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South Africa, the African Union and the responsibility to protect: The case of Libya

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Summary

International relations are regulated by a system of norms and laws that has evolved over a long period. The responsibility to protect is an evolving normative framework shared by a significant number of international actors, but it failed to create normative cohesion and unity of action during the Libyan crisis in 2011 due to issues of interpretation and application. The article examines the application of the responsibility to protect framework when violence broke out in Libya. Contradictory strategies by the United Nations and the African Union divided the international community and rekindled old divisions and mistrust, resulting in claims by some within the AU – South Africa particularly – that the African effort was being undermined. The international community must urgently strengthen the common understanding and institutional framework for the responsibility to protect.

1 Role of norms in international relations

1.1 Introduction

Tension between the African Union (AU) and the United Nations Security Council (UNSC) over the Libyan conflict and the developments

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that had unfolded after the UNSC's passing of Resolution (UNSCR) 1973[1] formed the backdrop to a high-level UNSC meeting on 12 January 2012 which was convened by South Africa during its rotating presidency. Delegates focused on ways to strengthen the co-operation and partnership between the UN and the AU.[2] Kenya's Foreign Affairs Minister and Chairperson of the AU Peace and Security Council (PSC), Moses Wetang'ula, argued that the AU and UN should agree on a 'set of principles aimed at clarifying their relationship' and that, from an AU perspective, these principles should revolve around 'support for African ownership, the division of labour and sharing of responsibilities'. President Jacob Zuma of South Africa referred to the experiences of the Libyan crisis and identified the need for 'greater political coherence and a common vision between the African Union and the United Nations' as the main requirements for the resolution of conflicts in Africa. Ambassador Joy Ogwu of Nigeria added the requirements of 'comparative advantages, complementary mandates and optimal use of resources and capacities' as important prerequisites for a successful AU-UN partnership.[3]

These delegates were speaking after one of the most difficult episodes in the existence of the AU. No specific mention was made of Libya in UNSCR 2033 adopted unanimously at the end of the debate, although references were made to the UN-AU Mission in Darfur (UNAMID) and the AU Mission in Somalia (AMISOM). This is understandable, since there was never a UN mission in Libya. South Africa had an interest in placing the issue of co-ordination between the UN and the AU on the agenda, because it had gone through a particularly frustrating year balancing its options in Libya.

This article provides an assessment of the normative framework guiding the decisions and actions of the AU and, more specifically, South Africa, in dealing with the crisis in Libya in 2011. South Africa is singled out because it played a prominent role during the Libyan crisis. At the time, South Africa was a non-permanent member of the UNSC. The high-level *ad hoc* committee appointed by the AU to broker an agreement between the Libyan authorities and the rebel forces was also chaired by the President of South Africa. Both these roles must be seen in the context of South Africa's vocal stance on the need to reform the global governance system, particularly the UNSC. The Libyan crisis presented an opportunity for South Africa to demonstrate its political clout, both on the continent and in the

1 UN Security Council S/RES/1973, adopted by the Security Council at its 6498th meeting on 17 March 2011.

2 UN Security Council (SC 10519) 'Security Council commits to "effective steps" to enhance relationship with African Union in conflict prevention, resolution, with unanimous adoption of 2033 (2012)' 12 January 2012 http://www.un.org (accessed 5 June 2012).

3 UN Security Council (SC 10519) (n 2 above).

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international arena. The AU struggled to implement a coherent and effective response to the Libyan crisis as it was confronted with both UNSCR 1973 and the decisions of the AU. South Africa was forced to make sense of being party to the differing strategic pathways of the two organisations; in the end the AU agenda of finding 'an African solution to an African problem' was frustrated by the military intervention which was ultimately to end Gadhafi's reign. The failure to implement the AU roadmap, in the public perception, has been interpreted as a blow to South Africa, given the prominent role the country played in promoting it.[4] This article asks whether the source of the differences was a divergence of underlying norms between South Africa and the AU, on the one hand, and those who supported the use of force in the resolution of the Libyan crisis, on the other hand. Finally, it asks what lessons must be learnt from the Libyan conflict and whether the sharp differences that divided the world can be avoided in similar scenarios in the future.

It is argued that success in implementing the responsibility to protect as a normative framework must be based on shared understandings and expectations. In particular, the framework must be able to impose predictability, co-ordinate behaviour and eventually produce binding decisions, which are common characteristics of normative frameworks, as we later discuss. The question is whether the responsibility to protect can evolve from a social norm to a legal norm which can impose legally-binding responsibilities, where 'the internal morality of the law serves as a check upon the powerful within the system'.[5] We agree with Brunée and Toope when they argue:[6]

> We should stop looking for the structural distinctions that identify law, and examine instead the processes that constitute a normative continuum bridging from predictable patterns of practice to legally required behaviour.

