities and protection of civilians according to the AU's conceptualization of PoC in conflict situations. The implication of the AU's approach is an embedding of PoC within R2P as contained in the 2001 ICISS Report and in turn, an over-emphasis on the reactive component of R2P. The jeopardy with focusing on the reaction component is a neglect of the preventive dimension of R2P and Article 4(h) and possible rearing of a tendency to wait for conflicts to escalate in gravity before engaging.

The second challenge is institutional preparedness to deal with mass atrocity crimes. The APSA is set back by several capability gaps in the operationalization of Article 4(h). For instance, the PSC secretariat is severely understaffed and has no permanent team of legal experts and translators. There is great need for enhancements to the PSC secretariat in view of the burgeoning workload that comes with the AU's engagement in conflict management. The CEWS also faces human resource problems specifically a paucity of skilled staff (Williams 2011a: 22). There are military gaps as far as the ASF is concerned with its over-delayed operationalization as a result of disparities in mission readiness across the various brigades; tensions in political command of the ASF and challenges in training and evaluation; logistics and rapid deployment capabilities (Aboagye 2012b:4). Arguably, one of the biggest problems facing the AU in living up to its role as a formidable peace and security actor is the lack of funding. AU member states contribute only 6% of the regular budget towards the AU Peace Fund which has led to an over-reliance on funds from external donors such as the EU. The reliance on foreign donors bodes

unfavourably for the AU's credibility and political ownership in matters of peace and security (Ayangafac & Cilliers 2011: 139).

The third set of challenges is the lack of political will. AU member states continue to operate along lines of mutual peer-shielding and solidarity (Kasaija 2012:127). The point is echoed by Bachmann and Gelot (2011:15) that whenever presented with a case where the AU has to choose between its protection norms and anti-imperialism, the anti-imperialist paradigm is often privileged. The lack of political will towards invocation of Article 4(h) cannot be divorced from the historically tumultuous relationship between AU member states and the ICC which reached a low point in 2008 upon President Al-Bashir's indictment by the Court. The AU has categorically declared its policy of non-cooperation with the ICC and continues to hold on to this stance at the expense of international justice on the continent (Murithi 2013:1).

The final set of challenges is operational; linked to overall coordination and efficiency of APSA as a unit. The 2010 Assessment Study found that there was a trend to operate in silos thereby resulting in poor horizontal coordination across the various components. For instance, the PSC has not fed from the regional early warning mechanisms under the CEWS. In terms of vertical coordination, there is limited coordination between the AU and RECs/RMs with regard to the PSC and the Panel of the Wise, both of which have similar structures at the sub-regional level (PSD 2010: 8). In spite of the 2008 MoU on cooperation in the area of peace and security between the AU, RECs and the Coordinating Mechanisms of the Regional Standby Brigades; there are gaps in the cooperation and consultation frameworks between AU and RECs. There is a need to address the issue of priority between the AU and RECs and to formulate clear guidelines on division of labour particularly when it comes to peace and security issues (Dersso 2014: 98).

Drawing from the experiences in Libya and Mali, which highlighted the need to improve the AU's responsiveness to crisis situations; the 21st ordinary session of the AHSG in May 2013 decided to create the African Capacity for Immediate Response to Crises (ACIRC). The idea of the ACIRC was first brought up in January 2013 during the AU Summit deliberations on the situation in Mali. The French-led military intervention in January 2013 may have been seen as a

timely intervention but it exposed the inability of the AU to handle crises in its own backyard. African Ministers of Defence had expressed reservations about the concept of ACIRC and submitted a report in April 2013 to the Chairperson of the Commission, which requested a thorough assessment of the challenges in operationalizing the ASF and its rapid deployment capacity (RDC). The *Report of the Chairperson of the Commission on the Operationalization of the Rapid Deployment Capacity of the ASF and the Establishment of an 'African Capacity for Immediate Response to Crises'* (RPT/Exp/VI/STCDSS/ (i-a) 2013) defined the ACIRC as 'a strictly military capacity with high reactivity to respond swiftly to emergency situations upon political decisions to intervene in conflict situations within the continent' (AUC 2013: 7). The ACIRC will be drawn from 'a reservoir of 5,000 troops, with operational modules in the form of tactical battle groups of 1,500 personnel (BG 1500) that can be deployed rapidly... which must have a minimum initial self-sustainment period of 30 days' (AUC 2013: 8). Troops will be sourced from voluntary contributions of member states and would be deployed within 10 days. Moreover, the force headquarters would have a nucleus of 50 staff and the ACIRC will have mandates in (i) 'stabilization, peace enforcement and intervention missions; (ii) neutralization of terrorist groups, other cross-border criminal entities, armed rebellions; and (iii) emergency assistance to Member States within the framework of the principle of non-indifference for protection of civilians' (AUC 2013: 8).

The ACIRC can be lauded as part of the dynamic process of enhancing APSA in a continental environment where peace and security matters are in a state of flux (Théroux-Benoni 2013). However, for effective conflict management capabilities, the AU must also look to 'pro-active interventionism' as envisaged by Article 4(h). The Panel of the Wise is best placed to steer the APSA and the AU towards proactive interventionism by virtue of its preventive diplomacy mandate. Efforts toward building a culture of prevention has been seen in the establishment of the Pan-African Network of the Wise (PanWise) consisting of the AU Panel of the Wise, Friends of the Panel, similar mechanisms from the RECs and international mediators. PanWise is aimed at promoting 'a bottom-up approach' to mediation, collaboration and extending ownership of the African peace and security agenda to African people, local communities, governments and civil society organizations (AU 2013).

Ultimately, the development of APSA is closely linked to the RECs and a coordinated relationship in implementation of the peace and security mandate. Indeed APSA components like the ASF and CEWS would not function properly in the absence of regional cooperation (Vines 2013: 104). Additionally, the internal political dynamics of sub-regional organizations have a direct impact on the institutionalization of R2P at the continental level, as seen in the initiatives of SADC and ECOWAS advocating for implementation of R2P through their Protocols and intervention frameworks (Aning & Atuobi 2011:14). Bizos (2014: 35) reiterates this view of sub-regional organizations as essential building blocks of continental peace and security and key catalysts in the localization of R2P at both sub-regional and regional levels. However, he cautions that these sub-regional organizations need to be ‘developed cognitively around an African agenda and not around presumed regional spheres of influence’ (Bizos 2014: 35).

The 2011 Libyan crisis revealed how the defunct North African REC, Arab Maghreb Union, was unable to take up the lead in dealing with the crisis thereby exposing a vacuum that was taken up by the LAS as the main sub-regional security actor (Vines 2013: 106). If R2P is to be localized, sub-regional organizations need to engage in building awareness and support for R2P; aligning their policies with R2P and fostering compliance from member states in enforcing decisions (Aning & Atuobi 2011:17). Ultimately, success in implementation of R2P at the sub-regional and regional levels is contingent on political will and renewed engagement on the protection discourse flowing from domestic structures at the state level to the regional level embodied by APSA and its attendant structures (Bizos 2014: 35).

