

**THE APPLICABILITY OF THE THEORY OF RIPENESS TO THE
2011 LIBYAN CONFLICT**

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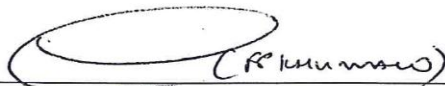
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ABSTRACT

One of the most crucial phases in successful mediation is the launch of negotiations. This is often referred to as *entry* into the mediation process or *getting into* mediation. The successful launch of negotiations is therefore a *sine qua non* for the resolution of a conflict through mediation.

This study applies the theory of ripeness to the Africa Union's (AU) 10 April 2011 launch of negotiations in the 2011 Libyan conflict in order to assess its utility value as a tool in the successful launching of negotiations. The theory assumes that for the successful launch of negotiations a conflict has to be ripe for resolution, in the sense that all the elements of the theory of ripeness, namely a Mutually Hurting Stalemate (MHS), a Way Out and a Valid Spokesperson (VS), have to be present.

This study argues that the theory of ripeness could have been used by the AU, as a tool to assess whether the 2011 Libyan conflict was ripe for resolution through mediation, prior to its launch of mediation efforts on 10 April 2011. It is further argued that as a result of the AU's failure to apply the theory of ripeness, its mediation efforts were launched prematurely in that throughout the conflict, parties to the conflict were still determined that victory through unilateral means was a possibility.

Having applied all the elements of the theory of ripeness to the 2011 Libyan conflict, the study concludes that the conflict was not ripe for resolution through mediation at the time of the launch of the AU's mediation efforts.

CHAPTER 1

1.1 INTRODUCTION

In his report *Enhancing Mediation and Its Support Activities* the United Nations Secretary-General (UNS-G), Ban Ki-moon, remarked that “the most favourable time to resolve disputes is at an early stage, before they turn into violent conflict – when issues are less complicated; parties fewer; positions less hardened; relationships less damaged; and emotions more contained” (UNSC: 2009:5). Whilst there are merits in the Secretary-General’s argument, some argue that some conflicts cannot be resolved at an early stage; they need to reach a stage of ripeness before mediation efforts are launched.

The notion that to achieve a successful resolution by negotiations, a conflict has to be “ripe” was first developed by Zartman and Berman (1982). Zartman (1989) later argued that the dynamics of a crisis should be discussed in terms of “ripe moments” as a tool to determine whether or not a conflict was ready for a peaceful resolution. Zartman (1989:10) argued that it was possible to identify the “ripe moment” if one were to study the escalation of or critical shifts in the intensity of a crisis. The basic assumption behind Zartman’s theory of ripeness is that a conflict is ripe for resolution when there is a mutually hurting stalemate (MHS) and parties to that conflict are willing to negotiate because they see negotiations as the only ‘Way Out’ of the MHS. An additional element of ripeness is that parties to a conflict must be represented by a Valid Spokesperson or Spokespersons (VS).

This study investigates the ripeness of a conflict as one of the important preconditions for a successful launch of negotiations. Zartman (2001:8) emphasises the above point by stating that while most studies of the peaceful settlement of disputes see the substance of the proposals for resolution as the key to a successful resolution of conflict, a growing focus of attention shows that a second and equally necessary key lies in the timing of efforts for resolution.

For the purpose of this study, the successful launching of negotiations refers to assembling around the table, parties who are willing to search for solutions using

negotiation. This study is therefore concerned with, as Maundi et al (2006:1) point out, the *entry, gaining access*, or simply *getting in* to mediation. The point of departure is Zartman's theory that for a successful resolution by negotiation, a conflict has to be ripe.

In order to understand the nature of the 2011 Libyan conflict, some conceptualisation is critical at this stage. According to Maundi et al (2006:3) "conflict refers to parties' attempts to pursue incompatible ends". Thus conflicts are intrinsically non-violent although they may turn violent; violence is not their inherent aspect, but it is only a potential form or means that conflicts may adopt. Internal conflicts, like interstate conflicts, can be political, economic, social, cultural or perceptual and structural, and they can move from normal politics to violence (Maundi et al 2006:3).

According to Maundi et al (2006:3), internal conflicts can be centralist or regionalist. Centralist conflicts are disputes over the central authority, where insurgents fight in order to replace the government or to be included in it and governments fight back to resist being replaced or having to share power with the insurgents (Maundi et al: 2006:3). Regionalist conflicts aim at self-determination through secession or regional autonomy (Maundi et al: 2006:3).

The 2011 Libyan conflict can be conceptualised as a centralist internal conflict. Before discussing the study and its findings, an overview of the 2011 Libyan conflict is needed.

On 15 February 2011, riots broke out in the city of Benghazi, Libya following the arrest of a prominent human rights activist. This soon turned into a conflict against the government with the protestors ultimately calling for Qaddafi's resignation (Lynch: 2012).

This unrest preceded a planned demonstration against Libya's regime by one day; the planned demonstration was entitled a "Day of Anger" and organised through social networking sites on the Internet (Lynch: 2012).

The 15 February 2011 protests continued through the night with nearly 2 000 participants throwing petrol bombs and stones and setting cars on fire. Government forces responded with water cannons and rubber bullets in an attempt to disperse the

crowd (Lynch: 2012). As events were unfolding in Benghazi, police stations were set on fire in the cities of Zentan and Beyida (Lynch: 2012). By 6 March 2011, the escalation of violence saw the aerial bombing of civilians by the government forces (Lynch: 2012).

On 10 April 2011, the AU sent a high-level delegation led by the South African President, Jacob Zuma, to Libya in an attempt to get the parties to negotiate a peaceful settlement of the dispute. By that stage, the United Nations Security Council (UNSC) had debated and passed two resolutions on the situation in Libya.

Following the UN interventions (Resolutions 1970 and 1973), NATO intervened militarily, thus capacitating the rebel groups and levelling the playing field. Despite the stalemate that obtained for almost four months in the conflict, the government forces finally became weaker, leading to their final defeat and the killing of Qaddafi (Lynch: 2012).

Against this backdrop, the aim of this study, in examining the Libyan case, is to test the utility value of the theory of ripeness as a timing tool for the successful launch of negotiations for the resolution of a conflict through mediation.

The main research question is: can the theory of ripeness be used as a tool to assess whether the 2011 Libyan conflict was ripe for resolution through mediation when the AU intervened by launching its mediation effort on 10 April 2011? In other words, can the theory of ripeness be used to identify or validate the elements or conditions necessary for the productive launching or inauguration of negotiations for the resolution of a conflict through mediation? These questions are answered by examining the circumstances under which negotiations in Libya in the 2011 conflict took place, with specific reference to the timing of the launch thereof, and by applying the theoretical framework to those circumstances.

In order to answer the main question, the following secondary and related questions are crucial:

- What was the political situation in Libya at the time of the AU's launch of negotiations?

- Was the Libyan conflict ripe for resolution through negotiation at the time of the AU's launch? In other words, was there an MHS, a Way Out and a VS?
- Finally, can the success or failure of the AU's launch of negotiations be attributed to ripeness or lack thereof, as the case maybe, in the case of the 2011 Libyan conflict?

In analysing the circumstances that accounted for the failure or otherwise of *entry* or the *getting in* attempts of the AU's high-level delegation, the elements of Zartman's theory of ripeness are used as tools of analysis to determine whether or not the Libyan conflict was ripe for the successful launching of negotiation on 10 April 2011. Before exploring the case itself, it is necessary to review the literature on the theory of ripeness.

1.2 LITERATURE SURVEY

1.2.1 Theoretical origins

Since the inception of the UN Charter, international mediation has been used with some degree of success; hence the International Peace Institute (IPI Blue Paper No. 8: 2009) says that with the end of the Cold War, the number of armed conflicts dropped from 50 in 1990 to approximately 35 in 2008. At the same time, says the IPI, the proportion of armed conflicts ending in negotiated settlements increased from one-third during the Cold War to two-thirds after its end.

Nathan (1999:1) argues:

the main argument is that the key to effective mediation lies in understanding, managing and transforming the 'psycho-political dynamics' of conflict which make adversaries resistant to negotiations. Notwithstanding the varying causes and features of conflict, these dynamics can be described in general terms: the parties regard each other with deep mistrust and animosity; they believe that their differences are irreconcilable; they consider their own position to be non-negotiable; and they fear that a settlement will entail unacceptable compromises. These visceral concerns are intense where large-scale killing has occurred and where identity, security, freedom and justice are at stake.

In the quest to use mediation as a tool for successfully resolving a conflict, mediators, diplomats, and scholars have battled with a range of questions. What is the role of the mediator? What are the strategies to be employed during negotiations? When is the right time to launch negotiations for the successful settlement of a conflict? These questions and many others continue to be debated. Such debates, according to Crocker et al (1999:20) can be classified into two major paradigms or approaches, namely the social-psychological and the structuralist.

1.2.1.1 The structuralist paradigm of mediation

Crocker et al (1999:20) explain that the basic assumption behind the structuralist paradigm is that through the use of persuasion, incentives and disincentives (i.e. a costing process), parties to a conflict can be led to and through a negotiated settlement.

In other words the listed factors can be used to bring the parties to a negotiation table, and the same measures can be used to help them reach a negotiated settlement. The structuralist paradigm, according to Crocker et al (1999:20), is anchored in a rational-choice view of the world. It treats the causes of conflict as objective – as opposed to subjective – issues that can yield to negotiation.

Crocker et al (1999:20–21) argue that the structuralist paradigm of mediation is premised on the familiar notions of ‘ripeness’ and ‘hurting stalemate’ as advanced in the work of I. William Zartman, Richard Haass, and others. To this end (Crocker et al 20–21) argue:

the prospects for a negotiated settlement to a dispute are thus greater when war weariness has set in among the parties and a conflict has reached a plateau or hurting stalemate in which unilateral solutions are no longer believed to be credible or achievable, ... timing, of course, is all-important if mediated interventions are to be successful and potential mediators are well advised, according to the theory of ripeness, to wait until the parties are sufficiently ‘exhausted’ on the battlefield to push for a negotiated political settlement. It may

well be that in some circumstances the issue of who does the mediating is less important than the matter of timing and ripeness of the conflict itself.

Crocker et al (1999:21) argue further:

in stressing the importance of timing, ripeness theory has its greatest utility in setting up benchmarks and signposts that help mediators calibrate their strategies to help ripen the conflict. Parties have to be cajoled to the bargaining table through a combination of carrots and sticks, and skilled mediators use a variety of ripening agents: coaching, discrediting, legitimising, making themselves indispensable, leaning and shifting weight, exploiting changes in military balance, exploiting changes in party leadership, as well as promises of resources or threats of withdrawal.

Thus for Crocker et al (1999:21)

mediation involves more than just assisting highly motivated parties in reaching a negotiated solution to their disputes. It also requires the use of various side payments and/or penalties and sanctions to get the parties to the dispute to change their cost-benefit calculations about the utility of a negotiated settlement. Thus what is required is in some situations what Saadia Touval calls 'mediators with muscle'.

According to this formulation, impartiality and objectivity are less important in achieving influence than 'power potential considerations'. According to Crocker et al (1999), the ability to exercise leverage may also be positively influenced by close ties between a mediator and one or more parties to the dispute, thus allowing the mediator to elicit cooperative behaviour and concessions.

Crocker et al (1999:21–22) argue

the less 'muscle' a negotiator has, and the more removed or distant the mediator is from the conflict, the weaker will be the mediator's efforts. How much leverage

mediators must exercise to bring about a negotiated settlement before mediation is a matter of some contention.

According to Crocker et al (1999), structuralists are generally silent on the question of whether one mediator is better than many. Crocker et al (1999:22) argue further that there seems to be a view that great powers are considered to have an advantage when it comes to mediation because leverage depends on persuasion, extraction, termination, manipulation and the ability to offer and withhold resources. This view, according to Crocker et al (1999:22), is based on the notion that, acting in concert, a coalition of great power mediators should in principle be able to exert greater leverage than a single state. The problem with this notion, according to Crocker et al (1999), is that it assumes that the members of the coalition share similar goals and are willing to work together and not at cross-purposes.

1.2.1.2 The social-psychological approach

The social-psychological paradigm is a subjective one and according to Crocker et al (1999:22) focuses on the process of communication and exchange as a way to change perceptions and attitudes. It is based on the notion that parties should be provided with a forum in which they can explore options and develop solutions outside the highly charged arena of a formal negotiation structure. It appeals to superordinate goals and values. Here the parties to a conflict are assisted to see those areas of common good where, notwithstanding the prevailing disagreements; there is a need to cooperate.

Superordinate goals and values are those things that appeal to the common good of the parties despite their divergent views. These include but are not limited to the restoration of the rule of law, socio-economic reconstruction and development and peace and security. As Crocker et al (1999:22) point out, this approach plays on the parties' aspirations to legitimacy and their desire to be part of the broader political community. Crocker et al (1999:22) argue that "in this approach, the use of moral suasion and symbolic rewards or gestures is important".

The basic assumption behind the social-psychological paradigm is that analysing interests may be less important than identifying the underlying needs that govern each party's perception of the conflict. It is assumed further that because much of human conflict is anchored in conflicting perceptions and in misperceptions, the contribution of third parties lies in changing the perceptions, attitudes, values and behaviours of the parties to a conflict.

Proponents of the social-psychological paradigm such as Doob (1993), Kriesberg (1992, 1996), Wehr and Lederach (1997), Bloomfield (1997), and Wehr and Lederach (1991) have identified instruments that bring about attitudinal change to include consultative meetings, problem-solving workshops, training in conflict resolution at the communal level, and third-party assistance in developing and designing other kinds of dispute resolution systems that are compatible with local culture and norms and directed at elites at different levels within society.

1.2.2 Original theory

Zartman (1989:10), whose approach falls into the structuralist school if we follow the distinction proposed by Crocker et al (1999), argues that the dynamics of a crisis can be understood or analysed in terms of "ripe moments" viewed in relation to escalation of or critical shifts in the intensity of a crisis.

In his original theory, Zartman (1989) says that ripe moments can be defined in three overlapping ways: firstly, as mutual, painful stalemates marked by a recent or impending catastrophe; secondly, as a time when both parties' efforts at unilateral solutions or "tracks" are blocked and bilateral solutions or "tracks" are conceivable; and thirdly, as a place on a long slope where the "ins" start to slip and the "outs" start to surge. The third way refers to a situation where the conflict reaches a stalemate, in that none of the parties has the ability to escalate the conflict further and the costs of continued conflict become unbearable for both.

Zartman (1989) likens a crisis to an earthquake along a fault line and argues: "There may be strains and pressures for readjustments between the two sides of the earth's

crust over a long time, but at some moment they move into a new position vis-à-vis each other to accompaniment of much disturbance and violence.” The move into a new position signals a change or shift in relations. The seismic shift analogy is used by Zartman to explain the shifts in power relations in conflict situations.