Our point of departure is that norm formation and adoption take place in the context of real circumstances of international politics, civil strife and alliance formation, all of which are complex and mediated processes. The end result of this process should ideally be the existence of a framework of compatible, reasonable, predictable, transparent and binding legal norms.

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4 E Mckaiser 'South Africa's response to the Libyan crisis: An analysis' http://www.politicsweb.co.za (accessed 1 November 2011).

5 J Brunée & S Toope 'International law and constructivism: Elements of an international theory of international law' (2000) 39 *Columbia Journal of Transnational Law* 19 49-50.

6 Brunée & Toope (n 5 above) 68 analyse the link between international law and constructivist theory and ask how law influences human behaviour. They provide an analysis of the conditions of internal rationality that distinguishes legal norms from social norms, ie compatibility of norms with one another, reasonable demands, predictability and transparency. The presence of these conditions is crucial for responsibility to protect to evolve into a binding legal norm (56).

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1.2 Norms in international relations

Generally speaking, a norm can be defined as a 'standard of appropriate behaviour for actors with a given identity'.[7] International relations are regulated by a system of norms and laws that have evolved over a long period. International law codifies what is expected of states in their relations with the rest of the international community. There are a number of significant caveats to this relationship: Firstly, sovereign states can only be legally bound by an obligation if they 'have taken part in the process of developing it, or they must have accepted it'.[8] And secondly, given the decentralised nature of the international system, there is an inevitable relativism of international law, which can lead to 'a clash between the unilateral legal claims of states, as each state is free to assess the scope of the obligations it has assumed and is on an equal footing with every other state as regards the interpretation of its commitments'.[9]

Put differently, the norms and rules in the international system are not consistently and uniformly interpreted by the states who constitute it, even by those who supposedly subscribe to the same sets of rules; instead the different interpretations result in a 'jigsaw puzzle of subjective allegations and claims',[10] and it is these differences that often give rise to tensions over their interpretation. On top of this, the rules of international engagement are in an ongoing state of evolution, as states struggle to align their behaviour with a new normative structure based on the need to promote human security, before, during and after conflict situations.

According to Florini,[11] norms in international relations provide a blueprint for behaviour and are crucial for consistency and stability. They must also be able to facilitate change and to evolve with new conditions. Florini identifies three conditions for the successful creation and distribution of new norms: 'initial prominence, coherence and favourable environmental conditions'.[12] Three corresponding questions can be asked in relation to these variables: Firstly, is the norm powerful enough to take root? This is most likely if the norms are clear, shared and agreed upon by all members of a group. Secondly, there is the question of how well the norm interacts with complementary norms. The development of institutions often provides the framework

7 M Finnemore & K Sikkink 'Taking stock: The constructivist research programme in international relations and comparative politics' (1998) 52 *International Organisation* 891.

8 JAC Salcedo 'Reflections on the existence of a hierarchy of norms in international law' (1997) 8 *European Journal of International Law* 584.

9 Salcedo (n 8 above) 585.

10 As above.

11 A Florini 'The evolution of international norms' (1996) 40 *International Studies Quarterly* 363.

12 Florini (n 11 above) 374.

for such coherence. Third is the matter of how strong and persistent the external conditions which confront the norm are.

Applied to international relations, different norms interact in the international, regional and national arenas and the ability of new norms to take root, persist, become dominant and part of the legal framework, depends on their acceptance, their strengthening by complementary norms and their acceptance in all these arenas. The responsibility to protect is arguably such a normative framework, having emerged and having been adopted by a shocked and guilt-ridden international community after the 1990s, Africa's 'unprecedented decade of violence'.[13] Nevertheless, serious questions arise in relation to its persistence and universal acceptance and it falls short of the conditions of legal rationality that distinguish social norms from legal norms, as indicated by Brunée and Toope.[14]

1.3 Responsibility to protect: An emerging international norm

The responsibility to protect establishes a normative link between sovereignty and human rights at a time when controversy has clouded the practice of humanitarian intervention. Prominence was given to the responsibility to protect in December 2001 when the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) published their report entitled *The responsibility to protect*.[15] This report identified three obligations on the part of the international community: the responsibility to prevent; the responsibility to react; and finally the responsibility to rebuild. The report indicated six requirements to be met before military action could be considered on humanitarian grounds. Military intervention should only be an option where there is *just cause*, based on actual or anticipated mass human suffering and evidenced by large-scale loss of life. Military intervention should also be governed by the *right intention*, meaning that the only motive should be to put an end to human suffering. The action should also involve '*proportional means*'; this refers to the scale of military intervention which can only be as a '*last resort'* and if there are '*reasonable prospects for success*'. The last requirement, *right authority,* involves authorisation by the UNSC as

13 T Murithi 'The African Union's evolving role in peace operations: The African Union mission in Burundi, the African Union mission in Sudan and the African Union mission in Somalia' (2008) 17 *African Security Review* 73.