A fourth lesson brought out by the Libyan crisis is the relative paucity of norm entrepreneurs to enhance localization of R2P within the AU. In their discussion on the role of agency in dynamics of norm diffusion and norm change, Müller and Wunderlich (2013: 28) draw on the work of Acharya (2004: 240) on intrinsic sources of norm change and the role of local norm-takers in re-interpreting meanings of new norms to adapt them to local normative structures. As mentioned in Chapter 2 of this study, Acharya (2004: 248) highlights the advocacy role of credible local actors as one of the conditions for successful norm localization. The concept of norm entrepreneurship in political science lexicon and in norm research in particular, focuses on actors that promote norms which resonate closely with their ideals and beliefs; and fit in with the collective interest

of the international community while simultaneously ‘creating a niche for themselves in international politics’ (Björkdahl 2002:48 as cited in Müller & Wunderlich 2013: 32). Norm entrepreneurs operate across various contexts and can be states, regional organizations, individuals, transnational networks and civil society organizations (Müller & Wunderlich 2013: 36).

With regard to R2P, particular attention has been paid to states like Canada and individuals like Kofi Annan, Gareth Evans and Francis Deng who played pivotal roles in idea take-off of R2P at the norm-emergence stage of R2P. However, the role of norm entrepreneurs as agents can also go beyond the norm-emergence stage onto the subsequent phases of the norm cycle by ‘maintaining, ensuring, protecting, promoting and enforcing’ norms (Müller & Wunderlich 2013: 35). A case in point is the office of the UN Secretary-General which has been integral in mainstreaming of R2P in the UN system (Bellamy 2013: 155-156). In relation to the AU, the ideals of former Presidents Mbeki (African Renaissance); Obasanjo (CSSDCA) and to an extent Gaddafi (United States of Africa) during the drafting of the Constitutive Act of the AU; lent greatly to the final composition of the legal and policy frameworks of the APSA as it presently stands (Tieku 2004: 265). The localization of R2P within the AU is also partly influenced by AU bureaucracy, civil society and member states. At the helm of the AU bureaucracy is the AU Commission whose Peace and Security department wields agenda-setting powers. The Chairperson of the AU Commission is in a crucial position to influence localization of R2P due to his or her role as the source of information and analysis to the PSC with respect to issues of peace and security. Civil society organizations also have the potential to influence the AU’s key decision-makers in implementation of R2P as nodes of information dissemination and feedback. However, both the AU Commission and civil society’s powers of influence are dwarfed in comparison to the decision-making powers of AU member states (Dembinski & Schott 2014: 12).

At the state level, the localization of R2P is highly varied as seen in the approaches of continental hegemony, South Africa and Nigeria, whose pro-R2P foreign policy orientations take on opposing views when it comes to implementation. Closely linked to historical and political experiences, South Africa largely advocates for non-violent settlement of conflicts with

undertones of anti-imperialism and quiet diplomacy; whereas Nigeria has not shied away from political and military intervention in its neighbourhood and a desire to be Africa's 'big brother' (Dembinski & Schott 2014: 13). The stances of Nigeria and South Africa on Libya *vis-à-vis* the AU further serve to highlight the would-be role of Africa's hegemons as norm entrepreneurs of R2P institutionalization in the AU context and in opening up the African discourse on implementation of R2P in a cohesive and coherent manner.

The Libyan crisis exposed the dearth of head of state-level norm entrepreneurs such as Mbeki and Obasanjo to champion the cause of R2P on the continent. Further muddying the waters is the preponderance of authoritarian regimes across the continent, set on pursuing regime security at the expense of human security (Sturman 2012: 5). Some commentators, for example Zähringer (2013: 192), have gone on to observe that R2P is politically dead within the AU. While efforts of individuals such as Annan, Deng and the Chairperson of the Commission may be instrumental in advancing R2P, it is states that are the cornerstone of embedding R2P within the APSA. Weak state institutions, undemocratic leadership and governments and authoritarian policies feed into the peace and security challenges of the continent (Maru 2012: 7). The urgent reformation of state behaviour coupled with localization of R2P within national security cultures will fuel the localization of R2P at the AU level and steer the AU towards making R2P a living reality of its security culture.

The fifth lesson to be learnt is the utility of roadmaps in the resolution of conflicts by the AU. Over the last decade, the AU has institutionalized mediation as an integral tool of its conflict resolution strategies. The multi-layered and multi-faceted nature of conflicts on the continent coupled with the growing need to embrace more holistic approaches to conflict management has spurred the AU to re-engage in home-grown initiatives to redress conflicts (Khadiagala 2011: 22). Central to the AU's conflict management strategy is the concept of mediation which is essentially 'a method of mitigating the concerns through the presence and support of an intermediary who is not party to the conflict, who enjoys the trust of the disputants and whose goal is to help the disputants forge agreements which they find acceptable' (Nathan 1999).

Over the years as the AU has faced various conflicts such as those in Somalia, Sudan, Zimbabwe, Madagascar, Côte d'Ivoire and Libya; through a trial-and-error process, the AU has

come up with a methodology and model for conflict resolution that embraces mediation as well as components such as roadmaps and high-level panels in dealing with different conflicts. The significance of mediation in conflict resolution has to be examined against the backdrop of new approaches in conflict resolution theory evidenced by international endorsements, starting with Boutros-Ghalis' 1992 Agenda for Peace, the 2000 Brahimi Report and, more recently, the 2011 UNGA Resolution (A/RES/65/283) on *Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution*, among others. The ascendancy of mediation has also seen the AU make use of eminent personalities including former heads of states and elder statesmen (Khadiagala 2011: 24). In substantive terms, Rupiya (2012:178) observes that the AU's conflict management methodology is built on several elements such as the emergent role of RECs as mediators; insistence on ceasefire; assumption of role as the lead intermediary body; urging for an inclusive transitional period; and giving room for legal and constitutional reforms leading up to free and fair elections under observation by the AU. An evaluation of the success of the AU's methodology in various conflicts is beyond the scope of this study, but it is prudent to expect a mixed bag of successes and failures.

In the case of the Libyan crisis, the AU moved to establish an *ad hoc* High Level Panel on Libya as well as a proposed Roadmap that included an immediate ceasefire; unhindered delivery of humanitarian aid; protection of foreign nationals and an inclusive transitional period and reforms aimed at ending the conflict (PSC 2011b). When the *ad hoc* Committee travelled to Libya, Gaddafi loosely accepted the AU Roadmap but the NTC dismissed it. Nathan (2011) notes that the NTC rebels rejected the AU Roadmap mostly because the AU lacked credibility as a non-partisan mediator and also because the Roadmap did not include Gaddafi's departure as a precondition of the NTC's participation in negotiations. Moreover, the inherent bias of the Roadmap was perceived in light of the membership of the Committee including President Abdel Aziz of Mauritania who had close ties to Gaddafi and the fact that the visit of Committee to Libya was at the behest of Gaddafi rather than on its own initiative (Pack 2011).