Zartman’s theory was conceived in an era when there was a significant decline in interstate conflicts but an exponential rise of intra-state conflicts, which were not easy to resolve, especially in Africa following the de-colonialisation phase. As these previously “less important” conflicts became more significant in the global context, opines Zartman (1989), it became incumbent upon superpowers and former colonial powers to adopt and effectively implement policy initiatives and to develop conventions to avoid conflict and to help African states, amongst others, to resolve or at least manage conflict. It was in relation to the dynamic nature of intra-state African conflicts that Zartman thought such conflicts should be understood in terms of ripe moments.

1.2.3 Critiques of Zartman’s theory of ripeness

Zartman’s original theory has been critiqued on conceptual, policy-relevant, methodological and utilitarian bases by other scholars. Some problems that were identified by scholars such as Stedman (1991), as being inherent in Zartman’s theory include the following:

- It assumed that combatants were unitary actors who perceived or calculated the costs and benefits of the conflict and acted in unison;
- It did not explain what should happen to unripe conflicts and consistently unripe conflicts;
- It failed to recognise that some conflicts are better resolved at early stages; and
- It assumed that ripe moments occur in a linear fashion.

Richard Haass (1990) agrees with Zartman on the elements of ripeness but seeks to develop the theory further by arguing that for a conflict to be ripe, there must be a shared perception of the desirability of a compromise and the ability of political leaders to agree to a desirable accord.

Haass (1990) argues that in addition to the three elements of ripeness espoused by Zartman, the positions of the leaders within their organisations and their influence are also important factors in international mediation. The difference between Haass and Zartman when it comes to the internal politics of the parties is that for Zartman this refers to the power relations between the combatants, whilst Haass sees the role of internal politics in terms of the position of the leaders within their organisations. Haass (1990) cautions that too much diplomacy or mediation in a situation that is not ripe for resolution can be counterproductive.

Haass (1998) introduced the notion that agreements must be based on a sufficiently rich compromise so as to allow leaders to persuade their constituencies that the national interest has been protected, and disputants must agree on acceptable procedures to further deal with their conflict. This notion, in the writer's view, contradicts one of the fundamental assumptions of Zartman's theory of ripeness, which is that "it is not necessary for the parties to be able to identify a specific solution, it is sufficient that they all share a sense that a negotiated solution is possible for the searching" (Zartman: 2001). For ripeness to occur, it is not necessary for disputants to agree on acceptable procedures to further deal with their conflict (Zartman: 2001).

Stedman (1991) uses the Zimbabwean case in order to qualify some of the components of Zartman's theory, such as the notion that parties should perceive a MHS. He is of the opinion that the MHS notion will not always yield negotiations. He illustrates this by pointing out that during the Zimbabwean war of liberation (1964–1979), both Robert Mugabe and Joshua Nkomo saw the winning of the war as the only acceptable resolution of the conflict.

Stedman (1991:236–237) makes crucial observations, one being that it was not necessary for the direct combatants or parties to perceive the MHS, it was sufficient for a MHS to be perceived by a patron who was effective in bringing about a settlement and had a monopoly of assistance to its client and could make credible threats to its client. In the case of the Zimbabwean war of liberation, such a patron was the late

Mozambican President Samora Machel who, as a tool to persuade President Mugabe to participate in the negotiations, threatened to cut all logistical support to him.

Stedman (1991:237) argues that it is not true that in all cases ripeness can only come about in a situation where all parties believe they cannot win (as argued by Zartman). It can also come from a situation where all parties believe that a settlement will produce victory for them. He cites as an example that all parties to the Zimbabwean crisis believed they would win the elections. Stedman (1991) also observed that it is indeed a necessary condition of ripeness for a MHS to be perceived by all parties to a conflict, but that such a perception alone is not sufficient to create a ripe situation for resolution.

Another important contribution made by Stedman to the theory of ripeness is an emphasis on the role played by internal politics in the success or failure of negotiations. Internal politics have, for example led to the Movement for Democratic Change (MDC), which is the official opposition party in Zimbabwe, splitting into two factions. The implications of this split include the difficulty associated with multiparty negotiations, being the delays in reaching a resolution (International Crisis Group 2011a). It can be argued that reaching an agreement would have been easier if the MDC was still speaking with one voice.

Stedman's contributions have added value to the ripeness theory in that they have made it more relevant to practical realities on the ground. In other words its utility value has been enhanced by these contributions.

Kleiboer (1994:109–116) had the advantage of analysing the arguments of Zartman, Haass and Stedman and comparing the methodological basis of the origins of the theory of ripeness. She also assessed the analytical value of the theory of ripeness as an explanatory tool. Kleiboer argues that Zartman's and Haass's discussions on what a mediator can do to create a shared perception of a ripe moment are unsatisfactory, because it is not clear how a mediator can convince parties that a MHS exists. She argues further that it is not clear what specific sources of leverage are effective and appropriate. She argues that drilling down the arguments of these authors on ripeness is an elusive quest for the "holy grail of ripeness".

Kleiboer (1994:113) further argues that the conceptual and empirical basis of Zartman's and Haass's ideas is not clear. She argues that the prerequisites for ripeness appear out of the blue. She commends Stedman on his methodologically elaborate refinements of the theory but does not find any merit underlying Haass's assertions about the analytical and prescriptive value of ripeness. Haass (1988) argues that "the concept of ripeness provides an analytic tool to help explain why agreements can be reached in certain situations but not in others. And, ripeness may be a prescriptive tool, to help policy-makers discern which disputes are likely to be amenable to negotiation and which require change before diplomacy can prosper." Kleiboer (1994) concludes her argument by suggesting that it is the element of willingness to de-escalate the conflict on the part of the parties rather than ripeness that should be investigated, because ripeness ultimately appeals to complete willingness.

Making the case for willingness, Kleiboer (1994) argues that the first reason for preferring willingness to ripeness is that it is difficult to distinguish the concept of ripeness from the successful outcome of mediation. The second reason is that willingness is devoid of the inherent misconceptions associated with ripeness (there are stages in a conflict which make it ready for conflict management). Thirdly, the fact that all three authors are dealing with violent conflicts deprives them of the benefit of realising that some conflicts are better resolved at early stages. Kleiboer (1994:115) argues further that "willingness is thus a *minimal* requirement for settlement or a resolution to come about – however, even when all parties are willing it is not a *sine qua non* that this indeed will happen".

A different perspective on Zartman's theory of ripeness is presented by Pruitt (2005), who presents a critique that recasts Zartman's theory of ripeness in conventional psychological terms. He uses the language of variables rather than necessary states, and focuses on the psychological states of individual actors rather than on joint psychological states (Pruitt: 2005). In so doing, Pruitt aims to refine and extend the explanatory power of Zartman's original theory of ripeness.

Pruitt's recast theory, which he calls "readiness theory," argues that an actor's readiness for conflict resolution is a function of both motivation to end the conflict and optimism about the success of negotiation. Pruitt (2005:10–11) argues:

motivation to end a conflict and optimism about the success of negotiation are also, to some extent, compensatory with each other. Surely, some optimism must be present on both sides for true negotiation to start and persist. But more motivation can compensate for less optimism and vice versa. This trade-off helps to understand two asymmetrical peace processes in which one side's motivation to end the conflict was much stronger than the others, and the other acted mainly out of optimism that its limited goals would be met.

Pruitt (1997:238–239) identifies four problems attendant on the theory of ripeness. The first problem is that ripeness theory only seeks to explain entry into negotiation. Pruitt is of the view that the very same conditions that encourage entry should, if strong enough, also encourage other things such as throwing large human resources into the negotiation, taking significant risks to achieve agreement and making deep concessions, thus moving toward or to an agreement.

The second problem according to Pruitt (1997) is that ripeness is viewed by Zartman as a state rather than a variable, i.e. situations are either ripe or unripe. The advantage of viewing ripeness as a variable, opines Pruitt (1997), is that it allows us to postulate that as ripeness strengthens, negotiation is more likely to start, more resources will be devoted to it, more risks will be taken, deeper concessions will be made, and agreement is more likely to be reached.

The third problem that Pruitt (1997) sees with the theory of ripeness is that the antecedents of ripeness are viewed as joint states that simultaneously affect both parties to the conflict; that is MHS and mutually enticing opportunities. Pruitt (1997) proposes a more flexible theory that would analyse the motives and perceptions of each party separately. Such a theory according to Pruitt (1997) would make it easier to explain the asymmetric patterns that are often found in reality, in which one party is more motivated to settle than the other, or different forces produce ripeness on the two

sides. Pruitt (1997) cites as an example the forces that produced the Vietnam Accords of 27 January 1973, which amounted to a hurting stalemate for the United States and an enticing opportunity for North Vietnam.

Pruitt (1997) observes that after ‘TET offensive’ (the early 1968 North Vietnam’s coordinated offensive of surprise attacks aimed at breaking the stalemate in Vietnam War, which later became known as the ‘TET offensive’, named after Vietnam’s most important holiday, Tet, for celebrating the lunar of the new year), “further US escalation in Vietnam was ruled out because a sufficient number of Americans concluded that victory was unlikely. This is a kind of thinking that occurs in a hurting stalemate” (Pruitt: 1997:241).

The fourth problem that Pruitt (1997) identifies is that the ripeness theory has a list-like quality that does not distinguish between types of antecedent. Pruitt (1997) is of the view that it would better if the antecedents of ripeness were organised on the basis of some broader theory.

Pruitt (2005) argues that his approach is a refinement of Zartman’s original concept of “ripeness” in that it poses “readiness” as an alternative approach, which offers more explanatory and predictive power, given that it focuses on reasons other than pain and cost that might motivate leaders and decision makers to think of alternatives to ending a conflict through violence.

1.2.4 A refined theory

It can be argued that the criticism, to a certain extent, led to further development of Zartman’s theory of ripeness and gave him an opportunity to refine his theory in the light of such criticism.

Zartman (2001) in later versions of his theory argues that the concept of a ripe moment centres on the parties’ perception of a MHS, *optimally associated with an impending, past or recently avoided catastrophe*. The basic assumption behind Zartman’s concept of a ripe moment is that when the parties find themselves locked in a conflict from which

they cannot escalate to victory and this deadlock is painful to both of them, they seek an alternative or Way Out of the MHS. For Zartman (2001:8) the catastrophe provides a deadline or a lesson indicating that pain can be sharply increased if something is not done about it.

Thus the notion of catastrophe is a useful extension of the MHS but is not necessary to its definition or its existence. In other words, the MHS tells us that there is an impasse characterised by unbearable pain, which is felt by all parties to a conflict. Catastrophe is therefore an additive that serves to accelerate the degree of pain. MHSs can however exist without catastrophe.

Zartman (2001:8) associates the stalemate with a plateau, a flat unending terrain without relief. If the stalemate is a plateau, then for Zartman catastrophe is the precipice, the point where things suddenly and predictably get worse.

Zartman (2001:8) argues that:

... the concept is based on the notion that when the parties find themselves locked in a conflict from which they cannot escalate to victory and this deadlock is painful to both of them (although not necessarily in equal degree or for the same reasons), they seek an alternative policy or Way Out. The catastrophe provides a deadline or a lesson indicating that pain can be sharply increased if something is not done about it now; catastrophe is a useful extension of MHS but is not necessary either to its definition or to its existence. If the notion of mutual blockage is too static to be realistic, the concept may be stated dynamically as a moment when the upper hand slips and the lower hand rises, both parties moving toward equality, with both movements carrying pain for the parties (Zartman: 2008:1).

This illustration by Zartman (2008:1) is by no means a suggestion that he is employing some elements of a social-psychological paradigm; rather it is a further demonstration of a MHS as a point when war weariness has set in among the parties and a conflict

has reached a plateau or hurting stalemate in which unilateral solutions are no longer believed to be credible or achievable.

From the above, the description of what constitutes a ripe moment is clear. The question that now comes to mind is: who should declare that ripeness has occurred? In answer, Zartman would argue that ripeness is necessarily a perceptual event, and as with any subjective perception, there are likely to be objective referents to be perceived.

Zartman (2008:1) argues that:

The mutually hurting stalemate is grounded in cost-benefit analysis, fully consistent with public choice notions of rationality (Sen 1970; Arrow 1963; Olson 1965) and public choice studies of war termination and negotiation (Brams 1990, 1994; Wright 1965), which assume that a party will pick the alternative that it prefers, and that a decision to change is induced by increasing pain associated with the present, conflictual course. It is also consistent with prospect theory, with its emphasis on loss avoidance (Kahneman, Daniel & Tversky, Amos: 1979). In game theory terms, it marks the transformation of the situation in the parties' perception from a prisoners' dilemma game (PDG) into a chicken dilemma game (CDG) (Brams 1985; Goldstein 1998), or, in other terms, the realisation that the status quo or no negotiation is a negative-sum situation, and that to avoid the zero-sum outcomes now considered impossible the positive-sum outcome must be explored.

Zartman (2008:1) argues further that ripeness is necessarily a perceptual event, and as with any subjective perception, there are likely to be objective referents to be perceived. These can be highlighted by a mediator or an opposing party when they are not immediately recognised by the conflicting parties themselves, and resisted so long as the conflicting party refuses or is otherwise able to block out their perception. But it is the perception of the objective condition, not the condition itself, which makes for a MHS. If the parties do not recognise "clear evidence" (in someone else's view) that they are in an impasse, a MHS has not (yet) occurred, and if they do perceive themselves to

be in such a situation, no matter how flimsy the “evidence,” the MHS is present. Pruitt (2005:2) defines objective referents as follows:

‘Objective elements of ripeness’ can be defined as circumstances under which a well-informed, dispassionate, and rational decision maker would conclude that negotiation is appropriate. It is possible to identify such circumstances in a commonsensical way and thus to test some of the theory’s propositions. For example, Mooradian and Druckman (1999) operationalised ripeness as number of casualties in the Nagorno-Karabakh War between Armenia and Azerbaijan and showed that a sudden dramatic rise in casualties was followed by successful cease-fire negotiations.

According to Zartman (2008:1):

The other element necessary for a ripe moment is less complex and also perceptual: a Way Out. Parties do not have to be able to identify a specific solution, only a sense that a negotiated solution is possible for the searching and that the other party shares that sense and the willingness to search too. Without a sense of a Way Out, the push associated with the MHS would leave the parties with nowhere to go. Spokespersons often indicate whether they do or do not feel that a deal can be made with the other side and that requirement – i.e. the sense that concessions will be reciprocated, not just banked – exists, particularly when there is a change in that judgment (Zartman and Aurik 1991).