14 Brunée & Toope (n 5 above).

15 International Commission on Intervention and State Sovereignty, the Responsibility to Protect (2001) http://www.iciss.ca/report-en.asp (accessed 13 August 2012); see also M Serrano 'The responsibility to protect and its critics: Explaining the consensus' (2011) 3 *Global Responsibility to Protect* 426.

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the body which has the responsibility for addressing situations where international peace and security are threatened.[16]

The search for an acceptable normative structure for the protection of civilians continued to dominate debate in the UN and culminated in the *Report of the High-Level Panel on Threats, Challenges and Change*, submitted to UN Secretary-General, Kofi Annan, in 2004.[17] Endorsed and reframed in the World Summit Outcomes Document (2005),[18] the responsibility to protect is seen as comprising three 'pillars' in the prevention and reaction to four mass atrocity crimes – war crimes, genocide, ethnic cleansing and crimes against humanity. The three pillars are:

- the responsibility of the territorial state to protect its subjects against such crimes;
- the responsibility of the international community to assist states to fulfil these obligations; and
- the commitment by the international community to collective action in a timely and decisive manner consistent with the UN Charter.

The 2005 World Summit of the UN General Assembly and the passing of UNSCR 1674 in 2006 gave broad acceptance to the responsibility to protect as a guiding framework. UN Secretary-General Ban Ki-Moon identified three crucial elements of the responsibility to protect in his 2009 report.[19] The first is that all states should see it as 'an ally of sovereignty, not an adversary'. The 'narrow focus', with four crimes being specifically targeted, is the second element, whilst 'deep response', the third element, refers to the pool of measures and strategies that the framework provides.[20]

Whilst it does not have the status of a legally-binding norm – in fact, the UN avoids reference to it as a norm – the responsibility to protect has undoubtedly taken its place in the panoply of frameworks against which states in the international community measure and evaluate their own and other states' responses to international crises. Florini again provides us with a helpful tool to understand the evolution of norms when discussing norm reproduction as comprising two essential elements: 'vertical reproduction', which refers to the continuation of norms 'from one generation to another', and 'horizontal reproduction',

16 RJ Hamilton 'The responsibility to protect: From document to doctrine – but what of implementation?' (2006) 19 *Harvard Human Rights Law Journal* 289-291.

17 MW Matthews 'Tracking the emergence of a new international norm: The responsibility to protect and the crisis in Darfur' (2008) 31 *Boston College International and Comparative Law Review* 142.

18 UNGA World Summit Outcomes Document (2005) A/60/L.1.

19 Australian Red Cross 'The power of humanity' in Australian Red Cross *International humanitarian law and the responsibility to protect: A handbook* (2011) 11-12.

20 As above.

which results in major 'norm changes within one generation'. Horizontal norm changes take place when the external environment changes drastically, when the existing norms clearly fail to produce the necessary results or when new issues demand urgent action. Two phases can be identified in the process of horizontal norm changes. The first entails 'short-term discarding of old norms and the selection of new norms to prevent a gap in the normative framework and to maintain stability'. In the first phase, norm changes often occur as a reaction to disillusionment, the acceptance of failure and the need to face new challenges. The second phase, 'norm acceptance', is gradual, time-consuming and far more difficult than the first because of the nature of the international arena. This phase involves the acceptance of new norms as a guideline for action at the national, regional and international levels. It culminates in the transformation of new 'social' norms into rational 'legal' norms.[21]