The Libyan case highlighted the AU's 'illusions of dogmatic pacifism', as Handy (2011) refers to it, in view of its insistence on African solutions to African problems and preference for a

negotiated settlement against the reality of the AU's lack of hard power, dubious credibility and absence of a clear African position on Libya. In the second instance, the Libyan case also highlighted the challenges of implementing roadmaps in the case of 'divided international opinion' and lack of support for the AU Roadmap from powerful stakeholders in the UNSC. The P3 were set on seeing through the NATO operation in Libya and marginalized the AU as a frontline actor in resolution of the crisis, preferring to work with Arab regional organizations like the LAS (Khadiagala 2012: 6). Additionally, Libya also revealed the enduring issues around sequencing of local and international initiatives, resulting in breakdown of consensus around coordination of African and international efforts in handling of African conflicts (Khadiagala 2011: 29).

While the increasing use of roadmaps by the AU is a crucial development in the institution's conflict management and resolution matrix, an evaluation of the utility of roadmaps cannot be viewed separate from the broader strategic and institutional considerations of mediation. Strategic considerations include the necessity of confidence-building mechanisms and the impartiality of mediators. Institutional considerations entail the centrality of mediation expertise and a comprehensive doctrine and concept of mediation (Nathan 2005: 3, 9). Integral to the broad themes of this research is an understanding of the use of mediation in R2P situations. The Libyan case is pertinent in that it presented as a grave humanitarian crisis that required attention of the international community. In the context of the Libyan situation, key issues that can be fleshed out include the timing of mediation in a complex conflict situation, the source of the mediation initiative and whether the mediation offer is comprehensive enough (Kumar 2013: 602). The AU effort in pushing for a negotiated settlement may have had reasonable prospects for success had it been conducted in an effective and timely manner and forged around best practice from previous mediation experiences. The discourse linking roadmaps and R2P needs to be seen against the normative changes in the APSA and the embrace of universal norms such as democracy, protection of human rights and good governance. The utility of roadmaps as a political solution in African conflicts will ultimately depend on the AU's efforts to bridge the gap between mandate and capacity and its application based on timely diagnosis and effective mediation procedures (Khadiagala 2012: 6).

The final lesson to be gleaned from the AU's handling of the Libyan crisis is linked to the localization process. Norm localization is a progressive endeavour hence one should not dismiss the localization of R2P within the AU peace and security framework as a complete failure. Evidence of localization is seen when institutional change takes place in a regional organization either through change in function or creation of new policy instruments (Acharya 2004: 252). In the context of the AU, codification of Article 4(h) and the creation of the APSA can be taken as the institutional manifestation of norm localization. The AU's handling of the Libyan crisis, in which it failed to invoke Article 4(h) in response to the situation, may be taken as a partial failure of norm localization in the sense that the AU failed to undertake 'robust enforcement action' (Kabau 2012: 60). The AU's failure to invoke Article 4(h) can be attributed to a number of factors *inter alia* preponderance of the norm of non-interference, lack of consensus among member states, lack of hard power and insistence on negotiated settlement that fell short of international backing.

Acharya (2013: 476) asserts that in order to understand the diffusion of R2P in the African regional context, one has to also examine the role of 'African' agents such as Deng, Annan and Sahnoun in the emergence of R2P in the transnational context; the shifts in views on sovereignty by African leaders prior to the 2001 ICISS Report; the African conceptualization of the notion of 'responsible sovereignty'; and the policy shift from non-interference to non-indifference as putative embrace of R2P. He adds (Acharya 2013: 478):

'Hence, the African construction of the R2P cannot be easily dismissed as a case of Africa merely following the Western idea of the right to intervene. It was qualitatively different in origin and inspiration and would lead to modifications to the scope and implementation of the R2P norm not only in Africa but also in other parts of the world'.

At the end of the localization process is norm displacement, resulting in changes in norm hierarchy and displacement of the target norm (Acharya 2004: 254). Within the AU norm hierarchy; the norms of anti-imperialism/non-interference have not yet been supplanted by an 'African' R2P hence norm displacement cannot be said to have occurred. Nevertheless, R2P has

found an institutional home in the APSA and its impact and diffusion are best seen through the lens of constitutive localization whereby the AU normative order and R2P are in a ‘mutually constitutive’ relationship (Acharya 2004: 252).

6.4. Summative Research Findings

The primary hypothesis was that as regards the 2011 UNSC intervention in Libya, the AU failed to live up to expectations that it would act as a trailblazer of the R2P norm and allowed the debate and subsequent intervention to be dominated by other regional organizations and the international community at large. Upon evaluating the AU’s handling of the Libyan crisis, it can be said that this central research assumption is accurate. Inasmuch as the AU condemned the brutal crackdown of protesters by Gaddafi’s forces and called for an end to the violence, it largely failed to see through its proposed Roadmap for a negotiated settlement to the crisis. Not only did the AU fail to communicate its preference for a political situation to the public, but it also dragged its feet in undertaking timely action such as dispatching its High Level Panel to Libya. It came as no surprise that the AU was overtaken by events and was seen as playing catch-up to the diplomatic efforts of other stakeholders in the international community such as the LAS and OIC whose propositions were quickly taken up by the UNSC.

The first sub-hypothesis observed that in spite of conformity between R2P and the normative basis of the AU’s peace and security architecture, R2P has remained subservient to other norms such as non-interference in the norm hierarchy of the AU. The AU’s approach to R2P as part of its security culture is often influenced by a number of factors, sometimes at odds with its protection norms. These factors include an abhorrence of external intervention; the influence of global political culture; the complexity of R2P as soft law; long-held traditions of mutual peer-shielding; the spread of neo-patrimonial regimes and the continued privileging of regime security over human security (Dembinski & Reinold 2010: 18).

The second subsidiary assumption proposed that an array of political, institutional and material challenges continues to impede the AU’s policy shift from non-interference to non-indifference.

The APSA, which has been hailed as the embodiment of R2P in the AU context, is hamstrung by considerable gaps between mandate and capacity ranging from a dearth of skills, human resources and financial resources. The political challenges are largely in the form of lack of political will as most African leaders still prefer to shield peers and privilege regime security values over human security values effectively placing the R2P norm on the backburner of continental politics. The AU is also stymied by institutional challenges whereby institutional preparedness is severely hampered by overdue operationalization of some elements of APSA such as the ASF which is far from being mission-ready. The AU's dearth of financial resources is two-fold in that there is heavy reliance on foreign financial assistance from donors such as the EU, and at the same time the AU suffers from weak absorption capacity which further cripples implementation of pledged mandates. Operational challenges are evident in the relationship between the AU and RECs, mired in poor coordination strategies and lack of clear guidelines on division of labour in matters of peace and security.