For Zartman (2008:1):

Ripeness is only a condition, necessary but not sufficient for the initiation of negotiations. It is not self-fulfilling or self-implementing. It must be seized, either directly by the parties or, if not, through the persuasion of a mediator. Thus, it is not identical to its results, which are not part of its definition, and is therefore not tautological. Not all ripe moments are so seized and turned into negotiations, hence the importance of specifying the meaning and evidence of ripeness so as to indicate when conflicting or third parties can fruitfully initiate negotiations.

Although ripeness theory is not predictive in the sense that it can tell when a given situation will become ripe, it is predictive in the sense of identifying the elements necessary (even if not sufficient) for the productive inauguration of negotiations. This type of analytical prediction is the best that can be obtained in social science, where stronger predictions could only be ventured by eliminating free choice (including the human possibility of blindness and mistakes). As such it is of great prescriptive value to policymakers seeking to know when and how to begin a peace process.

Zartman (2008:1) concludes that:

Finding a ripe moment requires research and intelligence studies to identify the objective and subjective elements. Subjective expressions of pain, impasse, and inability to bear the cost of further escalation, related to objective evidence of stalemate, data on numbers and nature of casualties and material costs, and/or other such indicators of MHS, along with expressions of a sense of a Way Out, can be researched on a regular basis in a conflict to establish whether ripeness exists. Researchers would look for evidence, for example, whether the fluid military balance in conflict has given rise at any time to a perception of MHS by the parties, and to a sense by authoritative spokespersons for each side that the other is ready to seek a solution to the conflict, or, to the contrary, whether it has reinforced the conclusion that any mediation is bound to fail because one or both parties believes in the possibility or necessity of escalating out of the current impasse to achieve a decisive military victory.

In other words, for Zartman (2001:9) primarily, if the parties perceive themselves to be in an impasse, however flimsy the evidence, the MHS has occurred; it does not matter what third parties think of a situation. Conversely, if the parties do not perceive themselves to be in an impasse, however overwhelming or clear the evidence of an impasse, the MHS has not occurred. Therefore what constitutes the MHS is the perception of an objective condition and not the condition itself. In the event that the parties have not perceived ripeness, the existence of objective referents, argues

Zartman (2001:9), makes it possible for the third party to step in and point them out to the parties.

Zartman (2001:9) cautions that ripeness is only a condition, necessary but not sufficient, for the initiation of negotiations. It is not self-fulfilling or self-implementing. It must be seized, either directly by the parties, or if not, through the persuasion of a mediator. In this way the moment of ripeness can be created by a mediator convincing the parties (thus creating a perception) that the MHS exists. To do this some form of leverage is necessary (an incentive or a threat). An example of this is how in the mid-1970s the then Mozambican President, Samora Machel, persuaded President Robert Mugabe into the 1979 London negotiations aimed at bringing about an end to the Zimbabwean war of liberation, by threatening to stop supporting him and his armed forces (Stedman: 1991:236–237).

Zartman (2001:9) argues further that ripeness is not identical to its results, which are not part of its definition, and is therefore not tautological. Zartman (2001:9) acknowledges that not all ripe moments are so seized and turned into negotiations. It is important to critically analyse all evidence of ripeness so as to indicate when conflicting parties can fruitfully initiate negotiations.

The third element of ripeness is that each party to a conflict must be represented by a VS. Zartman (2001:10–11) sees this element as a structural one and important because the presence of a strong leadership recognised as representative of each party is a necessary condition for productive negotiations to begin, or indeed succeed.

Zartman (2001:11) concludes by stating that while ripeness is a necessary precondition for negotiation, not all ripe moments lead to negotiation, as in some cases increased pain from the MHS can increase resistance rather than reducing it. To this end he cites the mutual belief of parties in slogans such as “no pain no gain”, meaning that one has to endure some pain or difficulty before one receives any benefit from one’s efforts.

In summary, Zartman says that a conflict is ripe for successful resolution through negotiations when there is (as perceived by all parties to the conflict, and if not

perceived, pointed out to them by a mediator), a MHS, associated with a catastrophe that has passed or is impending and parties to a conflict see a negotiated solution as the only Way Out of the MHS. Here, it is not necessary for parties to identify a specific solution; merely a sense that a negotiated solution is possible for the searching is sufficient. The internal politics of the parties must be taken into consideration. It is important that parties are represented by VS. By this, Zartman (2008:1) means legitimate and credible representatives of the parties to a conflict.

Zartman (2008:1) argues that “parties resolve their conflict only when they are ready to do so- when alternative, usually unilateral, means of achieving a satisfactory result are blocked and the parties feel that they are in an uncomfortable and costly predicament. At that ripe moment, they seek or are amenable to proposals that offer a way out.”

1.3 RESEARCH DESIGN AND METHODOLOGY

In this study, Zartman’s theory of ripeness is used as the theoretical framework that will help to answer the research question, because despite criticism over the past two decades it still provides the best insight into the importance of timing during the launch of mediation efforts. This is a qualitative study that attempts to test the applicability of the theory of ripeness to the launching of negotiations for a resolution of a conflict. As stated above, the question to be answered is whether the theory of ripeness can be used as a tool to identify whether the Libyan conflict was ripe for mediation at the time the AU intervened.

The hypothesis is that in the 2011 Libyan conflict, the AU’s mediation efforts were launched prematurely in that all parties to the conflict were still determined that victory through unilateral means was a possibility.

The theory of ripeness is applied to the Libyan conflict to analyse whether or not the timing was right for the launching of negotiations in the Libyan conflict when the African Union sent its High Level Ad hoc Committee on Libya, led by the President of the Republic of South Africa, Jacob Zuma, to mediate between the Libyan leader Muammar Qaddafi and the Libyan people.

The primary sources used consist mainly of UNSC documents such as Resolutions 1970 and 1973, AU communiqués, on-the-field journalist reports and official government documents such as press releases and speeches of political leaders. Most of the primary sources were found on the official websites of the institutions concerned. No interviews were conducted in this study, as it relied on media reports and scholarly articles to understand the conditions and the circumstances relating to the 2011 Libyan conflict. The lack of interviews affects the extent to which insight into perceptions of the parties about the 2011 Libyan conflict can be gleaned. The mitigating factor, however, is that the available sources on the critical shifts in the 2011 Libyan conflict are sufficient to help us understand whether or not a ripe moment occurred.

The secondary sources consist mainly of books, scholarly articles, journals and reports. The journal articles are from accredited journals including the Asian Journal of Political Science; Institute for Security Studies Africa; Institute for Strategic Affairs; Journal of Conflict Resolution; International Crisis Group; International Negotiation; Martinus Nijhoff Publishers; NATO reports; SAGE Publications; South African Institute of International Affairs; Council on Foreign Relations (Foreign Affairs); Journal of International Relations; and other reliable material that was discovered during the research.

Journal contributions are written by scholars who are applying the theory of ripeness to other conflicts such as the Oslo talks on the Israeli-Palestine conflict and the China-Vietnam conflict. The importance of these journals is that they deepen the understanding of the theory of ripeness and highlight its utility value in conflict resolution. The elements of the theory of ripeness, especially the “timing” of the launch of mediation attempts, were used to determine the material and data that is relevant to this study.

Chapter 1 deals with the introduction, the literature review and research methodology. Chapter 2 provides a theoretical framework that helps answer the research question and map the theoretical questions applicable to our case study. Chapter 3 provides an overview of the mediation efforts in the 2011 Libyan conflict. In Chapter 4 the theoretical

framework is applied to the case study and detailed answers to theoretical questions are provided. Chapter 5 summarises the key findings.

CHAPTER 2

2.1 THEORETICAL FRAMEWORK

The aim of this chapter is to provide a theoretical framework with which to examine and understand the factors that accounted for the failure of the launch of the AU's mediation efforts in the 2011 Libyan conflict. The theoretical framework will also help answer the research question: "Can the theory of ripeness be used as a tool to assess whether the Libyan conflict was ripe for resolution through mediation when the AU intervened by launching its mediation effort on 10 April 2011?"

As stated in Chapter 1, the hypothesis is that in the 2011 Libyan conflict, the AU's mediation efforts were launched prematurely in that all parties to the conflict were still convinced that victory by unilateral means was a possibility. To this end, it is argued that Zartman's refined theory of ripeness is the most relevant in understanding the importance of timing the launch of mediation efforts. The theoretical framework also extends to theorising about the success and failure of international mediation, as this will provide more clarity on why mediation attempts failed in the 2011 Libyan conflict.

2.1.1 Theorising about the success and failure of international mediation

The question of how to make international mediation successful has since occupied both students and practitioners in the field (Kleiboer: 1996). The theory of conflict ripeness is the product of some of the studies aimed at ascertaining what accounts for the success and failure of mediation.

2.1.1.1 Zartman's theory of conflict ripeness

Zartman (2008:1) argues:

While most studies on peaceful settlement of disputes see the substance of the proposals for a solution as the key to a successful resolution of conflict, a growing focus of attention shows that a second and equally necessary key lies in the timing of efforts for resolution. Parties resolve their conflict only when they

are ready to do so – when alternative, usually unilateral, means of achieving a satisfactory result are blocked and the parties feel that they are in an uncomfortable and costly predicament. At that ripe moment, they seek or are amenable to proposals that offer a way out.

The building blocks of the theoretical framework are found in the core assumptions of the refined theory of ripeness put forward by Zartman (2008). Zartman (2008) argues that the concept of a ripe moment centres on the parties' perception of a MHS, optimally associated with an impending, past or recently avoided catastrophe.

According to Zartman (2008), the concept of a MHS is based on the notion that when the parties find themselves locked in a conflict from which they cannot escalate to victory and this deadlock is painful to both of them (although not necessarily in equal degree or for the same reasons), they seek an alternative policy or Way Out. A catastrophe, argues Zartman (2008), provides a deadline or a lesson indicating that pain can be sharply increased if something is not done about it immediately; catastrophe is a useful extension of MHS but is not necessary to either its definition or its existence.

The MHS, according to Zartman (2008), is grounded in cost-benefit analysis and is fully consistent with public choice notions of rationality and public choice studies of war termination and negotiation, which assume that a party will pick the alternative that it prefers, and that a decision to change is induced by increasing pain associated with the present (conflictual) course. Zartman (2008) argues further that the MHS is also consistent with prospect theory, with its emphasis on loss avoidance.

With regard to the MHS vis-à-vis the 2011 Libyan conflict, the following theoretical questions come to mind: "Did the parties perceive a MHS at the time the AU launched its mediation attempts? Was there any impending, past or recently avoided catastrophe? Did the parties perceive themselves as being locked in a conflict from which they could not escalate to victory, where such a deadlock was painful to both of them – so that they sought an alternative policy or Way Out?"

In applying the theory of ripeness as an assessment tool to assess whether the Libyan conflict was ripe for resolution through mediation when the AU intervened by launching its mediation effort on 10 April 2011, it can be argued here that the parties did not perceive a MHS when Qaddafi pledged: “We will fight until the last man and woman. We will defend Libya from the north to the south” (Lynch: 2012:177). The airstrikes conducted by Qaddafi’s forces, catastrophic as they were, did not deter the rebels from fighting the regime. In the same way the NATO airstrikes on Qaddafi’s forces might have been a very hurting catastrophe but did not create a perception of a hurting stalemate, as Qaddafi forces fought on convinced of their unilateral victory.

According to Zartman (2008), ripeness is necessarily a perceptual event, and as with any subjective perception, there are likely to be objective referents (evidence of a MHS on the ground, for example inability to bear the costs of escalation or high numbers of casualties on all sides) to be perceived. These can be highlighted by a mediator or an opposing party when they are not immediately recognised by the parties themselves, and can be resisted as long as the conflicting party refuses to acknowledge them or is otherwise able to block out their perception.

Zartman (2008) argues that it is the perception of the objective condition, not the condition itself, which makes for a MHS. Zartman (2008:1) argues further that “if the parties do not recognise ‘clear evidence’ (in someone else’s view) that they are in an impasse, a Mutually Hurting Stalemate has not (yet) occurred, and if they do perceive themselves to be in such a situation, no matter how flimsy the ‘evidence’, the MHS is present.” In relation to the 2011 Libyan conflict, the question becomes: “Were there any objective referents during the conflict pointing towards the existence of a MHS?” It is argued that there were no objective referents or clear evidence of a MHS during the 2011 Libyan conflict.

The aerial strikes on the rebels by Qaddafi’s forces can be seen as a catastrophe that caused hurt to the rebels to the extent that they wanted the conflict to end. This is evident from words of the rebels senior member of Misrata’s governing council, who stated that: “We [previously] did not accept any foreign soldiers in our country, but now,

as we face these crimes of Kadhafi [Qaddafi], we are asking on the basis of humanitarian and Islamic principles for someone to come and stop the killing. Before we were asking for no foreign interference, but that was before Kadhafi [Qaddafi] used Grad rockets and planes. Now it's a life or death situation" (Lynch: 2012:185).

The question however is, was the hurt on the part of rebels enough to produce a MHS? It is argued that the hurt was too temporary (short-lived) to have produced a perception of a MHS, in that the rebels' plea for foreign intervention was quickly answered by NATO. The same question (was the hurt adequate to produce a MHS?) could be asked regarding the hurt inflicted by NATO on Qaddafi's forces. To this end it could be argued that despite the fact that throughout the conflict the NATO bombings had a catastrophic effect on Qaddafi's forces in terms of both deaths and destruction of military equipment, they were convinced that the war was winnable. In view of the above, as will be seen more in Chapter 4, it will be argued that there was no perception of a MHS on the part of the parties.

According to Zartman (2008), the other element necessary for a ripe moment, a Way Out, is less complex and also perceptual. Zartman (2008:2) argues that "parties do not have to be able to identify a specific solution, only a sense that a negotiated solution is possible for the searching and that the other party shares that sense and the willingness to search too." Without a sense of a Way Out, argues Zartman (2008), the push associated with the MHS would leave the parties with nowhere to go. In Zartman's experience, spokespersons often indicate whether they do or do not feel that a deal can be made with the other side and that a requirement – i.e. the sense that concessions will be reciprocated, not just banked – exists particularly when there is a change in that judgment (Zartman and Aurik: 1991). In view of the above, the question that arises is whether or not any of the parties in the 2011 Libyan conflict ever had a sense that a negotiated solution was possible and that the other party not only shared that sense but also the willingness to search. In searching for evidence of a Way Out, it is important to observe the utterances of the parties. It is argued that during the 2011 Libyan conflict, despite the hurt inflicted on all sides, both Qaddafi and the rebels remained convinced of their unilateral victory.

For Zartman (2008), “ripeness is only a condition, necessary but not sufficient for the initiation of negotiations. It is not self-fulfilling or self-implementing. It must be seized, either directly by the parties or, if not, through the persuasion of a mediator. Thus, it is not identical to its results, which are not part of its definition, and is therefore not tautological.” In the 2011 Libyan conflict, the compelling question is whether there was a ripe moment that could be seized by the parties or pointed out to them by the mediators. It is argued that in the 2011 Libyan conflict, there was no ripe moment to be seized as there was no MHS associated with a catastrophe (impending or recently occurred) and a sense of a Way Out never obtained.