Shared norms may be crucial for consistency in the interactions between actors in the global arena, but norms must fulfil basic requirements before they can enable, regulate, legitimise and galvanise effectively.[22] Norms must also be forceful in their impact, and must form part of a coherent, normative structure that provides consistency and predictability.[23] Another requirement relates to the acceptance of the norms by those who will be subjected to them. Finnemore and Sikkink in their discussion on the life cycle of international norms argue that these go through three phases: 'norm emergence'; 'norm acceptance' and, at a critical tipping point, 'norm internalisation'. The characteristic feature of the first phase, norm emergence, is 'persuasion by norm entrepreneurs', who attempt to persuade a critical mass to embrace the new norms. The main feature of the acceptance stage is that more and more actors subscribe to the norm. The reasons for this vary, ranging from the sheer moral weight that the norm may carry, to a more self-interested need by role players for acceptance and legitimation for fear of going against the tide. Norms take on a taken-for-granted capacity in the stage of 'norm internalisation'. By this time, it has become inconceivable that the group or a member of a group would consider acting outside of the normative framework.[24] A fourth stage can be added and that is the stage where the norm becomes part of the existing legal framework. Notwithstanding the standing of the 2005 World Summit Outcome Document, the responsibility to protect is a normative framework which has to some extent gained formal acceptance, but not by all those who are subjected to it. Moreover, its application is not widespread enough for it to be considered legally binding and an essential part of international humanitarian law.

21 Florini (n 11 above) 378. See also Brunée & Toope (n 5 above).

22 Florini (n 11 above).

23 As above.

24 Finnemore & Sikkink (n 7 above) 895.

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1.4 Normative shifts in the international system

The changing normative landscape in the international system is illustrated by a cursory overview of world history. More than 360 years ago, the Treaty of Westphalia laid the legal foundation for the modern nation-state based on the principles of sovereignty, territorial integrity, non-intervention and self-determination. These norms became the standard of behaviour for all international actors and were enshrined in the 1945 Charter of the UN, as well as the 1963 Charter of the OAU. The end of the Cold War introduced profound norm shifts in the last decades of the twentieth century. The period of the Cold War had been a time of immense suffering as UN Secretary-General, Boutros Boutros-Ghali, reflected in his 1992 Agenda for Peace when discussing the consequences of the Cold War:[25]

> Since the creation of the United Nations in 1945, over 100 major conflicts around the world have left some 20 million dead. The United Nations was rendered powerless to deal with many of these crises because of the vetoes – 279 of them – cast in the Security Council, which were a vivid expression of the divisions of that period.

Unfortunately the end of the Cold War did not herald an era of peace. The new millennium forced the UN to reconsider its relevance in the lives of people. UN Secretary-General Kofi Annan provided a new moral vision when he declared that '[w]e must put people at the centre of everything we do'.[26] 'Freedom from want and freedom from fear' became the normative pillars guiding the UN; nevertheless, human rights violations at a mass scale followed in Somalia (1993), Rwanda (1994), Bosnia-Herzegovina (1995) and Kosovo (1999).

The doctrines of sovereignty, non-intervention and national security often provided autocratic and ruthless leaders with the necessary space to wage war against their own people. Decisions and action around humanitarian intervention became the breeding ground for debates between states in the global south, some of whom experienced intervention as imperialist strategies to dominate and undermine the sovereignty of weaker states, and the global north, which maintained that sovereignty was often used as an excuse to exonerate discredited governments when they violated the human rights of their citizens. There existed little trust and even less agreement on how governments should meet their obligations to protect their subjects. Humanitarian intervention was often perceived as being selective, guided by national interests and therefore riddled with 'irreconcilable controversy'.[27]

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25 B Boutros-Ghali 'An agenda for peace. Preventive diplomacy, peacemaking and peacekeeping' Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992.

26 K Annan *We the peoples. The role of the United Nations in the 21st century. UN Millennium Report* (2000) 7.

27 Matthews (n 17 above) 140.

The new normative structure, built on human security, struggled to survive as it competed with the long-existing conflicting norms underlying sovereignty. The result was often the international community's inaction or delayed action, when confronted with the death and suffering of thousands.

It has already been implied that the responsibility to protect is an emerging normative framework, located at the intersection between the age-old norm of state sovereignty, and the relatively new one of human security. Deng argued that the dilemma confronting the international community in the post-Cold War period is not to be underestimated because, even though the state does not have the capacity to meet the demands of sovereignty in our complex world, 'it still has the primary responsibility to promote the security, welfare and liberty of the citizens, organising co-operation and managing conflict'.[28]

Deng underlined the fact that the notion of 'sovereignty as a responsibility' had for some time been a concern of the UN, citing statements by UN Secretary-General De Cuellar in 1991, and Boutros-Ghali in 1992.[29] He also drew attention to the call made by OAU Secretary-General, Salim Ahmed Salim, for a 'conflict prevention and resolution mechanism' in 1992, on the basis of the 'promotion of democracy, human rights and good governance'. Deng argued that Salim's proposals, which were to become the basis of the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA), illustrated similar concerns between the UN and OAU. He further outlined the context and the complexities thereof in which the need for intervention might be experienced in Africa:[30]

> Furthermore, it is not always easy to determine the degree to which a government of a country devastated by civil war can be said to be truly in control, when, as is often the case, sizeable portions of the territory are controlled by rebel or opposing forces. Oftentimes, while a government may remain in effective control of the capital and the main garrisons, much of the countryside in the war zone will practically have collapsed.