The third subsidiary hypothesis submitted that the marginalization of the AU in the run-up to the NATO-led Libyan intervention is an indictment of the lack of commitment to consolidation of R2P. The AU's response to the Libyan crisis was perfunctory at best and tardy at worst, exacerbated by divisions within its ranks. Its view on Libya differed greatly from the stance of other stakeholders such as the LAS, EU and UN who viewed the situation as a warrant for R2P-type intervention. The rejection of foreign military intervention by the AU and its failure to invoke Article 4(h) is a reflection of the AU's historical record, characterized by a reluctance to intervene in a member state even in the face of grave circumstances. The marginalization of the AU was thus a product of its own slow-footedness and ambivalence towards Libya. The AU did not impose sanctions on the Gaddafi regime nor did it suspend Libya as the LAS had done. The rejection of the AU Roadmap by the NTC also contributed to the side-lining of the AU's plan as calls for a no-fly zone from the Arab regional organizations drew considerable political support from the P3 and NATO.

As a way of addressing the fundamental research problem, a subsidiary research question raised was: to what extent has congruence between Article 4(h) of the AU Constitutive Act and the

normative framework of R2P been realized? The study went on to show that in spite of similarities between Article 4(h) and R2P; the conceptualization of the ‘right to intervene’ by the AU casts R2P as a matter of discretion by member states rather than a responsibility. Furthermore, the proposed amendment in 2003 to Article 4(h) extending the right to intervene in the case of ‘a serious threat to legitimate order’ indicate a regression of the AU’s efforts to protect the rights of individual, tantamount to privileging of regime security over human security. Although the amendment has not yet been ratified by the requisite two thirds of member states, such undertakings do not bode well for the intervention clauses of the AU as far as R2P is concerned and continue to broaden the gap between policy and practice of an African position on R2P.

Two other subsidiary questions covered were: (i) with reference to the popular uprising in Libya, what implications does the AU’s stance against foreign military intervention have on the consolidation of the R2P norm within the AU security culture? and (ii) in view of the AU’s peripheral engagement in the Libyan experience, what prospects can be suggested for deeper consolidation and increased saliency of R2P as a normative component of the institutional security culture? The case study of Libya revealed the AU’s reluctance to invoke Article 4(h) authorizing intervention in a member state. If the AU keeps up with its record of omitting reference to grave circumstances, the AU may well take another decade before implementing its policy of non-indifference and hence fail to prioritize R2P within its norm hierarchy. Additionally it was seen that the ascendancy of R2P will ultimately depend on generalization of political will among member states including localization of R2P within national security cultures as a precursor to localization at the AU level. Furthermore, the integral role of RECs as building blocks of the APSA was also outlined as a fundamental part of the equation of realizing successful consolidation of R2P. It was emphasized that sub-regional organizations need to engage in building support for R2P, aligning their policies with R2P and fostering compliance from member states in enforcing decisions.

Through the application of the concept of norm localization as advocated by Acharya (2004) and viewed in the context of the Libyan crisis, the research study answers the fundamental research

question as well as its subsidiary questions. The research hypotheses have been verified and validated and proven useful in meeting the broad objectives of the study.

6.5. Challenges experienced in the course of research

In the course of gathering information in pursuit of research objectives, a major challenge was insufficient information from which to evaluate Gabon's engagement with R2P and analysis of its term on the UNSC during the Libyan crisis. While primary and secondary sources on its African counterparts on the UNSC during the crisis, Nigeria and South Africa, are in abundance in the public domain; the difficulty in obtaining information on Gabon for the purposes of this study proved problematic in the sense that most of the information was taken from secondary sources and interviews with little input from relevant primary government sources.

6.6. Recommendations for future research

The study utilised the theory of norm localization in analysing the evolution and status of R2P in the context of the AU. Norm localization relates to the broader framework of norm dynamics and the influence of agency and structure on the process of norm diffusion and evolution. The issue of feedback is not covered in this dissertation and is a subject that warrants specific investigation. As a starting point, Acharya (2013: 471) highlights the value of theories such as norm circulation which focuses on feedback/repatriation effects of norms into the transnational space and lead to its modification effect. An analysis of norm feedback, in the context of the AU and with respect to R2P, will prove insightful in understanding the multi-layered process and complex interaction between local and transnational contexts of norm dynamics on a continent where R2P has particular resonance, both in theory and practice.

Secondly, there is also need for a research agenda on the linkages between mediation practices and R2P situations as concerns the APSA. The AU has increasingly resorted to roadmaps and high level panels as part of its mediation practices in African conflicts. More research needs to

be dedicated to exploring the utility of mediation and the possibilities of making it the default option in R2P-type crises both at regional and global levels.

A third area for future research is the relationship between the ICC and R2P, not only because the two are related in a protection-prosecution agenda but also because their underpinnings are at the heart of the human security paradigm. Such analysis would cover the nuances in the relationship between the two concepts and unpack the fact that both address conscience-shocking situations in international relations. The need for an enhanced understanding of the ICC-R2P nexus has been highlighted by the ongoing tension between the Court and the AU, and the ambiguity related to international legal commitments of its members states, caused by the AU's formal position *vis-à-vis* the ICC.

6.7. Conclusion

The policy shift-from non-interference to non-indifference and codification of a right to intervene in Article 4 (h) of its Constitutive Act marked the starting point of the AU's embrace of R2P and acknowledgement of the notion of responsible sovereignty. The concept of norm localization was utilized in investigating the status of R2P within the AU's peace and security framework. The study showed that although Article 4 (h) of the Constitutive Act of the AU is in tandem with the tenets of R2P; the conceptual contours of Article 4 (h) portray 'African R2P' as a right rather than a responsibility. The 2011 Libyan crisis was a crucible of the AU's commitment to R2P, which saw the institution fail to invoke Article 4(h) and the marginalization of the AU by international stakeholders dealing with the crisis as a result of contradictions and weaknesses in its APSA.

Overall, the study fleshed out several key lessons from the AU's handling of the Libyan crisis. These include *inter alia* the role of regional organizations as 'gatekeepers' of interventions by the international community; norm contestation as an essential part of continental politics; the various limitations of APSA that vitiate its effectiveness as a peace and security regime; the array of challenges that impair the APSA's implementation of R2P and limitations on the process

of norm localization of R2P within APSA. The study emphasized that progressive norm localization will ultimately come down to political will of member states and the championing of R2P by existent and upcoming norm entrepreneurs. An evaluation of the rhetoric-reality nexus of R2P within the AU revealed its nuanced commitment to R2P as being aspirational at best, if not simply rhetorical. Overall, the Libyan crisis proved to be a valuable learning curve for the consolidation and institutionalization of R2P in the future of the AU, normatively speaking.