Zartman (2008:2) concedes that “not all ripe moments are so seized and turned into negotiations, hence the importance of specifying the meaning and evidence of ripeness so as to indicate when conflicting or third parties can fruitfully initiate negotiations.”

Zartman (2008:2) takes the view that:

Although ripeness theory is not predictive in the sense that it can tell when a given situation will become ripe, it is predictive in the sense of identifying the elements necessary (even if not sufficient) for the productive inauguration of negotiations. This type of analytical prediction is the best that can be obtained in social science, where stronger predictions could only be ventured by eliminating free choice (including the human possibility of blindness and mistakes). As such it is of great prescriptive value to policymakers seeking to know when and how to begin a peace process.

In the process of such research, argues Zartman (2008), researchers would look for evidence of, for example, whether the fluid military balance in the conflict had given rise at any time to a perception of a MHS by the parties, and to a sense by authoritative spokespersons for each side that the other was ready to seek a solution to the conflict; or, on the contrary, whether it has reinforced the conclusion that any mediation is bound to fail because one or both parties believes in the possibility or necessity of escalating out of the current impasse to achieve a decisive military victory.

2.1.1.2 Other relevant theories on the success and failure of international mediation

In theorising broadly about the success or failure of international mediation, the theory of conflict ripeness alone, it argued, is not adequate to account for all factors. In other words the failure of the AU's launch of mediation efforts in the 2011 Libyan conflict cannot be explained by simply answering the question of whether or not that conflict was ripe for resolution. There are other variables at play in a conflict situation. In this broader context, the theory of conflict ripeness is part of the contextual variables to be considered in the analysis of the factors that account for the success and failure of international mediation.

To this end, Takeshi (2010) defines mediation as one form of an ad-hoc trial of conflict resolution in a non-enforceable and non-legally-binding manner practised by the parties to the conflict and third parties as mediators (see also Bercovitch & Rubin 1992:2, 4–5, 7; Crocker 2007:2; Crocker et al 1999:5-7; Horowitz: 2007:51; Williams & Williams 1994:116).

Takeshi (2010) argues that the independent variables for explaining the outcome of third-party mediation may be classified into contextual and process variables. There is a large consensus in the standard literature on which factors are considered contextual variables to explain the effectiveness of mediation (see also Bercovitch & Rubin 1992:7; Takeshi 2010).

Contextual variables consist of four categories:

- (1) the characteristics of the dispute;
- (2) the parties;
- (3) the mediator; and
- (4) the international context.

The characteristics of the dispute can be analysed according to their ripeness, intensity, and issues at stake in the conflict (Takeshi 2010; Kleiboer 2006:374–376). The characteristics of the 2011 Libyan conflict, it is argued, can be summed up as ‘an unripe conflict with Qaddafi having the monopoly of heavy artillery at the beginning and NATO levelling the playing field shortly thereafter and escalating the conflict up to the killing of Qaddafi’.

The nature of the parties involved in the conflict may be analysed through six aspects: identification, cohesiveness, type of regime, motivation to mediate the conflicts, mutual relationship and power balance of the parties (Takeshi 2010). In the 2011 Libyan conflict the parties were Qaddafi representing his powerful autocratic government on one hand and the National Transitional Council representing the protesters on the other; with both parties unwilling to negotiate; and the shifting balance of power (from Qaddafi to protesters).

The third contextual variable, the characteristics of the mediator, can be evaluated on three levels: impartiality, leverage and status (Takeshi 2010). It can be argued that the AU was not an impartial mediator in the eyes of the protesters, given Qaddafi’s influence as the leader of Libya as an AU member state. This perception would therefore affect the AU’s leverage over the protesters and taint its status.

The fourth contextual variable, the international context, focuses on the impact of significant international events and processes around the mediation activity (Takeshi 2010). In the 2011 Libyan conflict, the international context will examine impact of the acts and omissions of other international actors such as the UNSC and Arab League on the AU’s negotiations attempt.

2.1.1.2.1 Characteristics of the dispute

Kleiboer (1996) argues that the success and failure of mediation can be explained by analysing the characteristics of the dispute, the parties and their interrelationship, the characteristics of the mediator and the international context, among others. In the 2011 Libyan conflict this involved understanding what the demands of the rebels were; the

rebels themselves; the Qaddafi regime and its allies; and the characteristics of the AU, UNSC and Arab League (AL) as mediators.

Regarding the characteristics of the dispute, Kleiboer (1996) argues that mediation research focus on three characteristics held to affect mediation outcomes: (a) conflict ripeness, (b) the level of conflict intensity and (c) the nature of the issue(s) in conflict.

(a) Conflict ripeness

Analysts have frequently highlighted the importance of proper timing of mediation initiatives for achieving successful outcomes (Kleiboer: 1996). It is assumed that conflicts pass through a life cycle that encompasses a number of distinguishable phases, and that certain stages are more amenable to outside intervention than others (Young 1967:19–20; Kleiboer: 1996). The hypothesis is that to be successful, mediation needs to be initiated at such “ripe moments”. Conflicting views exist, however, about what constitutes or how to recognise such moments (Kleiboer: 1994; 1996). Some analysts believe that conflicts follow the logic of “clock time” (Kleiboer: 1996).

The duration of conflict in terms of days, months or years is linked to the persistence or change of attitude of the adversaries toward the conflict. The “classical” position, which supports late entry, is based on the thesis that mediation is most fruitful when failure to reach an agreement precipitates an emergency (Kleiboer: 1996). A sense that there is an emergency will strongly increase the disputants’ motivation to moderate their intransigence and revise their expectations (Northedge and Donelan: 1971; Frei: 1976; Rubin: 1981; Moore: 1987; Koh: 1990; Kleiboer: 1996). Other analysts claim, however, that mediation needs to be initiated at an early stage, that is, well before the adversaries cross a threshold of violence and begin to inflict heavy losses on each other (Edmead: 1971; Kleiboer: 1996). In the 2011 Libyan conflict the early stages would therefore be before 15 February 2011 when the protests began.

At such an early, pre-violence stage, it is still possible to consider possibilities for settlement before the conflict has become too entrenched and the parties too inflexible in their attitudes (Kleiboer: 1996). In his study of 257 attempts at intermediary

intervention, Bercovitch et al (1991) find that the longer a dispute lasts, the less amenable it is to mediation. However, there does seem to be a minimum time period necessary before mediation can be successful. Mediation efforts initiated between 12 and 36 months have proved the most successful (Bercovitch et al 1991:22). Other analysts repudiate the logic of clock time and instead focus on “social” or “event” time (Lauer: 1981). Irrespective of days, months or years, they assume a conflict to be ripe for resolution if certain events have taken place which affects the perceptions and attitudes of the disputants (Kleiboer: 1996).

Zartman’s (1983; 1985) and Haass’s (1988; 1990) case studies demonstrate that the parties’ assessment of the interactions between them is decisive (Kleiboer: 1996).

According to Zartman, a conflict is ripe for resolution when:

- (1) a mutually hurting stalemate exists, marked by a recent or impending catastrophe (see also Modelski 1964:143; Pruitt 1981a; Assefa 1987:17, 195);
- (2) the efforts of both parties to impose unilateral solutions are blocked and bilateral solutions become conceivable, leading antagonists to believe that there is a workable alternative to combat; and
- (3) power relations have changed in such a way that a party that previously had the upper hand in the conflict starts slipping and the underdog starts rising (Kleiboer: 1996).

In contrast, Stedman (1991) asserts that developments within the contending parties are critical for the emergence of ripe moments (Kleiboer: 1996). In his analysis of the mediation attempts in Zimbabwe, he shows that ripeness is a function of internal political changes within groups in conflict, such as the rise of new leaders, the emergence of a divided leadership, or a split in a government previously unified in its war aims (Kleiboer: 1996).

(b) The level of intensity

Kleiboer (1996) argues that although there is ambiguity in what is meant by the “intensity” of a conflict, it is a second characteristic of the dispute commonly presumed to affect mediation outcomes. There is no agreement amongst analysts whether the “intensity” of a conflict refers to the degree of threat or tension or the magnitude of violence or the number of fatalities (Kleiboer: 1996). Analysts strongly disagree about the impact of the “intensity of a conflict” as a characteristic of conflict (Kleiboer: 1996).

Some indicate that the greater the intensity, the more polarised the positions of the disputants will become, resulting in a greater inclination to reject any mediation effort (Kleiboer: 1996). Instead they will try to “win” at all costs (Modelski: 1964; Frei: 1975; Brockner: 1982; Kleiboer: 1996). Bercovitch et al (1991) conducted an evaluation of intensity of a conflict using the number of fatalities experienced by each adversary as a variable, and found empirical support for the hypothesis that as the number of fatalities in a dispute increases, the likelihood that mediation will prove successful suffers a corresponding decline (Kleiboer: 1996). Regarding the findings of Bercovitch et al (1991), Kleiboer (1996) argues that protracted and intense conflicts should therefore be managed in a different way. In applying this hypothesis to the 2011 Libyan conflict the questions are: (a) did the rebels become more unwilling to negotiate as Qaddafi intensified the airstrikes upon them?; and (b) was Qaddafi willing to negotiate as the NATO forces intensified their attacks on his forces?. We attempt to answer these questions in Chapter 4.

On the other hand, analysts such as Jackson (1952) and Young (1967; 1968) argue that the greater the intensity of a conflict, the higher the likelihood that mediation will be both accepted and successful as a method of minimising losses. This analysis is in line with the theory of conflict ripeness that assumes that a MHS coupled with an impending or recently avoided catastrophe will bring the parties to the negotiating table.

(c) The nature of the issue(s)

Analysts are of the view that “the nature of the issue(s) in conflict” is a characteristic of a dispute that has an important bearing on the outcomes of mediation (Kleiboer: 1996). Bercovitch et al (1991:14) distinguish between five types of conflict issue:

- 1) sovereignty issues involving adversaries with incompatible claims to a specific piece of territory;
- 2) ideology issues focusing on the nature of a political system, basic values, or beliefs;
- 3) security issues concerning frontiers, borders and territories;
- 4) issues of self-determination and national selfhood in independence conflicts; and
- 5) a residual category of other types of conflict (Kleiboer: 1996).

It is argued that the 2011 Libyan conflict would fall under type 2, as the rebels were fighting the nature of Qaddafi’s political system and its basic values (predominantly dictatorship, with powerless committees purporting be participative democracy). Using their database, they find that disputes involving territorial or security issues are far more amenable to successful mediation than are issues of ideology or independence (Kleiboer: 1996).

2.1.1.2.2 Parties and their interrelationship

Kleiboer (1996) argues that scholarly discussions about the parties engaged in mediation focus on six characteristics:

- a. their identification;
- b. their cohesiveness;
- c. their type of regime;
- d. their motivation to mediate;
- e. their previous and ongoing relationships; and
- f. the distribution of power between them.

(a) Identification of parties

In theory, argues Kleiboer (1996), it is generally agreed that mediation can only be successful if the parties in conflict are clearly identifiable in terms of group characteristics and boundaries. In the 2011 Libyan conflict the parties were identifiable as the Qaddafi regime on one hand and the rebels led by the Transitional National Council (TNC) on the other. The rebels were very united and cohesive; on the other hand some of Qaddafi's key loyalists joined the rebels. On one hand the rebels were convinced that they were fighting for a more democratic regime, whilst on the other Qaddafi seemed convinced that the type of regime, the Jamahiriya (the state of the masses) was for the people. The rebels, as will be seen later, were not amenable to negotiation whilst Qaddafi agreed in principle to negotiate, although in practice he seems to have acted contrary to this stance. In terms of conflict ripeness theory the identity of the parties is referred to as the 'Valid spokesperson' or the 'VS' (Zartman: 2001).

Assefa (1987) observes that particularly in cases of "unscheduled" political violence like riots or civil wars, the corporate identity of at least one of the parties is often elusive. In these circumstances, there is, as Modelski (1964:142) states, "no one to settle with." In Zartman's theory of conflict ripeness terms, there is no VS. Kleiboer (1996) argues that an additional problem is that there are numerous historical examples of international mediation in which it is clear to an outsider who the disputants are, but in which the parties themselves are unwilling to identify and grant recognition to the other group as a legitimate participant whose needs, interests and values they have to take seriously (see also Hare 1992:58).

(b) Cohesiveness: constituencies and representatives

It is undisputed in the literature that the internal cohesiveness of adversaries is important for successful intermediary intervention, but analysts seem to have operationalised cohesiveness in two different ways. Some refer to the stability of the parties' internal power structure, for example, whether or not clear leaders or

representatives exist who can authoritatively negotiate and secure the implementation of agreements reached (Assefa: 1987:13). The study argues that at the beginning of the 2011 Libyan conflict there were no clear leaders who could do this. It was only when the TNC was formed that identifiable leadership emerged.

Kleiboer (1996) argues that most often, however, cohesiveness is associated with the nature and number of domestic constituencies. Specifically, it has usually been equated with the existence of only one constituency (Kleiboer: 1996). If cohesiveness is low (the presence of more than one constituency), it may be hard to identify parties in the first place (Kleiboer: 1996). It is assumed that the presence of numerous constituencies within a state makes it harder for its potential representatives to engage in any meaningful form of conflict settlement, because the representatives will find it difficult to make concessions without losing face vis-à-vis any of the constituencies (Kleiboer: 1996). This creates a need for negotiation and mediation to take place not only among the adversary parties but also among factions within the parties themselves (Kleiboer: 1996).

It has been demonstrated, for example, that in mediating the 1973 Middle East conflict, Kissinger had to win over only Sadat on the Egyptian side, whereas on the Israeli side, he had to convince not only the prime minister, but the cabinet, the political opposition and the press as well (Kalb and Kalb: 1974:502; Rubin 1981:15). Also, it is presumed that leaders of such internally non-cohesive parties are more aggressive and willing to provoke or escalate conflict with out-groups (see, for example, Bloomfield and Leiss 1969:27; Rabbie and Visser: 1972; Fisher: 1989). The existence of numerous constituencies may also provide for negotiators who are unwilling to compromise a convenient excuse for resisting any mediation efforts to produce movement (Kressel 1981:231).

(c) Type of regime

Regime types are usually distinguished in terms of democracies versus non-democracies (Kleiboer 1996). Maoz and Abdolali (1989:3–35), Russett (1993) and others have argued that although democratic states may be as prone to conflict as any

other type of regime, they rarely fight among themselves (Kleiboer: 1996). The three explanations advanced to account for this lack of war are democracies' political culture (shared norms that promote peaceful conflict resolution), structure (institutional constraints on high-level decision makers), and democratic leaders' perceptions and beliefs (Kegley and Hermann: 1995; Kleiboer: 1996). Kleiboer (1996) argues that this hypothesis has also found its way into the mediation literature, the idea being that intermediary intervention is more successful in conflicts between democracies.