Under such conditions the vulnerability of the civilian population escalates and due to modification of the traditional notion of sovereignty – the state no longer has control over all of its territory and people – leaves the international community with no choice but to establish dialogue with non-governmental actors. Deng was writing with the conditions of humanitarian crises occasioned by internal displacement in mind, but there is often a link between the condition

28 See FM Deng 'Frontiers of sovereignty. A framework of protection, assistance, and development for the internally displaced' (1995) 8 *Leiden Journal of International Law* 250. Deng was the UNSG's Special Adviser on the Prevention of Genocide from 2007 to 2012.

29 Deng (n 28 above) 271.

30 As above.

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of displacement and violent conflict between various parties within a territory that has brought these conditions about. The Libyan crisis brought similar dilemmas to the fore for the international community. There was little disagreement that the harsh response (or even the threats of a harsh response) by Gadhafi constituted a 'threat to international peace and security',[31] the basis for intervention in terms of the UN Charter. The AU too considered the unfolding conditions in Libya sufficiently grave for them to be given the highest priority in its deliberations and on its agenda from the beginning of the crisis.

What followed demonstrated the internal weaknesses of the UNSC and the AU as well as a lack of institutional synergy between these two bodies in reconciling their resolutions and strategies. The Libyan conflict highlighted just how embryonic and unevenly understood Deng's notion of sovereignty as a responsibility is.

2 South Africa and the African Union on the 2011 Libyan conflict

2.1 Outline of the issues

In order to understand the approach of the AU and that of South Africa, which played a prominent role in the AU's attempts to resolve the Libyan conflict, we need to assess the normative frameworks which shaped their stances and actions. Many AU member states have been vocal promoters of the responsibility to protect as it has taken shape at the UN, arguing that the concept has its contextual roots in Africa. They often cited the 1994 genocide in Rwanda, where the international community only acted after approximately 800 000 people had died, as a clear driver for the adoption of this principle by the AU when it was established in 2000.

As a member state, South Africa supports the AU's approach of the right to intervene, reflected in article 4(h) (Principles) of the Constitutive Act.[32] On 23 July 2009, in his statement during the UN General Assembly debate on the UN Secretary-General's report on implementing the responsibility to protect, Ambassador Baso Sangqu declared that South Africa welcomed the report and acknowledged the centrality of the UN, particularly the UN General Assembly, in developing the concept. On the other hand, Ambassador Sangqu was critical of the UNSC and declared that its failure to prevent mass atrocities and its inability to act on behalf of all humankind instead

31 Art 1(1) & ch VII art 42 United Nations Charter.

32 African Union Constitutive Act, entered into force 26 May 2001.

of a selected few had caused the demand for new measures.[33] As an example of the weakness of the UNSC, he cited the system of apartheid, a declared crime against humanity, which attracted 'three simultaneous vetoes' each time the question of measures against the apartheid regime was put to the vote in the Security Council.[34]

Yet South Africa, like the AU, displayed an ambivalent attitude when it came to the question of the use of coercive force in the context of the Libyan intervention. Initially supporting UNSCR 1973 which called on member states to use 'all necessary means' to end the conflict, and authorising the establishment of a no-fly zone over Libya in order to protect civilians, South Africa was later to question the interpretation of the resolution by members of the North Atlantic Treaty Organisation (NATO), saying it was using the resolution as a pretext for 'regime change'.

Our first question in this section, which seeks to understand the nature and functions of the normative structure underlying the AU's response to the Libyan crisis, asks: Does the AU have a coherent and solid normative structure with a clear blueprint to sustain its responsibilities as regional peacekeeper? Put differently, we might ask: Does the responsibility to protect provide a coherent normative framework for the AU to protect civilians in a state in which it seeks to intervene? A negative answer will demand the reasons for this normative defect, but an affirmative answer, on the other hand, will demand that we deliver a verdict on the role of the AU in the Libyan case. As a member state, we insert South Africa into that picture to assess its role in and commitment to the position espoused by the AU.