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Appendix 1: UNSC Resolution 1973 (Libya) 17 March 2011

United Nations

S/RES/1973 (2011)



Security Council

Distr.: General
17 March 2011

Resolution 1973 (2011)

Adopted by the Security Council at its 6498th meeting, on 17 March 2011

The Security Council,

Recalling its resolution 1970 (2011) of 26 February 2011,

Deploring the failure of the Libyan authorities to comply with resolution 1970 (2011),

Expressing grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties,

Reiterating the responsibility of the Libyan authorities to protect the Libyan population and *reaffirming* that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

Condemning the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions,

Further condemning acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel and *urging* these authorities to comply with their obligations under international humanitarian law as outlined in resolution 1738 (2006),

Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

Recalling paragraph 26 of resolution 1970 (2011) in which the Council expressed its readiness to consider taking additional appropriate measures, as necessary, to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya,

Expressing its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel,

Recalling the condemnation by the League of Arab States, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that have been and are being committed in the Libyan Arab Jamahiriya,

11-26839 (E)

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Taking note of the final communiqué of the Organisation of the Islamic Conference of 8 March 2011, and the communiqué of the Peace and Security Council of the African Union of 10 March 2011 which established an ad hoc High Level Committee on Libya,

Taking note also of the decision of the Council of the League of Arab States of 12 March 2011 to call for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in the Libyan Arab Jamahiriya,

Taking note further of the Secretary-General's call on 16 March 2011 for an immediate cease-fire,

Recalling its decision to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court, and *stressing* that those responsible for or complicit in attacks targeting the civilian population, including aerial and naval attacks, must be held to account,

Reiterating its concern at the plight of refugees and foreign workers forced to flee the violence in the Libyan Arab Jamahiriya, *welcoming* the response of neighbouring States, in particular Tunisia and Egypt, to address the needs of those refugees and foreign workers, and *calling on* the international community to support those efforts,

Deploring the continuing use of mercenaries by the Libyan authorities,

Considering that the establishment of a ban on all flights in the airspace of the Libyan Arab Jamahiriya constitutes an important element for the protection of civilians as well as the safety of the delivery of humanitarian assistance and a decisive step for the cessation of hostilities in Libya,

Expressing concern also for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

Welcoming the appointment by the Secretary General of his Special Envoy to Libya, Mr. Abdel-Elah Mohamed Al-Khatib and supporting his efforts to find a sustainable and peaceful solution to the crisis in the Libyan Arab Jamahiriya,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya,

Determining that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Demands* the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;
2. *Stresses* the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and *notes* the decisions of the Secretary-General to send his Special Envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution;
3. *Demands* that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;

Protection of civilians

4. *Authorizes* Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and *requests* the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;

5. *Recognizes* the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the Charter of the United Nations, requests the Member States of the League of Arab States to cooperate with other Member States in the implementation of paragraph 4;

No Fly Zone

6. *Decides* to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians;

7. *Decides further* that the ban imposed by paragraph 6 shall not apply to flights whose sole purpose is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance, or evacuating foreign nationals from the Libyan Arab Jamahiriya, nor shall it apply to flights authorised by paragraphs 4 or 8, nor other flights which are deemed necessary by States acting under the authorisation conferred in paragraph 8 to be for the benefit of the Libyan people, and that these flights shall be coordinated with any mechanism established under paragraph 8;

8. *Authorizes* Member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above, as necessary, and *requests* the States concerned in cooperation with the League of Arab States to coordinate closely with the Secretary General on the measures they are taking to implement this ban, including by establishing an appropriate mechanism for implementing the provisions of paragraphs 6 and 7 above,

9. *Calls upon* all Member States, acting nationally or through regional organizations or arrangements, to provide assistance, including any necessary overflight approvals, for the purposes of implementing paragraphs 4, 6, 7 and 8 above;

10. *Requests* the Member States concerned to coordinate closely with each other and the Secretary-General on the measures they are taking to implement paragraphs 4, 6, 7 and 8 above, including practical measures for the monitoring and approval of authorised humanitarian or evacuation flights;

11. *Decides* that the Member States concerned shall inform the Secretary-General and the Secretary-General of the League of Arab States immediately of measures taken in exercise of the authority conferred by paragraph 8 above, including to supply a concept of operations;

12. *Requests* the Secretary-General to inform the Council immediately of any actions taken by the Member States concerned in exercise of the authority conferred by paragraph 8 above and to report to the Council within 7 days and every month thereafter on the implementation of this resolution, including information on any violations of the flight ban imposed by paragraph 6 above;

Enforcement of the arms embargo

13. *Decides that* paragraph 11 of resolution 1970 (2011) shall be replaced by the following paragraph : “Calls upon all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 9 and 10 of resolution 1970 (2011), to inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from the Libyan Arab Jamahiriya, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export of which is prohibited by paragraphs 9 or 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, *calls upon* all flag States of such vessels and aircraft to cooperate with such inspections and authorises Member States to use all measures commensurate to the specific circumstances to carry out such inspections”;
14. *Requests* Member States which are taking action under paragraph 13 above on the high seas to coordinate closely with each other and the Secretary-General and *further requests* the States concerned to inform the Secretary-General and the Committee established pursuant to paragraph 24 of resolution 1970 (2011) (“the Committee”) immediately of measures taken in the exercise of the authority conferred by paragraph 13 above;
15. *Requires* any Member State whether acting nationally or through regional organisations or arrangements, when it undertakes an inspection pursuant to paragraph 13 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspection, the results of such inspection, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;
16. *Deplores* the continuing flows of mercenaries into the Libyan Arab Jamahiriya and *calls upon* all Member States to comply strictly with their obligations under paragraph 9 of resolution 1970 (2011) to prevent the provision of armed mercenary personnel to the Libyan Arab Jamahiriya;

Ban on flights

17. *Decides that* all States shall deny permission to any aircraft registered in the Libyan Arab Jamahiriya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight has been approved in advance by the Committee, or in the case of an emergency landing;
18. *Decides that* all States shall deny permission to any aircraft to take off from, land in or overfly their territory, if they have information that provides reasonable grounds to believe that the aircraft contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 and 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, except in the case of an emergency landing;

Asset freeze

19. *Decides that* the asset freeze imposed by paragraph 17, 19, 20 and 21 of resolution 1970 (2011) shall apply to all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the Libyan authorities, as designated by the Committee, or by individuals or entities acting on their behalf or at their direction,

or by entities owned or controlled by them, as designated by the Committee, and *decides further* that all States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the Libyan authorities, as designated by the Committee, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, as designated by the Committee, and directs the Committee to designate such Libyan authorities, individuals or entities within 30 days of the date of the adoption of this resolution and as appropriate thereafter;

20. *Affirms* its determination to ensure that assets frozen pursuant to paragraph 17 of resolution 1970 (2011) shall, at a later stage, as soon as possible be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;

21. *Decides* that all States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in the Libyan Arab Jamahiriya or subject to its jurisdiction, and any individuals or entities acting on their behalf or at their direction, and entities owned or controlled by them, if the States have information that provides reasonable grounds to believe that such business could contribute to violence and use of force against civilians;