Kleiboer (1996) cautions however that one should not view internal cohesion as a structural feature of a political system (e.g. single versus multiparty) but should take instead the degree of legitimacy and freedom to manoeuvre that political leaders enjoy as its most important manifestation. This degree of legitimacy, in turn, can vary in both democratic and non-democratic states (Kleiboer: 1996). It follows that cohesion cannot be inferred automatically from regime type (Kleiboer: 1996).

(d) Motives to accept mediation

Willingness to address the conflict and accept the assistance of a mediator is often considered a necessary condition for mediation success (Rubin: 1981:5). Several motives (interests) may lead parties in conflict to become willing to seek or accept mediation (Zartman: 1985:9–10; Kleiboer: 1996). Kleiboer (1996) argues that parties may have the expectation that a certain mediator will help to produce a more favourable settlement to the conflict than would otherwise be possible. It is argued that Qaddafi's motivation to accept the AU's mediation stemmed from his perceived or actual historical influence within the AU, and based on that he hoped for a more favourable settlement.

(e) Previous and ongoing relationships between parties

States interact in a variety of ways, including both disputes and transactions based on complementary and common interests. The relative importance of these different dimensions of the relations between states affects the likelihood that any specific conflict can be resolved by mediation (Mitchell: 1981:202). Both the history and the nature of the relationship are considered important in this respect (Kleiboer: 1996). In

the case of the 2011 Libyan conflict, the nature of the relationship between the parties was that on one hand there were rebels who have been under the rule of Qaddafi's regime for more than 40 years and had reached a point where it was intolerable to continue under that regime and on the other hand Qaddafi saw nothing wrong with the Libyan political system 'the government of the masses' that he designed.

(f) Balance of power

Kleiboer (1996) argues that although many analysts assert that (approximate) power parity between the conflicting parties has an effect on the outcomes of international mediation, they hold diametrically opposed views about the nature of such effects. Kleiboer (1996) observes that most analysts argue that a balance of power between the disputants is crucial for successful mediation (Young: 1967:43–4; Zartman: 1981:150; Kriesberg: 1982:274; Touval: 1982:9). This study argues that in terms of Zartman's theory of ripeness, the balance of power represents a MHS. According to Kleiboer (1996), analysts indicate that a marked power disparity will strengthen the stronger party's view of the mediator as a stumbling block in the path to total victory. Such a disparity, argues Kleiboer, will reinforce the stronger party's unwillingness to accept mediation in the first place, or will enhance its reluctance to make any concessions or compromises during mediation essential for attaining successful results.

Modelski (1964:149) observes: "It goes strongly against the grain of human nature to seek a negotiated solution when one can be imposed merely by demanding it." For Kleiboer (1996), it is also possible that the stronger party may use the mediator as an instrument for facilitating surrender (see also Bercovitch et al: 1991:11).

2.1.1.2.3 Characteristics of the mediator

Mediators themselves also affect their chances of success (Kleiboer: 1996). In particular, three mediator attributes are considered important in the literature: (a) impartiality, (b) leverage, and (c) status (Kleiboer: 1996). These characteristics are usually held responsible for a mediator being accepted by the disputing parties, which, in turn, is seen as vital for the successful performance of his or her mediator functions

(Susskind and Babbitt 1992:35; Kleiboer: 1996). Kleiboer (1996) argues that it is the mediator's acceptability to the disputants that distinguishes mediation from other forms of intermediary intervention in international conflict (Mitchell and Webb 1988:4).

(a) Impartiality and motives

Kleiboer (1996) argues that the issue of mediator impartiality has evoked intense debate among scholars of international mediation. Conceptually, some confusion exists because impartiality may refer to intention, consequence or appearance (Kriesberg: 1982). In addition, it is sometimes related to a mediator's attitudes to the conflicting parties and, at other times, to a mediator's stake in the substance of issues in conflict (Princen: 1992); at yet other times, it is related to both.

Kleiboer (1996) states that analysts agree that, impartiality is essentially a matter of the perceptions of the parties in conflict (Touval: 1975:55; Yarrow: 1978:164; Bailey: 1985:209–10). The heart of the debate on impartiality lies not with conceptual issues, however, but with the effects of impartiality on the outcomes of mediation.

(b) Leverage

Kleiboer (1996) argues that leverage is one of the most elusive elements of mediation. It makes for fuzzy conceptualisations, and research produces contradictory results concerning its importance for successful mediation outcomes (Kleiboer: 1996). Few analysts bother to define leverage explicitly (Kleiboer: 1996). Overall, it seems to refer to a mediator's ability to put pressure on one or both of the conflicting parties to accept a proposed settlement (Kleiboer: 1996). This assumes a mediator has power and influence that can be brought to bear on the parties (Kleiboer: 1996); it is not clear, however, which resources are crucial (Kleiboer: 1996).

Kleiboer (1996) argues that analysts distinguish between sticks (negative sanctions) and carrots (positive sanctions) (Touval and Zartman: 1985:13), and between material aspects (such as the possibility of withholding or supplying economic aid) and immaterial aspects (the possibility of using moral or psychological pressure) (Princen:

1992:167). Without systematic research on the impact of these various types of resource, there has been controversy in the literature over how important leverage is for achieving successful mediation outcomes (Kleiboer: 1996).

According to some authors, leverage is a necessary condition for mediation success (Cot: 1972:12; Brookmire and Sistrunk: 1980:326; Bercovitch et al: 1991:15; Touval: 1992:233). Kleiboer (1996) argues that although analysts disagree about the impact of leverage, they do agree that mediation also runs various risks when mediators use (too much) leverage.

(c) Status

Kleiboer (1996) argues that another important factor enhancing a mediator's chances of success is his or her status. Status derives from personal reputation, track record and special expertise, but also from organisational factors. Two such organisational factors are distinguished in the literature: institutional and positional status (Kleiboer: 1996). The institutional status of a mediator stems from the identity of a mediator's constituency (Kleiboer: 1996). A mediator seldom acts as an individual, but usually as a spokesperson or representative of a national state or a non- governmental organisation (Kleiboer: 1996).

The standing, legitimacy and, in some cases, leverage of these "mediating bodies" determine the status of the representative who acts as a mediator (Rubin 1981:9–11). The positional status of the mediator depends on his or her standing within his or her own country or organisation (Kleiboer: 1996). The mediator must have a strong enough internal position to commit his or her government or executive to back up the things he or she says or does (Kleiboer: 1996). For example, if a mediator promises compensation for concessions made by the adversaries, they must be able to count on him or her being able to commit his or her country/organisation to deliver (Kleiboer: 1996). It is argued that the AU chose South African President, Jacob Zuma because of South Africa's mediation role in Africa, backed by South Africa's successful negotiated transition as well as President Zuma's position as the leader of the country.

2.1.1.2.4 The international context

Kleiboer (1996) argues that international context in which any conflict takes place also affects the outcomes of mediation efforts. In particular, the impacts of other parties and of other conflicts taking place simultaneously are deemed relevant in this respect (Kleiboer: 1996). Economic and political pressure exercised by other (powerful) parties with a stake in the outcomes of the conflict may encourage, but also frustrate, conflict settlement efforts (Kleiboer: 1996). In particular, governments of countries undergoing civil wars are put under pressure by their neighbours who are bothered by streams of refugees (Assefa: 1987:159). Kleiboer (1996) argues that in several cases, non-mediating yet influential external parties have succeeded in constraining one or both disputants from using violence.

In Chapter 4, the theoretical framework is applied to the 2011 Libyan conflict in order to determine whether the parties found themselves locked in a conflict from which they could not escalate to victory, and whether such a deadlock was sufficiently painful to both of them for them to seek an alternative policy or Way Out. The theoretical framework as it relates to the success and failure of mediation is also applied to the case study in order to understand the factors causing the failure of mediation efforts. In order to understand the dynamics of the case study, it is important to first deal briefly with the history of mediation attempts in the 2011 Libyan conflict.

CHAPTER 3

3.1 AN OVERVIEW OF MEDIATION ATTEMPTS IN THE 2011 LIBYAN CONFLICT

The aim of this chapter is to give an account of mediation efforts in the 2011 Libyan conflict and an overview of the conditions or context (particularly the psycho-political dynamics) within which such mediation attempts took place. The conditions on the ground, including the perceptions of the parties, when assessed can yield an indication of whether or not the 2011 Libyan conflict was not ripe for resolution through mediation when the mediation attempts were launched by the AU. As demonstrated in Chapter 2, the theory of ripeness is useful but is not sufficient to fully account for the success or failure of mediation; there are other factors and dynamics that come to play. Some of the dynamics that accounted for the failure of the AU's mediation efforts are analysed below.

3.1.1 A brief background to the 2011 Libyan conflict

Inspired by events in Tunisia and Egypt between January and February 2011, in which ordinary people took to the streets to force out the governments of Presidents Ben Ali and Hosni Mubarak respectively in public demonstrations and protests (Apuuli: 2012:139), the people of eastern Libya began an uprising against the government of Muammar Qaddafi on 15 February 2011 (Apuuli: 2012:138).

The protests began in the eastern city of Benghazi, where people staged a protest against the government for arresting a human rights campaigner (ISS: 2011a:3; Apuuli: 2012:139). As in Tunisia and Egypt, opposition groups used social network websites such as Facebook to call on people to stage protests (ISS 2011a:3; (Apuuli: 2012:139). The lethal and indiscriminate use of force by security forces on unarmed protesters was condemned by the international community (Apuuli: 2012:139). The protesters established a Transitional National Council (TNC) to act as the political face of the revolution, headed by former Justice Minister Mustafa Mohamed Abud Al Jeleil, to spearhead the struggle against the Qaddafi government (Apuuli: 2012:139). The stance

of the TNC was always that there would be no negotiations in Libya whilst Qaddafi was still in power.

On 5 March 2011, the TNC issued a statement declaring itself to be the “only legitimate body representing the people of Libya and the Libyan state” (UN Interoffice Memorandum 2011). An executive board, chaired by Mahmoud Jibril, was formed by the council on 23 March 2011 after being *de facto* assembled as an “executive team” since 5 March 2011 (UN Interoffice Memorandum 2011).

The TNC issued a Constitutional Declaration in August 2011 in which it set up a road-map for the transition of the country to a constitutional democracy with an elected government (UN Interoffice Memorandum 2011). The council gained international recognition as the legitimate governing authority in Libya and occupied the country’s seat at the UN. In referring to the Libyan state, the TNC used simply “Libya” (UN Interoffice Memorandum 2011). The UN formally recognised the country as “Libya” in September 2011, based on a request from the Permanent Mission of Libya citing the Libyan interim Constitutional Declaration of 3 August 2011 (UN Interoffice Memorandum 2011).

As the rebellion rolled out west towards Libya’s capital, Tripoli, the Qaddafi government mobilised its armed forces, assisted by civilian loyalists, to confront it (Apuuli: 2012:139). Qaddafi’s stance was never to resolve the conflict through negotiations and this was confirmed on 2 March 2014, in a three-hour speech, where he said: “We will fight until the last man, the last woman, from South to North and from East to West” (Lynch: 2012: 177).

By the end of February 2011, Qaddafi’s forces had been able to take back several towns that had been overrun by the rebels (Apuuli: 2012:139). In the meantime, the AU’s Peace and Security Council (AUPSC) met one week after the rebellion broke out and issued a communiqué spelling out its intention to send a fact-finding mission to Libya (AUPSC 2011b: para. 6); Apuuli: 2012:139).

The 26th day of February 2011 marks the first intervention or mediation effort by the international community to stop the ongoing killings of the civilian population when the

UNSC passed Resolution 1970, which called for the immediate cessation of hostilities and called upon the government to stop the killing of civilians and allow humanitarian assistance. Moreover, by the time the intervention was launched, the regime had already demonstrated its willingness to use force against its own people: an estimated 1 000 to 10 000 had already been killed (Pattison: 2011:2). Furthermore, Resolution 1970 called upon members to impose an arms embargo, travel ban and asset freeze against the Libyan government (Lynch: 2012). The UNSC called upon the parties to try and resolve the conflict through negotiations. At this stage the UNSC was still convinced that the conflict could still be resolved through mediation. As the conflict continued to show signs of serious escalation, the UNSC moved to the use of force as a means of conflict resolution, hence the passing of Resolution 1973 authorising the use of force to protect the civilian people by imposing a no-fly zone over Libyan airspace.

On 6 March 2011, UN Secretary-General Ban Ki-moon appointed former Jordanian Foreign Minister Abdelilah Al-Khatib as his special envoy to Libya (FIIA: 2011). The UN's mediation efforts were desperately needed to establish access to over a million civilians in need of humanitarian assistance in the country and the region (FIIA: 2011). In order to gain this access, the UN had to obtain the consent of both belligerent parties, the Qaddafi regime and the Interim National Council (FIIA: 2011). However the appointment of Abdelilah Al-Khatib did not achieve its purpose and the situation on the ground remained volatile and dangerous for aid workers. It was only with NATO's intervention that civilians were able to receive humanitarian assistance (FIIA: 2011).

The prospects for UN mediation in Libya were undermined or at least complicated by the UNSC's decision a week earlier to authorise criminal enquiries by the International Criminal Court against the Libyan leadership (FIIA: 2011). The UN consequently found itself in a rather awkward position, attempting to play the double role of negotiator and law-enforcer in the conflict; as a result it was not trusted by Qaddafi (FIIA: 2011).

As the AUPSC was preparing to launch its mediation efforts, and in response to the threat from Qaddafi forces to crush the rebellion, on 17 March 2011 the UNSC passed Resolution 1973. This marked the beginning of Western countries' military intervention

(under NATO) in the Libya crisis (Apuuli 2012:139). By 23 March the Libyan Air Force had been largely wiped out, with most of its aircraft destroyed or rendered inoperable. With NATO's intervention weakening Qaddafi's forces, the rebels were able to gain considerable ground, taking control over many cities. Having NATO's assistance, the rebels were more convinced of their unilateral military victory and would thus not consider a negotiated solution as an option.

The 10th of April 2011 marks the second international mediation effort in the 2011 Libyan conflict, as it saw the AU's launch of a mediation attempt through a high-level delegation led by South African President, Jacob Zuma. It is argued that given South Africa's good record – the successful negotiated settlement that saw the end of apartheid coupled with the legacy of the former President Thabo Mbeki's role as a mediator within the African continent – the appointment of President Jacob Zuma did not come as a surprise. It is argued that South Africa's vote in favour of Resolution 1973 would have been expected to weaken President Zuma's status as a lead negotiator vis-à-vis Qaddafi; conversely, it did not. This may be attributed to the long-standing relationship between Qaddafi and President Zuma, a friendship that acted as leverage for President Zuma vis-à-vis Qaddafi.