Our second question involves the relationship between the UN and AU and we ask: Are there clear guidelines for the responsibilities of the UNSC and the AU in responding to war crimes, genocide and crimes against humanity, the three elements of the responsibility to protect that fall within the remit of the AU in terms of article 4(h)? To answer this question, we have to determine the legal relationship between the AU and the UN. It is clear from the outset that the UN Charter provided for the exclusive responsibility of the UNSC in the maintenance of international peace and security (article 24 of the UN Charter). Yet, the UN itself has acknowledged the complementary role of regional bodies in securing peace, and is engaged in ongoing discussions with such bodies including the AU, to demarcate more clearly who should be responsible for what.

Our third question focuses on the basic requirement of successful reproduction of norms at a regional or local level and we ask: How successful was the acceptance of a common normative framework in

33 Statement delivered by Ambassador Sangqu, Permanent representative of the Republic of South Africa, during the General Assembly debate on the Secretary-General's Report on implementing responsibility to protect (2009).

34 As above.

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the case of the AU's response to Libya, and can insufficient buy-in to a common normative framework be the main reason for the limited performance of the AU as peacemaker during the conflict? The background to this question is provided by South Africa's stance on the responsibility to protect as manifested in the role it played in the Libyan case. Finally, we ask: Can we determine patterns of conduct that must be followed or avoided from the Libyan experience or should we start afresh and revisit the viability of the responsibility to protect as a blueprint for action?

2.2 AU normative framework

The radical transformation of the OAU into the AU and the adoption of the AU Constitutive Act on 11 July 2000 not only provided the AU with a new security architecture and new confidence in its role as regional peacemaker, but it also gave the AU more prominence and legitimacy in the international arena. Along with a renewed commitment to embedded norms, such as the sovereign equality, independence and territorial integrity of member states, the AU also demonstrated a solidarity with the emerging normative concerns of the international community. The AU Assembly was granted 'the 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'.[35]

It signified a shift from non-interference to the principle of non-indifference. The AU established the Common African Defence and Security Policy (CADSP) in 2002 and the Peace and Security Council (PSC) in 2003. The PSC became the most important organ for the maintenance of peace and security and formed, together with the Panel of the Wise and the African Standby Force, the core instruments in the AU peace and security architecture. These developments – the creation of instruments that could be invoked to bring force and influence to bear on recalcitrant member states – suggested an underlying normative structure for the AU that was quite different from the normative framework guiding the decisions and actions of its predecessor, the OAU. However, it was obvious from the start that the introduction of a new normative framework would result in its uncomfortable coexistence with competing or pre-existing norms or arrangements. The Constitutive Act of the AU simultaneously upheld the principles of 'sovereign equality' (article 4(a), 'non-intervention' by member states, 'non-use of force', 'rejection of unconstitutional changes of government', along with the 'right to intervene' in the internal affairs of member states in the event of gross human rights

35 Art 4(h) African Union Constitutive Act.

abuses).[36] In 2005, African governments adopted the Ezulwini Consensus, basically affirming the primary responsibility of the UN for the maintenance of international peace and security, whilst stressing the importance of 'African solutions for African problems'.[37] In such a complex amalgamation of normative claims, the scope for varying interpretation is vast. Indeed, member states were not unanimous in their responses to the Libyan conflict. Florini refers to three different scenarios in the case of coexisting but competing norms: Either one of the norms prevails and becomes the main regulatory norm, while the other disappears or becomes dormant for long periods or they both coexist for an extended period. Florini further argues that[38]

> [i]t is quite possible either for the population to be polymorphic (with some actors following one norm and some the other), or for an individual actor to pursue a mixed strategy, following one norm on some occasions and its competitor on others.

The capacity of the institutional framework to enforce new norms and the broad acceptance and successful localisation thereof demand that norms go through various processes such as modifying or 'pruning', filtering and often reinterpretation. In the case of the AU, the 'old' norms of sovereignty, non-intervention, territorial integrity and the non-use of force clash with the 'new' norms of non-indifference, good governance and human security.[39]

What then were the measures and stances adopted by the AU? The AU had been watching developments in Libya since February 2011 when its PSC issued a statement calling on the Libyan government to ensure the protection of civilians. The AU also dispatched a mission to assess the situation in Libya after the February 2011 meeting of the PSC. On 10 March 2011, a week before UN Security Council Resolution 1973 was passed, the PSC adopted a major decision on Libya. Whilst reaffirming its strong commitment to the territorial integrity of Libya, and rejecting any foreign military intervention, it proposed an 'African' solution which included the immediate cessation of all hostilities, co-operation with the Libyan administration to deliver humanitarian

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36 Arts 4(a), 4(g), 4(e), 4(f), 4(i), 4(p) & 4(h) African Union Constitutive Act. See also M Dembinski & M Reinold 'Libya and the future of the responsibility to protect – African and European perspectives' PRIF Report 107 (2011) 8.