Designations

22. *Decides* that the individuals listed in Annex I shall be subject to the travel restrictions imposed in paragraphs 15 and 16 of resolution 1970 (2011), and *decides further* that the individuals and entities listed in Annex II shall be subject to the asset freeze imposed in paragraphs 17, 19, 20 and 21 of resolution 1970 (2011);

23. *Decides* that the measures specified in paragraphs 15, 16, 17, 19, 20 and 21 of resolution 1970 (2011) shall apply also to individuals and entities determined by the Council or the Committee to have violated the provisions of resolution 1970 (2011), particularly paragraphs 9 and 10 thereof, or to have assisted others in doing so;

Panel of Experts

24. *Requests* the Secretary-General to create for an initial period of one year, in consultation with the Committee, a group of up to eight experts (“Panel of Experts”), under the direction of the Committee to carry out the following tasks:

(a) Assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011) and this resolution;

(b) Gather, examine and analyse information from States, relevant United Nations bodies, regional organisations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

(c) Make recommendations on actions the Council, or the Committee or State, may consider to improve implementation of the relevant measures;

(d) Provide to the Council an interim report on its work no later than 90 days after the Panel’s appointment, and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations;

25. *Urges* all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Committee and the Panel of Experts, in particular by supplying any information at their disposal on the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;

26. *Decides* that the mandate of the Committee as set out in paragraph 24 of resolution 1970 (2011) shall also apply to the measures decided in this resolution;
27. *Decides* that all States, including the Libyan Arab Jamahiriya, shall take the necessary measures to ensure that no claim shall lie at the instance of the Libyan authorities, or of any person or body in the Libyan Arab Jamahiriya, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 1970 (2011), this resolution and related resolutions;
28. *Reaffirms* its intention to keep the actions of the Libyan authorities under continuous review and underlines its readiness to review at any time the measures imposed by this resolution and resolution 1970 (2011), including by strengthening, suspending or lifting those measures, as appropriate, based on compliance by the Libyan authorities with this resolution and resolution 1970 (2011).
29. *Decides* to remain actively seized of the matter.

Libya: UNSCR proposed designations

<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
1	I: Travel Ban QUREN SALIH QUREN AL QADHAFI	Libyan Ambassador to Chad. Has left Chad for Sabha. Involved directly in recruiting and coordinating mercenaries for the regime.	
2	Colonel AMID HUSAIN AL KUNI	Governor of Ghat (South Libya). Directly involved in recruiting mercenaries.	

<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
Annex II: Asset Freeze			
1	Dorda, Abu Zayd Umar	Position: Director, External Security Organisation	
2	Jabir, Major General Abu Bakr Yunis	Position: Defence Minister	Title: Major General DOB: --/--/1952. POB: Jalo, Libya
3	Matuq, Matuq Mohammed	Position: Secretary for Utilities	DOB: --/--/1956. POB: Khoms
4	Qadhafi, Mohammed Muammar	Son of Muammar Qadhafi. Closeness of association with regime	DOB: --/--/1970. POB: Tripoli, Libya

5	Qadhafi, Saadi	Commander Special Forces. Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations	DOB: 25/05/1973. POB: Tripoli, Libya
6	Qadhafi, Saif al-Arab	Son of Muammar Qadhafi. Closeness of association with regime	DOB: --/--/1982. POB: Tripoli, Libya
7	Al-Senussi, Colonel Abdullah	Position: Director Military Intelligence	Title: Colonel DOB: --/--/1949. POB: Sudan

Entities

1	Central Bank of Libya	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	
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<i>Number</i>	<i>Name</i>	<i>Justification</i>	<i>Identifiers</i>
2	Libyan Investment Authority	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	a.k.a: Libyan Arab Foreign Investment Company (LAFICO) Address: 1 Fateh Tower Office, No 99 22nd Floor, Borgaida Street, Tripoli, Libya, 1103
3	Libyan Foreign Bank	Under control of Muammar Qadhafi and his family and a potential source of funding for his regime.	
4	Libyan Africa Investment Portfolio	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	Address: Jamahiriya Street, LAP Building, PO Box 91330, Tripoli, Libya
5	Libyan National Oil Corporation	Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.	Address: Bashir Saadwi Street, Tripoli, Tarabulus, Libya

Appendix 2: AU PSC Communiqué PSC/PR/COMM.2(CCLXV) 10 March 2011

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

P.O. Box: 3243, Addis Ababa, Ethiopia, Tel.:(251-11) 551 38 22 Fax: (251-11) 551 93 21
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**PEACE AND SECURITY COUNCIL
265TH MEETING
ADDIS ABABA, ETHIOPIA
10 MARCH 2011**

PSC/PR/COMM.2(CCLXV)

COMMUNIQUE

**COMMUNIQUE OF THE 265th MEETING OF
THE PEACE AND SECURITY COUNCIL**

The Peace and Security Council of the African Union (AU), at its 265th meeting held at the level of Heads of State and Government, on 10 March 2011, adopted the following decision on the situation in Libya:

Council:

1. **Takes note** of the statements made by the Chairperson of the Commission, as well as by the representative of the Great Socialist People's Libyan Arab Jamahiriya;
2. **Recalls** communiqué PSC/PR/COMM(CCLXI) adopted at its 261st meeting, held on 23 February 2011, and the statement issued, the same day, by the Chairperson of the Commission;
3. **Expresses AU's deep concern** at the prevailing situation in Libya, which poses a serious threat to peace and security in that country and in the region as a whole, as well as to the safety and dignity of Libyans and of the migrant workers, notably the African ones, living in Libya. Council **is equally deeply concerned** with the resulting humanitarian situation;
4. **Expresses AU's solidarity** with Libya, and **underscores** the legitimacy of the aspirations of the Libyan people for democracy, political reform, justice, peace and security, as well as for socio-economic development, and the need to ensure that these aspirations are fulfilled in a peaceful and democratic manner; in this context, Council **takes note** of the stated commitment of the Libyan authorities to embark upon the path of reforms;
5. **Reiterates AU's strong and unequivocal condemnation** of the indiscriminate use of force and lethal weapons, whoever it comes from, resulting in the loss of life, both civilian and military, and the transformation of pacific demonstrations into an armed rebellion; Council **deeply deplores** the loss of human life, **conveys its condolences** to the families of the victims and **wishes** early recovery to those who have been injured;
6. **Reaffirms its strong commitment** to the respect of the unity and territorial integrity of Libya, as well as its rejection of any foreign military intervention, whatever its form;
7. **Expresses** its conviction that the current situation in Libya calls for an urgent African action for:
(i) the immediate cessation of all hostilities, (ii) the cooperation of the competent Libyan authorities to facilitate the timely delivery of humanitarian assistance to the needy populations, (iii) the protection of foreign nationals, including the African migrants living in Libya, and (iv) the adoption and implementation of the political reforms necessary for the elimination of the causes of the current crisis;