Although Qaddafi informed the AU's delegation that he was prepared to seek a negotiated settlement, the rebels indicated that they were not prepared to negotiate with Qaddafi. President Jacob Zuma had no leverage on the TNC, arguably because it had not been in existence for a long time; the power relations within it had not yet been clearly drawn. In terms of its roadmap, the AU's delegation needed to obtain the buy-in of both parties in order to get to the negotiating table; however it could not get the ear of the TNC. The literature on mediation argues that neutrality serves as a necessary condition if a sustainable outcome is to be reached (Penetrante: 2012). The roadmap envisaged a shared power model; however the TNC did not see itself forming a government with Qaddafi. It is argued that this TNC's position is one of the factors that accounted for the failure of the AU's launch of mediation.

Sunday 21 August 2011 saw an important shift in the 2011 Libyan conflict when rebels launched an offensive to take Tripoli, the Libyan capital, from Qaddafi's forces. The rebels made rapid progress and by the end of the week had overrun much of the capital, although sporadic fighting continued in parts of the city (Apuuli: 2012:140). Qaddafi went into hiding but continued making radio broadcasts urging his followers to fight and take back the city. Rebel forces captured the city of Sirte on 20 October 2011, and subsequently news began filtering out that Qaddafi had been killed (ISS: 2011:5; Apuuli: 2012:140). When it was confirmed, Qaddafi's death effectively brought to an end the war in Libya (Apuuli: 2012:140).

The TNC governed Libya for a period of ten months after the end of the war, holding elections for a General National Congress on 7 July 2012, and handing power to the newly elected assembly on 8 August 2012.

3.1.2 The AU's Intervention

3.1.2.1 The AU's approach to conflict resolution

Apuuli (2011:2–3) provides an overview of the AU's approach to conflict resolution and argues:

While establishing the AU, African leaders recognised the scourge of conflicts in Africa as constituting a major impediment to the socio-economic development of the continent. They also noted that the need to promote peace, security and stability are a prerequisite for the implementation of development and integration agenda. Whilst the AU is guided by the objective of 'promot[ing] peace, security and stability on the continent', it is also based on the principle of 'respect for sanctity of human life' ... The AU leaders recognised the failures of the OAU in the area of conflict resolution. Due to the doctrine of non-intervention, the OAU became a silent observer to the atrocities committed by some of its member states. A culture of impunity and indifference was cultivated and became entrenched in the international relations of the African countries.

Thus, argues Apuuli, (2011:2–3), learning from the lessons of the old OAU, when African leaders established the AU they adopted a much more interventionist stance in the organisation’s legal frameworks and institutions. Apropos of the legal framework, for example, the Constitutive Act 2000 opined that, “the Union had a right 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.” Also, member states were given a right to request intervention from the AU in order to restore peace and security. Finally, the AU member states were enjoined to respect democratic principles, human rights, the rule of law and good governance.

These principles, according to Apuuli (2011:3), were a marked departure from the charter of the OAU. Apuuli (2011:3) argues:

With regard to institutions, the AU sought to create robust conflict resolution organs to replace those of the moribund OAU. During the formative process of the AU, the Assembly of Heads of State and Government of the OAU meeting in Lusaka, Zambia in July 2001, adopted Decision 8 on the implementation of the Sirte Declaration (on the establishment of the AU, adopted in 1999), including the incorporation of other Organs. It was on the basis of this decision and Article 5(2) of the Constitutive Act that the AU PSC replaced the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution, established under the 1993 Cairo Declaration. The Cairo Declaration had ‘signalled Africa’s determination to resolve its own problems’. But the OAU’s Mechanism on CPMR was not effective at all; it did not deal, for example, with the 1994 genocide in Rwanda, nor the crises in Liberia and Sierra Leone.

The protocol relating to the establishment of the AUPSC was adopted at the inaugural meeting of the Assembly of the Union held in Durban, South Africa in July 2002 and entered into force on 26 December 2003 (Apuuli 2011). Apuuli (2011:3) argues: “Due to the conflicts on the continent, the PSC has been compelled to deal mainly with country-focused issues and thus, when the crisis in Libya broke out, it was immediately seized of the matter.”

3.1.2.2 The first AUPSC communiqué regarding the Libyan crisis

At its 261st sitting held on 23rd February 2011, the AUPSC discussed the crisis in Libya and, in the ensuing communiqué, took a decision to “urgently dispatch a mission of Council to Libya to assess the situation in the ground” (Apuuli 2011:3; AU: 2011). However, the AU failed to act in accordance with its decision. Apuuli (2011:3) argues that “the failure of the PSC to act without delay in the crisis set the basis upon which it came to be marginalised by the UNSC.”

Had the AUPSC immediately established the fact-finding mission, argues Apuuli (2011:3), it would have been very difficult for the UNSC to ignore it in the conflict. To this end the charter of the UN recognises the existence of regional arrangements or agencies to deal with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided the activities undertaken are consistent with the purposes and principles of the UN (Apuuli 2011).

According to Apuuli (2011), regional arrangements are enjoined to make every effort to achieve pacific settlement of local disputes before referring them to the Security Council. Thus, argues Apuuli (2011), the failure of the AUPSC to immediately establish the fact-finding mission paved the way for the UNSC to pull the rug from under the AU in the Libya crisis.

Apuuli (2011:4) argues:

... the AU having failed to act without delay allowed the UNSC to seize the initiative. On 26th February 2011, acting under Chapter VII, the UNSC passed Resolution 1970 which effectively precluded the AU from being the lead organisation to deal with the Libya situation. Once this resolution was passed, it meant that whatever the AU would do in future regarding the Libyan situation, would be secondary to what the UNSC did; as it must be remembered that the UNSC has the primary responsibility for maintaining international peace and security.

It is argued that the procrastination on the part of the AU that led to it being overtaken by the UNSC weakened its position as a mediator. This meant that the AU could no longer be taken seriously by the parties. The decentring of the AU also meant the loss of any leverage it may have had as the regional body.

3.1.2.3 The second AUPSC communiqué regarding the Libyan crisis

The next meeting of the AUPSC on Libya on 10 March 2011 was held against the backdrop of fast-developing events; Qaddafi's forces were threatening to overrun the rebel stronghold of Benghazi, and there were calls to the UNSC from the other regional bodies (such as the AL) to impose a no-fly zone on Libya to protect civilians (Apuuli 2011:4). Apuuli (2011:4) argues that one would have expected the AUPSC, faced with the deteriorating situation in Libya, to act decisively, for example by requesting intervention from the AU to restore peace and security. However, the AUPSC did no such thing, and instead took two important decisions that also came to be overtaken by the UNSC action.

First, the AUPSC established a roadmap by which the Libya crisis could be resolved, including calling for: urgent African action for the cessation of all hostilities; cooperation with the competent Libyan authorities to facilitate the timely delivery of humanitarian assistance to the needy populations; protection of foreign nationals, including African migrants living in Libya; and adoption and implementation of political reforms necessary for the elimination of the causes of the current crisis (Apuuli: 2011:4). Secondly, the AUPSC established an AU High Level Ad hoc Committee on Libya comprising of five heads of state and government, together with the chairperson of the PSC (Apuuli: 2011:4).

The AU High Level Ad hoc Committee's mandate was to: engage with all the parties in Libya and to continuously assess the evolution of the situation on the ground; facilitate an inclusive dialogue among the Libyan parties on the appropriate reforms; and engage the AU's partners, in particular the AL, Organisation of Islamic Conference (OIC), the European Union (EU) and the UN to facilitate coordination of efforts and seek their support for the early resolution of the crisis (Apuuli 2011:4). Apuuli (2011:4) argues that

the AUPSC's two decisions were overtaken by events happening elsewhere in the 2011 Libyan conflict.

In the days after the establishment of the AU High Level Ad hoc Committee, the UNSC passed Resolution 1973, which paved the way for military attacks against Libya by the Western powers. The resolution also imposed a no-fly zone over Libya, which meant that the AU High Level Ad hoc Committee could not travel to the country without UN authorisation.

From April 2011 to July 2011 there was a stalemate in the eastern part of Libya where NATO forces and rebels continued to inflict serious assaults on Qaddafi's forces, which retaliated with almost equal force. Cities that had previously been taken by rebels were recaptured by Qaddafi's forces. It is argued, however, that this stalemate did not reach a MHS in that the parties remained convinced of their respective unilateral victories.

Apuuli (2011:4) argues:

... whilst since passing resolution 1973 the UNSC has not passed any other resolution on Libya, various institutions of the AU continued to be seized of the situation in Libya. For example, at its 10th meeting held on 12 May in Addis Ababa, the AU's Panel of the Wise expressed deep concern at the situation in the country. It thus called for an immediate and complete ceasefire, and an end to all attacks on civilians.

The said AU's Panel of the Wise's had no effect on the parties as the conflict continued to escalate. This demonstrated the AU's failure as a regional organisation to resolve or at least manage conflicts in Africa.

3.1.2.4 UN and NATO's view of the AU's mediation role vis-à-vis the Arab League

Apuuli (2011:5) argues that "in its response to the Libya crisis, the UNSC appeared to give priority to the Arab League (AL) over the AU. But both organisations eventually came to feel as though their views were not heard." Resolution 1973 explicitly

recognised the important role of the AL states in matters relating to the maintenance of international peace and security in the region (Apuuli: 2011:5).

Apuuli (2011:5) argues that -

... the Council only 'took note' of the AU PSC's decision to send the *ad hoc* Committee to Libya in its operative declaration of the resolution. In other words, the resolution recognised the primacy of the Arab League over the AU in the Libya crisis. Appearing on the BBC programme Hard Talk on 25 March 2011, Jean Ping the Chairperson of the AU Commission decried the side-lining of the AU in the Libya crisis. He raged against the fact that the international community was not consulting the organisation. He said, 'Nobody [has] talked to us, nobody has consulted us.' Asked if he felt that the AU was being ignored, he answered, 'totally, totally'.

Despite the acknowledgement of its role, the AL also became concerned with the military action in Libya once it started (Apuuli 2011:5). In a statement on 20 March 2011, the AL Secretary-General, Amr Musa, issued a strong statement claiming that the air strikes went beyond the scope of the Resolution to implement the no-fly zone (Apuuli 2011: 5). He said he was concerned about civilians being hurt in the bombing (Apuuli 2011:5). Apuuli (2011:5) argues that this comment by the AL Secretary-General raised serious anxiety in the international community over the commitment of the AL's resolve and the durability of the international unity in the Libyan crisis. Apuuli (2011) concludes that while it was clear that Qaddafi had few friends, both Arab and African states were uneasy at the scale of the NATO intervention.

3.1.2.5 Divisions within the AU over the resolution of the 2011 Libyan conflict

The Libya crisis exposed the fissures within the AU and thus the failure of the organisation to mount a united front in the matter. In this regard, three positions emerged among the members on dealing with the situation (Apuuli: 2011:7). The first, advanced by Uganda, South Africa and to an extent Kenya, among others, accepted

UN Resolution 1973 in principle but was critical of the way the NATO countries were conducting their operations in Libya (Apuuli: 2011:7). To these countries, NATO's operations went beyond the contours of Resolution 1973 and in effect were part of "regime change doctrine" (Apuuli: 2011:7).

The second position, advanced by the likes of Rwanda, supported the NATO attacks on Libya (Apuuli: 2011:7). President Kagame in particular is reported to have argued that "the Libyan situation had degenerated beyond what the AU could handle" (Apuuli: 2011:7). The third position, advanced by the likes of Zimbabwe, Algeria and Nigeria, opposed NATO's operation in Libya and viewed it as the Western countries using the UN to get rid of the Qaddafi regime (Apuuli: 2011:7). In fact, President Mugabe accused NATO of being a "terrorist organisation" fighting to kill Qaddafi. With these varied positions, the AU could not mount an effective intervention in the crisis (Apuuli: 2011:7).

It is argued that the AU's position as a mediator was further weakened by the divisions among its members on the question of Libya. As these divisions became public knowledge, the parties could no longer take the AU high-level delegation seriously.

3.1.2.6 AU's position on Qaddafi's future

The AU in its roadmap failed to pronounce on the future of Qaddafi in and after the negotiation of the political solution to the crisis (Apuuli: 2011:7). While Western permanent members of the UNSC – France, the United Kingdom (UK) and the United States – were resolute in their demand that Qaddafi relinquish power, the AU was ambivalent at best (Apuuli: 2011:7). Asked if Qaddafi had to leave power, President Jacob Zuma was of the view that "if he [Qaddafi] had to go, the issues to be addressed were when, where and how that happens" (Apuuli: 2011:7). At the 17th AU Summit meeting in Malabo, Equatorial Guinea, some African officials announced that Qaddafi should leave power for a democratic transition to take place (Apuuli: 2011:7).

The UK's Minister to the UN and Africa, Henry Bellingham, was quoted saying that most foreign ministers at the Malabo meeting told him privately that they felt Qaddafi should go. But the final decisions of the Assembly on Libya called for no such action. Moreover,

being the only major organisation that had not called for the imposition of sanctions or a no-fly zone on Libya, the AU carried very little credibility, especially with the rebels (Apuuli: 2011:7). This could partly explain why the rebels were reluctant to buy into its political roadmap (Apuuli: 2011:7).

Apuuli (2011:8) argues that this ambivalence over the role of Qaddafi hampered the AU's mediation efforts. After the establishment of the AU High Level Ad hoc Committee, the AU was trying to sell its roadmap to resolve the crisis in Libya to the two main protagonists – the Qaddafi government and the TNC (Apuuli: 2011:8). The committee was able to travel to Libya from 9 to 11 April 2011 (Apuuli: 2011:8). It met Qaddafi on 10 April, who accepted the AU roadmap on Libya including the specific issue of “the ceasefire and deployment of an effective and credible monitoring mechanism” (Apuuli: 2011:8). But when the committee travelled to Benghazi the next day to meet the TNC, it was a different matter (Apuuli: 2011:8).

Apuuli (2011:8) argues that “despite extensive discussions between the Committee and the TNC there was no agreement due to a political condition put forward by the latter as a prerequisite for the urgent launching of discussions on the modalities for a ceasefire.” The political condition advanced by the TNC was that it could not negotiate an end to the crisis unless Qaddafi relinquished power. According to the TNC, Qaddafi and his government had lost all legitimate claim to govern the country and thus could not be interlocutors in finding a solution to the crisis. Thus, the TNC refused to agree on the crucial issue of the cessation of hostilities.