37 The common African position on the proposed reform of the United Nations: The 'Ezulwini consensus', adopted by the AU Executive Council on 8 March 2005 at the 7th extraordinary session in Addis Ababa, Ethiopia, http://www.responsibilitytoprotect.org/files/ AU_Ezulwini%20Consensus.pdf (accessed 13 September 2012).

38 Florini (n 11 above) 367 373.

39 T Murithi 'The African Union's transition from non-intervention to non-indifference: An *ad hoc* approach to the responsibility to protect?' (2009) http://library.fes.de/pdf-files/ipg/ipg-2009-1/08_a_murithi_us.pdf (accessed 29 October 2012). See also the references of the African Union Commission Chairperson, Alpha Konare, to the principle of non-indifference in Africa in A Baffour 'African Union: From non-interference to non-indifference' (2007) 460 *New African* 10.

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assistance to those in need and the protection of all non-citizens in Libya. The PSC solution concluded with the implementation of the necessary reform measures to eliminate the causes of the violence.[40]

The AU also established a high-level *ad hoc* committee on Libya consisting of five heads of state and government, and the Chairperson of the AU Commission. President Jacob Zuma of South Africa was appointed Chairperson, with the heads of state of Uganda, the Republic of Congo, Mauritania and Mali being the other members. The Committee's mandate was 'to engage with all the relevant actors to facilitate dialogue' among the parties and to work with 'the UN, regional organisations such as the League of Arab States, the Organisation of the Islamic Conference (OIC) and the European Union (EU) to facilitate a non-violent resolution of the conflict'.[41]

The League of Arab States, however, had decided to rather request the UN to establish a no-fly zone over Libya, which is the context in which Resolution 1973 came about, and this created the basis for the use of force in the resolution of the matter.[42] The AU high-level committee's shuttling took place as military measures were being effected. President Zuma met with Colonel Gadhafi on 10 April 2011 and was initially encouraged by the latter's apparent acceptance of the Committee's plan; however, the Committee's meeting with the Libyan opposition on 11 April 2011 yielded a cool response. They saw Colonel Gadhafi as part of the problem and not part of the solution.[43] In the end, the roadmap failed to win genuine support for it from both sides of the Libyan crisis as well as from the UN.[44] On 14 June 2011, a delegation of AU Ministers of the countries on the high-level *ad hoc* committee met with the UNSC to discuss resolving the Libyan conflict in accordance with the roadmap. In addition, on 18 June, the chief executives of the AU, the Arab League, the OIC, the EU and the UN met in Cairo to co-ordinate efforts. But throughout these developments, the no-fly zone was maintained, and the conflict within Libya escalated. By June 2011 the Transitional National Council (TNC) was a reality. In a 26 June 2011 statement, the *ad hoc* committee called on the Libyan government and the TNC to commit themselves to

40 See AU press statement PSC/PR/COMM/CCLXII (23 February 2011) and Communiqué PSC/AHG/COMM.1(CCLXV) (10 March 2011) and PSC/MIN/COMM.2(CCLXXV) (26 April 2011).

41 Report of the Chairperson of the Commission on the activities of the AU high-level *ad hoc* committee on the situation in Libya AU PSCPR/2(CCLXXV) (26 April 2011).

42 Dembinski & Reinold (n 36 above) 10-11.

43 The rejection of the AU road map for peace in Libya followed the same path as AU efforts to end conflicts in Somalia, Madagascar and Côte d'Ivoire. See M Tran 'Libyan rebels protest over African Union peace mission' *The Guardian* 11 April 2011 http://www.guardian. co.uk/world/2011 (accessed 13 August 2012).

44 E Sidiropoulos 'Libya: A lost opportunity for the African Union' 31 August 2011 http://www.saiia.org.za/diplomatic-pouch/libya-a-lost-opportunity-for-the-african-union.html. (accessed 13 August 2012).

a cessation of hostilities and welcomed 'Colonel Gaddafi's acceptance of not being part of the negotiation process'.[45] This suggested that Gadhafi had accepted that there was no role for him in Libya's political future, though it was to be months of uncertainty before the outcome of the conflict was determined.