8. **Decides** to establish an AU *ad-hoc* High-Level Committee on Libya comprising five Heads of State and Government, as well as the Chairperson of the Commission; Council **requests** the Chairperson of the Commission to finalize the consultations undertaken in this respect and to announce the composition of the Committee as soon as possible. Council **further decides** that the Committee is mandated to:
 - (i) engage with all parties in Libya and continuously assess the evolution of the situation on the ground,
 - (ii) facilitate an inclusive dialogue among the Libyan parties on the appropriate reforms,
 - (iii) engage AU's partners, in particular the League of Arab States, the Organization of the Islamic Conference, the European Union and the United Nations, to facilitate coordination of efforts and seek their support for the early resolution of the crisis ;
9. **Further decides** that the AU *ad-hoc* High-Level Committee on Libya be supported by a team comprising the Ministers of Foreign Affairs/External Relations and/or other relevant Ministers of the countries concerned, as well as the AU Commissioner for Peace and Security;
10. **Requests** all AU Member States to provide logistical and humanitarian support to all African migrant workers wishing to leave Libya, as well as to those neighboring countries forced to bear a disproportionate burden and to the countries of origin to facilitate the socioeconomic reinsertion of these migrant workers. In this respect, Council **requests** the Chairperson of the Commission to take the necessary steps to coordinate such an effort, including the convening of a conference to facilitate the mobilization of the required resources and other related measures;
11. **Recalls** the provisions of the OAU Convention on the Elimination of Mercenarism in Africa; Council **requests** the Commission to gather information on the reported presence of mercenaries in Libya and their actions, to enable it, should these reports be confirmed, to take the required measures in line with the Convention;
12. **Requests** the Chairperson of the Commission to transmit this decision to the United Nations Security Council, the League of Arab States, the Organization of the Islamic Conference, the European Union and other concerned AU partners, for their action as appropriate;
13. **Decides** to remain actively seized of the matter.

Appendix 3: UNSC Resolution 1970 (Libya) 26 February 2011

United Nations

S/RES/1970 (2011)*



Security Council

Distr.: General
26 February 2011

Resolution 1970 (2011)

**Adopted by the Security Council at its 6491st meeting, on
26 February 2011**

The Security Council,

Expressing grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians,

Deploring the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government,

Welcoming the condemnation by the Arab League, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that are being committed in the Libyan Arab Jamahiriya,

Taking note of the letter to the President of the Security Council from the Permanent Representative of the Libyan Arab Jamahiriya dated 26 February 2011,

Welcoming the Human Rights Council resolution A/HRC/RES/S-15/1 of 25 February 2011, including the decision to urgently dispatch an independent international commission of inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, to establish the facts and circumstances of such violations and of the crimes perpetrated, and where possible identify those responsible,

Considering that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

Expressing concern at the plight of refugees forced to flee the violence in the Libyan Arab Jamahiriya,

Expressing concern also at the reports of shortages of medical supplies to treat the wounded,

* Second reissue for technical reasons (10 March 2011).

11-24558* (E)
1124558



Recalling the Libyan authorities' responsibility to protect its population,

Underlining the need to respect the freedoms of peaceful assembly and of expression, including freedom of the media,

Stressing the need to hold to account those responsible for attacks, including by forces under their control, on civilians,

Recalling article 16 of the Rome Statute under which no investigation or prosecution may be commenced or proceeded with by the International Criminal Court for a period of 12 months after a Security Council request to that effect,

Expressing concern for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya.

Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

Acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,

1. *Demands* an immediate end to the violence and calls for steps to fulfil the legitimate demands of the population;
2. *Urges* the Libyan authorities to:
 - (a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors;
 - (b) Ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country;
 - (c) Ensure the safe passage of humanitarian and medical supplies, and humanitarian agencies and workers, into the country; and (d) Immediately lift restrictions on all forms of media;
3. *Requests* all Member States, to the extent possible, to cooperate in the evacuation of those foreign nationals wishing to leave the country;

ICC referral

4. *Decides* to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court;

5. *Decides* that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;

6. *Decides* that nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State;

7. *Invites* the Prosecutor to address the Security Council within two months of the adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution;

8. *Recognizes* that none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily;

Arms embargo

9. *Decides* that all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel whether or not originating in their territories, and decides further that this measure shall not apply to:

(a) Supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee established pursuant to paragraph 24 below;

(b) Protective clothing, including flak jackets and military helmets, temporarily exported to the Libyan Arab Jamahiriya by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; or

(c) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee;

10. *Decides* that the Libyan Arab Jamahiriya shall cease the export of all arms and related materiel and that all Member States shall prohibit the procurement of such items from the Libyan Arab Jamahiriya by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the Libyan Arab Jamahiriya;

11. *Calls upon* all States, in particular States neighbouring the Libyan Arab Jamahiriya, to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from the Libyan Arab Jamahiriya, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 or 10 of this resolution for the purpose of ensuring strict implementation of those provisions;

12. *Decides* to authorize all Member States to, and that all Member States shall, upon discovery of items prohibited by paragraph 9 or 10 of this resolution, seize and dispose (such as through destruction, rendering inoperable, storage or transferring to a State other than the originating or destination States for disposal) items the supply, sale, transfer or export of which is prohibited by paragraphs 9 or 10 of this resolution and decides further that all Member States shall cooperate in such efforts;

13. *Requires* any Member State when it undertakes an inspection pursuant to paragraph 11 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspections, the results of such inspections, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing

relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;

14. *Encourages* Member States to take steps to strongly discourage their nationals from travelling to the Libyan Arab Jamahiriya to participate in activities on behalf of the Libyan authorities that could reasonably contribute to the violation of human rights;

Travel ban

15. *Decides* that all Member States shall take the necessary measures to prevent the entry into or transit through their territories of individuals listed in Annex I of this resolution or designated by the Committee established pursuant to paragraph 24 below, provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory;

16. *Decides* that the measures imposed by paragraph 15 above shall not apply:

(a) Where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation;

(b) Where entry or transit is necessary for the fulfilment of a judicial process;

(c) Where the Committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in the Libyan Arab Jamahiriya and stability in the region; or

(d) Where a State determines on a case-by-case basis that such entry or transit is required to advance peace and stability in the Libyan Arab Jamahiriya and the States subsequently notifies the Committee within forty-eight hours after making such a determination;

Asset freeze

17. *Decides* that all Member States shall freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities listed in annex II of this resolution or designated by the Committee established pursuant to paragraph 24 below, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, and decides further that all Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the individuals or entities listed in Annex II of this resolution or individuals designated by the Committee;

18. *Expresses* its intention to ensure that assets frozen pursuant to paragraph 17 shall at a later stage be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;

19. *Decides* that the measures imposed by paragraph 17 above do not apply to funds, other financial assets or economic resources that have been determined by relevant Member States:

(a) To be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services in accordance with national laws, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant State to the Committee of

the intention to authorize, where appropriate, access to such funds, other financial assets or economic resources and in the absence of a negative decision by the Committee within five working days of such notification;

(b) To be necessary for extraordinary expenses, provided that such determination has been notified by the relevant State or Member States to the Committee and has been approved by the Committee; or

(c) To be the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered into prior to the date of the present resolution, is not for the benefit of a person or entity designated pursuant to paragraph 17 above, and has been notified by the relevant State or Member States to the Committee;

20. *Decides* that Member States may permit the addition to the accounts frozen pursuant to the provisions of paragraph 17 above of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen;

21. *Decides* that the measures in paragraph 17 above shall not prevent a designated person or entity from making payment due under a contract entered into prior to the listing of such a person or entity, provided that the relevant States have determined that the payment is not directly or indirectly received by a person or entity designated pursuant to paragraph 17 above, and after notification by the relevant States to the Committee of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose, 10 working days prior to such authorization; *Designation criteria*

22. *Decides* that the measures contained in paragraphs 15 and 17 shall apply to the individuals and entities designated by the Committee, pursuant to paragraph 24 (b) and (c), respectively;

(a) Involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in the Libyan Arab Jamahiriya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities; or

(b) Acting for or on behalf of or at the direction of individuals or entities identified in subparagraph (a).