Nevertheless, the AUPSC and the AU High Level Ad hoc Committee continued to pursue the implementation of the roadmap (Apuuli: 2011:8). At the end of May 2011, President Zuma, a member of the panel, travelled to Libya and met both belligerents (Apuuli: 2011:8). However, whilst Qaddafi's government accepted his call to adopt the AU roadmap as the only solution to resolve the conflict, the TNC rejected the proposal arguing that it could not accept any settlement which did not entail the departure of Qaddafi (Apuuli: 2011:8). Also, ahead of the 17th AU Summit meeting in Malabo, Equatorial Guinea, the AU High Level Ad hoc Committee met twice, in Pretoria on 26

June and in Malabo on 30 June, and adopted a Framework Agreement on a Political Solution to the Crisis in Libya (Apuuli: 2011:8).

The proposal was aimed at bringing the crisis to an end, ensuring the effective protection of the civilian population including the provision of humanitarian support, and ushering in a political process that would make it possible to meet the legitimate aspirations of the Libyan people to democracy, rule of law, good governance and respect for human life (Apuuli: 2011:8). The framework was endorsed by the Assembly of Heads of State and Government at the Malabo Summit and was presented to both parties in the Libya crisis (Apuuli: 2011:8–9).

3.1.2.7 The final AUPSC communiqué regarding the Libyan crisis

Apuuli (2011:9) argues that the AUPSC was overtaken by the events of Sunday 21 August that saw rebels launching an offensive to take Tripoli from Qaddafi's forces. The rebels made rapid progress and by the end of the week had overrun much of the capital, although sporadic fighting continued in parts of the city (Apuuli 2011:9). Whilst Qaddafi went into hiding, he continued making radio broadcasts urging his followers to fight and take back the city (Apuuli 2011:9). The AU High Level Ad hoc Committee and AUPSC were meeting in Addis Ababa, Ethiopia, to craft a response to the events in Libya (Apuuli 2011:9).

In the final communiqué of its 291st meeting, the AUPSC declined to recognise the TNC as the legitimate authority in Libya (Apuuli: 2011:9). Citing Article 30 of the Constitutive Act of the AU, which bars governments that come to power through unconstitutional means from participating in the activities of the organisation, the AUPSC reaffirmed its stand that all the stakeholders in Libya should come together and negotiate a peaceful process (Apuuli: 2011:9). This position would involve the inclusion of elements from the Qaddafi regime to be part of the new government (Apuuli: 2011:9).

Whilst the AU High Level Ad hoc Committee and AUPSC deliberated on the need for the formation of an all-inclusive transitional mechanism to lead Libya in the interim as a new Constitution was drafted to provide for elections, the governments of Ethiopia and

Nigeria recognised the TNC as the authority in charge of Libya. Nigeria's move so irked South Africa that the Secretary-General of the African National Congress (ANC), Gwede Mantashe, criticised the country by declaring that it was "jumping the gun in recognising the rebels as representatives of Libya" (Apuuli: 2011:9).

In reply, President Goodluck Jonathan affirmed that his government stood by the recognition of the TNC and that Nigeria's foreign policy "would not be dictated to her by the government, party or opinion of another country" (Apuuli: 2011:9). By this time Rwanda had also broken ranks with the AU position by reiterating its unequivocal support to the TNC (Apuuli: 2011:9). Whilst altogether 11 AU members recognised the TNC another 41 states declined to recognise it, further deepening the divisions within the organisation in the Libya crisis (Apuuli: 2011:9).

3.1.2.8 The institutional weakness within the AU results in organisations such as NATO and the Arab League taking a lead

The position of regional organisations like the AL, the Gulf Cooperation Council and even the Organization of the Islamic Conference was to refrain from presenting "interventionist" positions (FIIA: 2011). However these organisations expressed their endorsement of a coercive international action in Libya (FIIA: 2011).

Niyitunga (2014) argues that the failure of the AU to mediate the Libya crisis of 2011 and to prevent NATO's military intervention in the country impacted negatively on the organisation's credibility, authority and reliability in being entrusted with the management of African conflicts. Niyitunga (2014) argues that the AU's setback revealed serious institutional weaknesses in the organisation and deep political divisions within member states. The AUPSC's advisory panel on promotion and maintenance of peace, security and stability in Africa, known as the Eminent Panel of the Wise (EPW), comprised former African leaders who lacked the necessary experience and expertise to deal effectively with a complex geopolitical crisis, the implications of which encompassed not only Africa but also the Middle East and Europe.

This inexperience, argues Niyitunga (2014), was compounded by an imbalance and misalignment in the AUPSC. Niyitunga (2014) argues that the deep resentment and divisions among AU member states regarding Qaddafi thwarted the development of a clear and consistent approach on Libya in the face of NATO's determination to oust him and effect a regime change in the country.

Niyitunga (2014) argues that it will always be very difficult for the AUPSC to play a vital role in conflict management in Africa without functional regional organisations. Niyitunga (2014) argues that the failure of the AU mediation team during this crisis occurred as a result of a lack of strong and functional regional organisations in the northern part of Africa. It is argued that the Arab Maghreb Union (AMU), as the North African regional organisation officially linked to the AU, has been weak and ineffective ever since it was established (Niyitunga: 2014). This weakness and ineffectiveness led to the AL, an organisation that is not linked to the AU, becoming the key regional player during the Libya crisis of 2011 (Niyitunga: 2014).

The position of the UNSC as a mediator in the 2011 Libyan conflict raised for some the question whether "the intention of the intervention was predominantly the protection of civilians – a humanitarian objective – or the removal of Qaddafi?" (Pattison: 2011). The perception was that the regime change rather than humanitarian intervention was the goal of the UNSC (Pattison: 2011). Apart from the stated weaknesses that affected the position of all mediators, the situation on the ground throughout the 2011 Libyan conflict was such that parties to the conflict were capable of escalating the conflict and remained convinced of their respective unilateral victories. Thus a MHS both objectively and subjectively never obtained in the 2011 Libyan conflict so there was no evidence of a MHS that could be pointed out to the parties. In line with Zartman's theory of ripeness, if the parties do not perceive themselves to be in a MHS, a ripe moment has not occurred.

CHAPTER 4

4.1 APPLICATION OF THE THEORETICAL FRAMEWORK TO THE 2011 LIBYAN CONFLICT

The aim of this chapter is to apply the theoretical framework to the 2011 Libyan conflict as a lens that will help examine and understand the factors that accounted for the failure of the launch of the AU's mediation efforts. As stated in chapter 2, applying the theoretical framework to the case study helps answer the research question, "Can the theory of ripeness be used as a tool to assess whether the Libyan conflict was ripe for resolution through mediation when the AU intervened by launching its mediation effort on 10 April 2011?"

As stated in Chapter 1, the hypothesis is that in the 2011 Libyan conflict, the AU's mediation efforts were launched prematurely in that all parties to the conflict were still determined that victory through unilateral means was a possibility. To this end, it is argued that Zartman's refined theory of ripeness is the most relevant in understanding the importance of timing of the launch of mediation efforts.

Zartman (2008:1) argues: "While most studies on peaceful settlement of disputes see the substance of the proposals for a solution as the key to a successful resolution of conflict, a growing focus of attention shows that a second and equally necessary key lies in the timing of efforts for resolution. Parties resolve their conflict only when they are ready to do so – when alternative, usually unilateral, means of achieving a satisfactory result are blocked and the parties feel that they are in an uncomfortable and costly predicament. At that ripe moment, they seek or are amenable to proposals that offer a way out."

As stated in Chapter 3, 26 February 2011 marks the first intervention or mediation effort by the international community to stop the ongoing killing of the civilian population when the UNSC through its Resolution 1970 called upon the parties to endeavour resolving the conflict through negotiations. Although this call by the UNSC was a noble one, it is argued that the situation on the ground was such that the parties were not ready to

resolve the conflict through negotiations. In other words the ripe moment had not obtained.

Before the AU's launch of its mediation efforts the UNSC passed Resolution 1973 on 17 March 2011. On one hand Resolution 1973 saw the immediate destruction of Libyan Air Force and the general weakening of the entire Qaddafi forces, whilst on the other the rebels gained momentum in that they were able to gain a lot ground, taking control over many cities. Despite NATO's intervention, Qaddafi forces remained resolute to wipe out the rebels. This gives credence to Kleiboer's (1996) hypothesis that the greater the intensity, the more polarised the positions of the disputants will become, resulting in a greater inclination to reject any mediation effort. It therefore answers the 'was Qaddafi willing to negotiate as the NATO forces intensified their attacks on his forces?'

Against this backdrop, it is therefore argued that the AU's mediation efforts were launched prematurely in that throughout the conflict, parties to the conflict were still determined that victory through unilateral means was a possibility. In other words, it is argued here that the parties to the 2011 Libyan conflict did not perceive themselves to be locked in a conflict which was painful to both of them nor was it a conflict that could not be escalated to victory (MHS), and therefore did not require an alternative policy or Way Out.

Zartman (2008) argues that the concept of a ripe moment centres on the parties' perception of a MHS, optimally associated with an impending, past or recently avoided catastrophe. According to Zartman (2008), the concept of a MHS is based on the notion that when the parties find themselves locked in a conflict from which they cannot escalate to victory and this deadlock is painful to both of them (although not necessarily in equal degree or for the same reasons), they seek an alternative policy or Way Out. The catastrophe, argues Zartman (2008), provides a deadline or a lesson indicating that pain can be sharply increased if something is not done about it at once; catastrophe is a useful extension of MHS but is not necessary to either its definition or to its existence.

It is argued that throughout the conflict a MHS never occurred because both parties never perceived themselves to be in a MHS. The airstrikes on civilian population by the

Libyan Air Force could be seen as a catastrophe but failed to produce the necessary effect, i.e. a necessary push towards the perception of a MHS; instead it served as a motivation for the rebels to fight on. This provides an answer to the question 'did the rebels become more unwilling to negotiate as Qaddafi intensified the airstrikes upon them? It is argued therefore that the 'mutual hurt' that the parties in the 2011 Libyan 2011 did not bring them to the negotiating table but polarised them further. This can be seen as one of the shortcomings of the theory of conflict ripeness in so far as the element of a MHS is concerned.

The destruction of the Libyan Air Force by the NATO forces could also be seen as a catastrophe that could have acted as a necessary push for Qaddafi to perceive an MHS. However, as serious as it was it failed to do so as Qaddafi's forces were not deterred from their objective of defending the regime. It is argued that the parties did not perceive a MHS when Qaddafi pledged: "We will fight until the last man and woman. We will defend Libya from the north to the south" (Lynch 2012:177). The airstrikes conducted by Qaddafi forces, catastrophic as they were, did not deter the rebels from fighting the regime. In the same way the NATO airstrikes on Qaddafi's forces might have been a very hurting catastrophe but did not create a perception of a hurting stalemate, as Qaddafi forces fought on convinced of their unilateral victory.

Zartman (2008) argues that if the notion of mutual blockage is too static to be realistic, the concept may be stated dynamically as a moment when the upper hand slips and the lower hand rises, both parties moving toward equality, with both movements carrying pain for the parties. The MHS, according to Zartman (2008), is grounded in cost-benefit analysis, fully consistent with public choice notions of rationality and public choice studies of war termination and negotiation, which assume that a party will pick the alternative which it prefers, and that a decision to change is induced by increasing pain associated with the present (conflictual) course. Zartman (2008) argues further that the MHS is also consistent with prospect theory, with its emphasis on loss avoidance.

It is argued that the 2011 Libyan conflict did not experience a stalemate, which is an important ingredient of a MHS, in that before the NATO's intervention Qaddafi's forces

showed military superiority on the ground and on air, but the rebels with their inferior military training and equipment were able to take control of several towns. NATO's intervention levelled the playing field in that apart from the air strikes rebels received military training and equipment. It was also a game changer in that the conflict saw a sustained weakening of Qaddafi's forces. It is therefore clear that with this situation on the ground a stalemate never occurred.

In game theory terms, argues Zartman (2008), the MHS marks the transformation of the situation in the parties' perception from a PDG into a CDG or, in other terms, the realisation that the status quo or no negotiation is a negative-sum situation, and that to avoid the zero-sum outcomes now considered impossible the positive-sum outcome must be explored. It is argued that the 2011 Libyan conflict never graduated from a PDG into a CDG as throughout the conflict both parties saw the game as a zero-sum one. The rebels wanted to oust Qaddafi and take full control of the government and were not prepared to negotiate with Qaddafi. It is argued that although Qaddafi agreed to negotiate when approached by the AU's delegation, he did envisage shared power as an outcome of such negotiations as he did not perceive any alternative version of the Libyan government that did not have him as a leader.

With regard to the above it is argued that in the 2011 Libyan conflict the parties did not perceive a MHS at the time the AU launched its mediation attempts and that there was no impending, past or recently avoided catastrophe that could have had a necessary effect or push for the perception of a MHS. It is argued further that the parties never perceived themselves as being locked in a conflict from which they could not escalate to victory, in which such a deadlock was so painful to both of them that they sought an alternative policy or Way Out.

According to Zartman (2008), ripeness is necessarily a perceptual event, and as with any subjective perception, there are likely to be objective referents (evidence of a MHS on the ground, e.g. inability to bear the costs of escalation or high numbers of casualties on all sides) to be perceived. These can be highlighted by a mediator or an opposing

party when they are not immediately recognised by the party itself, and resisted so long as the conflicting party refuses to perceive them or is otherwise able to block them out.

It is argued that throughout the 2011 Libyan conflict the inability to bear the costs of escalation applied to the Qaddafi forces only because the rebels had NATO backing and thus the inability to bear the costs of escalation was not mutually hurting. The cost of escalation therefore does not qualify as objective evidence of a MHS to be pointed out to the parties by the mediators and other third parties such as NATO. The high number of casualties on all sides could have been objective evidence of a MHS on the ground, but both parties saw it more as a necessary sacrifice to achieve victory than a deterrent. It is ultimately argued therefore that in the 2011 Libyan conflict there were no objective referents (evidence of a MHS) on the ground to be perceived by the parties or that could be pointed out to them by the third parties.

Zartman (2008) argues that it is the perception of the objective condition, not the condition itself, which makes for a MHS. Zartman (2008:1) argues further: “If the parties do not recognise ‘clear evidence’ (in someone else’s view) that they are in an impasse, a Mutually Hurting Stalemate has not (yet) occurred, and if they do perceive themselves to be in such a situation, no matter how flimsy the ‘evidence,’ the MHS is present” (Zartman (2008:1). In relation to the 2011 Libyan conflict, as stated above there was no clear evidence of a MHS. It is argued further that the parties to the 2011 Libyan conflict never perceived themselves to be at an impasse and therefore a MHS was never present.