23. *Strongly encourages* Member States to submit to the Committee names of individuals who meet the criteria set out in paragraph 22 above;

New Sanctions Committee

24. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council (herein “the Committee”), to undertake to following tasks:

(a) To monitor implementation of the measures imposed in paragraphs 9, 10, 15, and 17;

(b) To designate those individuals subject to the measures imposed by paragraphs 15 and to consider requests for exemptions in accordance with paragraph 16 above;

- (c) To designate those individuals subject to the measures imposed by paragraph 17 above and to consider requests for exemptions in accordance with paragraphs 19 and 20 above;
- (d) To establish such guidelines as may be necessary to facilitate the implementation of the measures imposed above;
- (e) To report within thirty days to the Security Council on its work for the first report and thereafter to report as deemed necessary by the Committee;
- (f) To encourage a dialogue between the Committee and interested Member States, in particular those in the region, including by inviting representatives of such States to meet with the Committee to discuss implementation of the measures;
- (g) To seek from all States whatever information it may consider useful regarding the actions taken by them to implement effectively the measures imposed above;
- (h) To examine and take appropriate action on information regarding alleged violations or non-compliance with the measures contained in this resolution;

25. *Calls upon* all Member States to report to the Committee within 120 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraphs 9, 10, 15 and 17 above;

Humanitarian assistance

26. *Calls upon* all Member States, working together and acting in cooperation with the Secretary General, to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya, and requests the States concerned to keep the Security Council regularly informed on the progress of actions undertaken pursuant to this paragraph, and expresses its readiness to consider taking additional appropriate measures, as necessary, to achieve this;

Commitment to review

27. *Affirms* that it shall keep the Libyan authorities' actions under continuous review and that it shall be prepared to review the appropriateness of the measures contained in this resolution, including the strengthening, modification, suspension or lifting of the measures, as may be needed at any time in light of the Libyan authorities' compliance with relevant provisions of this resolution;

28. *Decides* to remain actively seized of the matter.

Annex I

Travel ban

1. Al-Baghdadi, Dr Abdulqader Mohammed

Passport number: B010574. Date of birth: 01/07/1950.

Head of the Liaison Office of the Revolutionary Committees. Revolutionary Committees involved in violence against demonstrators.

2. Dibri, Abdulqader Yusef

Date of birth: 1946. Place of birth: Houn, Libya.

Head of Muammar Qadhafi's personal security. Responsibility for regime security. History of directing violence against dissidents.

3. Dorda, Abu Zayd Umar

Director, External Security Organisation. Regime loyalist. Head of external intelligence agency.

4. Jabir, Major General Abu Bakr Yunis

Date of birth: 1952. Place of birth: Jalo, Libya.

Defence Minister. Overall responsibility for actions of armed forces.

5. Matuq, Matuq Mohammed

Date of birth: 1956. Place of birth: Khoms.

Secretary for Utilities. Senior member of regime. Involvement with Revolutionary Committees. Past history of involvement in suppression of dissent and violence.

6. Qadhaf Al-dam, Sayyid Mohammed

Date of birth: 1948. Place of birth: Sirte, Libya.

Cousin of Muammar Qadhafi. In the 1980s, Sayyid was involved in the dissident assassination campaign and allegedly responsible for several deaths in Europe. He is also thought to have been involved in arms procurement.

7. Qadhafi, Aisha Muammar

Date of birth: 1978. Place of birth: Tripoli, Libya.

Daughter of Muammar Qadhafi. Closeness of association with regime.

8. Qadhafi, Hannibal Muammar

Passport number: B/002210. Date of birth: 20/09/1975. Place of birth: Tripoli, Libya. Son of Muammar Qadhafi. Closeness of association with regime.

9. Qadhafi, Khamis Muammar

Date of birth: 1978. Place of birth: Tripoli, Libya.

Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.

10. Qadhafi, Mohammed Muammar

Date of birth: 1970. Place of birth: Tripoli, Libya.

Son of Muammar Qadhafi. Closeness of association with regime.

11. Qadhafi, Muammar Mohammed Abu Minyar

Date of birth: 1942. Place of birth: Sirte, Libya.

Leader of the Revolution, Supreme Commander of Armed Forces.

Responsibility for ordering repression of demonstrations, human rights abuses.

12. Qadhafi, Mutassim

Date of birth: 1976. Place of birth: Tripoli, Libya.

National Security Adviser. Son of Muammar Qadhafi. Closeness of association with regime.

13. Qadhafi, Saadi

Passport number: 014797. Date of birth: 25/05/1973. Place of birth: Tripoli, Libya.

Commander Special Forces. Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.

14. Qadhafi, Saif al-Arab

Date of birth: 1982. Place of birth: Tripoli, Libya.

Son of Muammar Qadhafi. Closeness of association with regime.

15. Qadhafi, Saif al-Islam

Passport number: B014995. Date of birth: 25/06/1972. Place of birth: Tripoli, Libya.

Director, Qadhafi Foundation. Son of Muammar Qadhafi. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.

16. Al-Senussi, Colonel Abdullah

Date of birth: 1949. Place of birth: Sudan.

Director Military Intelligence. Military Intelligence involvement in suppression of demonstrations. Past history includes suspicion of involvement in Abu Selim prison massacre. Convicted in absentia for bombing of UTA flight. Brother-in-law of Muammar Qadhafi.

Annex II

Asset freeze

1. Qadhafi, Aisha Muammar

Date of birth: 1978. Place of birth: Tripoli, Libya.

Daughter of Muammar Qadhafi. Closeness of association with regime.

2. Qadhafi, Hannibal Muammar

Passport number: B/002210. Date of birth: 20/09/1975. Place of birth: Tripoli, Libya. Son of Muammar Qadhafi. Closeness of association with regime.

3. Qadhafi, Khamis Muammar

Date of birth: 1978. Place of birth: Tripoli, Libya.

Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.

4. Qadhafi, Muammar Mohammed Abu Minyar

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