According to Zartman (2008) the other element necessary for a ripe moment, a Way Out, is less complex and also perceptual. Zartman (2008:2) argues that “parties do not have to be able to identify a specific solution, only a sense that a negotiated solution is possible for the searching and that the other party shares that sense and the willingness to search too.” Without a sense of a Way Out, argues Zartman (2008) the push associated with the MHS would leave the parties with nowhere to go. In Zartman’s experience, spokespersons often indicate whether they do or do not feel that a deal can be made with the other side and that requirement – i.e. the sense that concessions will

be reciprocated, not just banked – exists, particularly when there is a change in that judgment (Zartman and Aurik: 1991).

In view of the above, it is argued that none of the parties in the 2011 Libyan conflict ever felt a sense that a negotiated solution was possible and that the other party shared that sense and the willingness to search as well. In searching for evidence of a Way Out, it is important to observe the utterances of the parties; during the 2011 Libyan conflict, despite the hurt inflicted on all sides, both Qaddafi and the rebels remained convinced of their unilateral victories.

For Zartman (2008), “ripeness is only a condition, necessary but not sufficient for the initiation of negotiations. It is not self-fulfilling or self-implementing. It must be seized, either directly by the parties or, if not, through the persuasion of a mediator. Thus, it is not identical to its results, which are not part of its definition, and is therefore not tautological.” It is argued that in the 2011 Libyan conflict, there was never a ripe moment that parties could be seized by the parties or pointed out to them by the mediators because the conditions on the ground did not produce a MHS.

Zartman (2008:2) concedes that “not all ripe moments are so seized and turned into negotiations, hence the importance of specifying the meaning and evidence of ripeness so as to indicate when conflicting or third parties can fruitfully initiate negotiations.” In the case of the 2011 Libyan conflict it is argued that there was no evidence of ripeness on the ground and thus no ripe moment to be seized.

Zartman (2008:2) takes the view that:

Although ripeness theory is not predictive in the sense that it can tell when a given situation will become ripe, it is predictive in the sense of identifying the elements necessary (even if not sufficient) for the productive inauguration of negotiations. This type of analytical prediction is the best that can be obtained in social science, where stronger predictions could only be ventured by eliminating free choice (including the human possibility of blindness and mistakes). As such

it is of great prescriptive value to policymakers seeking to know when and how to begin a peace process.

The application of the theory of ripeness to the 2011 Libyan conflict gives the result that on the ground there were no elements necessary or sufficient for the productive inauguration of negotiations.

Zartman (2008) argues that finding a ripe moment requires research and intelligence studies to identify the objective and subjective elements. Zartman (2008) is of the view that subjective expressions of pain; impasse, and inability to bear the cost of further escalation; related to objective evidence of stalemate; data on numbers and nature of casualties and material costs; and/or other such indicators of MHS; along with expressions of a sense of a Way Out; can be researched on a regular basis in a conflict to establish whether ripeness exists. It is argued that had the UNSC and the AU conducted research and intelligence studies in the 2011 Libyan conflict they were going to discover that the conflict was not ripe for resolution through negotiations because the important element of ripeness – a MHS – was lacking.

In the process of such research, argues Zartman (2008), researchers would look for evidence, for example, whether the fluid military balance in the conflict gave rise at any time to the perception of a MHS by the parties, and to a sense by authoritative spokespersons for each side that the other was ready to seek a solution to the conflict, or, to the contrary, whether it has reinforced the conclusion that any mediation is bound to fail because one or both parties believes in the possibility or necessity of escalating out of the current impasse to achieve a decisive military victory. The research, if it had been conducted on the 2011 Libyan conflict, it is argued, would have revealed that the critical shifts in the conflict, i.e. Qaddafi's air strikes on the rebels and NATO's airstrikes on Qaddafi's forces, never produced a perception of a MHS and as a result the leaders could not consider negotiations as a Way Out.

The result of the application of the theoretical framework to the 2011 Libyan conflict can be summarised as follows:

In the 2011 Libyan conflict, there was never a perception of a MHS, optimally associated with an impending, past or recently avoided catastrophe by the parties (Zartman 2008);

that there were no objective referents that could be highlighted by a mediator to the parties; that the situation on the ground did not produce a catastrophe that could have acted as a useful extension of a MHS; that there were no objective conditions or evidence of a MHS that could be perceived by the parties or pointed out to them by a mediator;

that the parties never perceived themselves to be in an impasse; that the parties never found themselves locked in a conflict from which they could not escalate to victory or in a deadlock that was sufficiently painful to both that they sought an alternative policy or Way Out; and therefore that the parties could not have had a sense that a negotiated solution was possible if they did not perceive themselves to be in a MHS.

The only element of ripeness present in the 2011 Libyan conflict, it is argued, is a VS. In the case of the rebels, the TNC was the VS and Qaddafi represented was the VS for his government. Zartman (2001:11) argues that the presence of strong leadership, that is recognised as representative of each party and that can deliver that party's compliance with the agreement, is a necessary (while alone insufficient) condition for productive negotiation to begin, or indeed to end, successfully. The VS alone is however not sufficient to produce a ripe moment.

It is clear from the application of the theoretical framework of the theory of ripeness to the case study that the theory of ripeness alone cannot account for all the dynamics that led to the failure of the AU's mediation efforts. Of particular importance is that the characteristics of the AU as a mediator are the relevant tool of analysis that may reveal the reasons behind the AU's failure.

As Kleiboer (1996) points out, mediators themselves also affect their chances of success. In particular, three mediator attributes are considered important in the literature: (a) impartiality, (b) leverage and (c) status (Kleiboer: 1996). These characteristics are usually held responsible for a mediator becoming accepted by the disputing parties, which in turn is seen as vital for the successful performance of his or her mediator functions (Susskind and Babbitt 1992:35; Kleiboer: 1996). Kleiboer (1996) argues that it is the mediator's acceptability to the disputants that distinguishes mediation from other forms of intermediary intervention in international conflict (Mitchell and Webb 1988b:4).

Kleiboer (1996) argues that the issue of mediator impartiality has evoked intense debate among scholars of international mediation. Kleiboer (1996) argues further that conceptually, some confusion exists because impartiality may refer to intention, consequence or appearance (Kriesberg: 1982). In addition, it is sometimes related to a mediator's attitudes to the conflicting parties, and at other times to a mediator's stake in the substance of issues in conflict (Princen: 1992b); at yet other times, it is related to both.

Kleiboer (1996) argues analysts agree that impartiality is essentially a matter of perceptions of the parties in conflict (Touval: 1975:55; Yarrow 1978:164; Bailey 1985:209–10). The heart of the debate on impartiality lies not with conceptual issues, however, but with the effects of impartiality on the outcomes of mediation. Taking into account Qaddafi's historical role in the liberation struggle of most of the AU Member States and his influence within the AU, it was not easy for the rebels to trust the AU as a mediator as they would have perceived it as partial and sympathetic to Qaddafi.

Kleiboer (1996) argues that leverage is one of the most elusive elements of mediation. It makes for fuzzy conceptualisations, and research produces contradictory results concerning its importance for successful mediation outcomes (Kleiboer: 1996). Few analysts bother to define leverage explicitly (Kleiboer: 1996). Overall, it seems to refer to a mediator's ability to put pressure on one or both of the conflicting parties to accept a proposed settlement (Kleiboer: 1996). This assumes a mediator has resources of

power and influence that can be brought to bear on the parties (Kleiboer: 1996). It is not clear, however, which resources are crucial (Kleiboer: 1996).

Kleiboer (1996) argues that analysts distinguish between sticks (negative sanctions) and carrots (positive sanctions) (Touval and Zartman: 1985:13), and between material aspects (such as the possibility of withholding or supplying economic aid) and immaterial aspects (the possibility of using moral or psychological pressure) (Princen: 1992b:167). Without systematic research on the impact of these various types of resource, there has been controversy in the literature over how important leverage is for achieving successful mediation outcomes (Kleiboer: 1996).

It is argued that the procrastination on the part of the AU, which led to it being overtaken by the UNSC, weakened its position as a mediator. This meant that the AU could no longer be taken seriously by the parties. The decentring of the AU also meant the loss of any leverage it may have had as the regional body.

Kleiboer (1996) argues that another important factor enhancing a mediator's chances of success is his or her status. Status derives from personal reputation, track record and special expertise, but also from organisational factors. Two such organisational components of mediator status are distinguished in the literature: institutional and positional status (Kleiboer: 1996). The institutional status of a mediator stems from the identity of a mediator's constituency (Kleiboer: 1996). A mediator seldom acts as an individual, but usually as a spokesman or representative of a national state or a (non-)governmental organisation (Kleiboer: 1996).

It is argued that the AU chose South African President Jacob Zuma because of South Africa's mediation role in Africa, backed by South Africa's successful negotiated transition as well as President Zuma's position as the leader of the country. However the status of the AU had a negative effect on the status of President Zuma.

As Niyitunga (2014) argues, the failure of the AU to mediate the Libya crisis of 2011 and to prevent NATO's military intervention in the country impacted negatively on the organisation's credibility, authority and reliability in being entrusted with the

management of African conflicts. Niyitunga (2014) argues that the AU's setback revealed serious institutional weaknesses in the organisation and deep political divisions within member states.

The institutional weaknesses within the AU had a negative effect on its status and position as a negotiator. Niyitunga (2014) argues that it will always be very difficult for the AUPSC to play a vital role in conflict management in Africa without functional regional organisations. Niyitunga (2014) argues that the failure of the AU mediation team during this crisis occurred as a result of a lack of strong and functional regional organisations in the northern part of Africa.

It is argued that the AMU, as the North African regional organisation officially linked to the AU, has been weak and ineffective ever since it was established (Niyitunga 2014). This weakness and ineffectiveness led to the AL, an organisation that is not linked to the AU, becoming the key regional player during the Libya crisis of 2011 (Niyitunga 2014). These are the issues that negatively affected the status of the AU as a mediator.

It is clear therefore that, inasmuch as the 2011 Libyan conflict was not ripe for the launch of mediation attempts, there were other factors that accounted for the failure of the AU's launch. Such factors included perceived partiality, lack of leverage, weakened position and the divisions within the AU. Therefore it is argued that the theory of conflict is useful as analytic tool to determine whether or not the 2011 Libyan conflict was ripe for resolution through mediation; however the theory is not sufficient to account for all the factors that led to the failure of the AU's intervention.

CHAPTER 5

5.1 CONCLUSION

As indicated in the introductory chapter, this study investigated the ripeness of a conflict as one of the important preconditions for a successful launch of negotiations. As Zartman (2008) points out, ripeness is only a condition, necessary but not sufficient for the initiation of negotiations. Against these theoretical assumptions the study examined whether the theory of ripeness could be used as a tool to assess whether the Libyan conflict was ripe for resolution through mediation when the AU intervened by launching its mediation effort on 10 April 2011.

The hypothesis was that in the 2011 Libyan conflict, the AU's mediation efforts were launched prematurely in that all parties to the conflict were still determined that victory through unilateral means was a possibility. The results of the application of the theory of ripeness to the situation on the ground in the 2011 conflict show that at the time that the AU's launched its mediation attempts, the ripe moment had not occurred.

We have furthermore been able to show that using the theory of ripeness as a tool, mediators can assess whether a conflict is ripe for the launch of negotiations. This can be achieved by searching for evidence of the elements of ripeness. Zartman (2008) argues that ripeness is not self-fulfilling or self-implementing; it must be seized, either directly by the parties or, if not, through the persuasion of a mediator. For Zartman (2008) therefore, finding a ripe moment requires research and intelligence studies to identify the objective and subjective elements.

It is argued that had the UNSC and the AU embarked on research and intelligence studies using the theory of ripeness as a tool, it would have discovered that there was no evidence of, for example, subjective expressions of pain, impasse, inability to bear the cost of further escalation, objective evidence of stalemate, perception of a MHS or other such indicators of a MHS, and expressions of a sense of a Way Out. It is argued the organisations would have discovered that the conflict was not ripe for resolution through negotiations because the important element of ripeness – a MHS – was lacking.

The argument above evidences the predictive value of the theory of ripeness, as Zartman (2008:2) argues:

Although ripeness theory is not predictive in the sense that it can tell when a given situation will become ripe, it is predictive in the sense of identifying the elements necessary (even if not sufficient) for the productive inauguration of negotiations. This type of analytical prediction is the best that can be obtained in social science, where stronger predictions could only be ventured by eliminating free choice (including the human possibility of blindness and mistakes). As such it is of great prescriptive value to policymakers seeking to know when and how to begin a peace process.

In summary, applying the theory of ripeness to the 2011 Libyan conflict, one can conclude that there was never a perception of a MHS, optimally associated with an impending, past or recently avoided catastrophe, by the parties (Zartman 2008); that there were no objective referents that could be highlighted by a mediator to the parties; that the situation on the ground did not produce a catastrophe that could have acted as a useful extension of a MHS; that there were no objective conditions or evidence of a MHS that could be perceived by the parties or pointed out to them by a mediator; that the parties never perceived themselves to be in an impasse; that the parties never found themselves locked in a conflict from which they could not escalate to victory which deadlock was sufficiently painful to both of them that sought an alternative policy or Way Out; and therefore that the parties could not have had a sense that a negotiated solution was possible as they did not perceive themselves to be in a MHS.

The study revealed, however, that the theory of ripeness alone is not sufficient to account for the failures and success of mediation. Other contextual variables such as (1) the characteristics of the dispute, (2) the parties, (3) the mediator and (4) the international context are important considerations. The characteristics of the dispute can be analysed according to their ripeness and intensity, and the issues at stake in the conflict (Takeshi: 2010; Kleiboer: 2006:374–376). The nature of the parties involved in the conflict may be analysed under six aspects: identification, cohesiveness, type of

regime, motivation to mediate the conflicts, mutual relationship and power balance of the parties (Takeshi: 2010). The third contextual variable, the characteristics of the mediator, can be evaluated on three levels: impartiality, leverage and status of the mediator (Takeshi: 2010). The fourth contextual variable, the international context, focuses on the impact of significant international events and processes on the mediation activity (Takeshi 2010). In particular the failure to lead and act decisively compromised the position of the AU as a negotiator. Niyitunga (2014) argues that the failure of the AU to mediate the Libya crisis of 2011 and to prevent NATO's military intervention in the country impacted negatively on the organisation's credibility, authority and reliability in being entrusted with the management of African conflicts.

The most important value of this study is that the theory of ripeness makes it possible for mediators to diagnose whether a conflict is ripe for the launch of negotiations before an actual launch is made. It is further argued that the results can be used by policy or decision makers to determine what other intervention measures are necessary to resolve the conflict. It is argued that establishing the correct timing for the launch of negotiations will minimise the failed attempts.

This study has tested to what extent the theory of ripeness can be used as a sufficient tool to determine whether or not a conflict is (in case of current conflicts) or was (in case of past conflicts) ripe for resolution through negotiations. The results are that there are other factors apart from the ripeness or otherwise of a conflict that account for the success or failure of negotiations.

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