Throughout the crisis, the AU can be seen as responding to the initiatives of the UNSC, on the one hand, whilst simultaneously having to mediate the varying postures of its own leaders on the other. The heads of state of Zimbabwe and Uganda, for example, expressed support for Colonel Gadhafi, whilst Rwanda's head of state criticised the AU's limp-wristed response, arguing that the AU lacked unity.[46]

Kuwali argues that in keeping with the responsibility to protect, article 4(h) of the AU Constitutive Act 'obligates its [the AU's] members to prevent mass atrocity crimes'. He observes that '[t]he confluence of both humanitarian streams is shifting the paradigm from sovereignty as a right to sovereignty as a responsibility'.[47] Whilst the AU had previously intervened militarily in conflicts (Darfur and Somalia being examples), in the case of Libya, the AU took a decision that can only be interpreted as suggesting that whilst the conditions invited intervention, the threshold for military intervention, even on humanitarian grounds, had not been reached. To understand the context of this decision, the institutional structures established to give effect to the AU's peace and security framework have to be evaluated. Kuwali points out that the deficiencies in the AU's framework are in part traceable to the instruments in the international system from which they draw their authority:[48]

> Article 7(1)(e) of the PSC Protocol informs that the PSC shall recommend to the AU Assembly, intervention in a member state in respect of 'grave circumstances' under article 4(h) as defined in relevant international conventions and instruments. The AU is bound to adopt the definition of 'war crimes', 'crimes against humanity' and 'genocide' as enshrined in the Rome Statute of the International Criminal Court (ICC), the Genocide Convention, the Geneva Conventions and Additional Protocols or the tried and tested definitions in the Statute of the International Criminal Tribunals of Yugoslavia and Rwanda.

However, there is a *lacuna* in the understanding of thresholds for these mass atrocities to have taken place and this has resulted, along with the varying interpretations of other principles in the Constitutive Act, in internal divisions in the AU on what kind of intervention was appropriate and resulted in the different positions that were taken. It

45 Communiqué: Meeting of the AU high-level *ad hoc* committee on Libya, Pretoria, 26 June 2011, http://www.thepresidency.gov.za/ (accessed 10 July 2012).

46 Dembinski & Reinold (n 36 above) 11-13.

47 D Kuwali 'The end of humanitarian intervention: Evaluation of the African Union's right of intervention' (2009) http://www.hks.harvard.edu/cchrp/pdf/ACJR_vol9 (accessed 13 August 2012).

48 Kuwali (n 47 above) 53.

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can be argued that the AU and, by extension, African states, failed to utilise article 4(h) to protect the civilian population from the massive attacks launched by both the Libyan government and rebels. The underlying principle of the responsibility to protect is that the states of the international community have a duty to protect all civilians, not only those in their own jurisdictions. The question must be asked whether the rebels would have been a legitimate target for intervention by the AU, especially if they were constituted, as popular reports strongly suggested, by ordinary citizens who had no alternative but to take up arms. In any event, the AU, apart from having chosen diplomacy as a solution, did not in fact have the means to protect civilians. The African Standby Force was still in the process of development and could probably not have been mustered to enforce any kind of peace agreement even if the appetite for one had been there.

2.3 South Africa's multiple normative stances on Libya

As with the AU, where there was initially a degree of normative ambiguity about what would constitute an appropriate response to the Libyan crisis (followed by the decision to seek an inclusive political solution), in South Africa there was also ambiguity among different sectors of society about where to draw the line between state sovereignty and human rights. Political opinion in South Africa was divided about the NATO action that followed UNSCR 1973, particularly as the TNC, established as an alternative administration to the Gadhafi regime, gained political mileage. When the South African government was accused by opposition parliamentary parties of showing no sympathy for the TNC and insisting instead on pressing ahead with the AU diplomatic initiative, Deputy Minister Ebrahim Ebrahim argued that 'South Africa not only campaigned for the suspension of Libya from the Human Rights Council in Geneva when the violence broke out', but that President Zuma had also informed Colonel Gadhafi that 'South Africa abhorred his government's violation of human rights'. Deputy Minister Ebrahim also referred to South Africa's active role in the adoption of the two UNSC resolutions as 'evidence of the country's determination to assist the people of Libya'.[49]

Whilst there were those who felt that the South African government was doing too little to see the end to the conflict, there were those who felt that it had in fact gone too far in supporting the UNSC. In the ruling party (the African National Congress) ranks, there was disquiet: The Youth League, for example, was of the view that South

49 Speech by Deputy-Minister Ebrahim Ebrahim on 'South Africa's position *vis-à-vis* recent UNSC resolutions on the Libyan crisis as a test of South Africa's leadership role on African solutions to African problems' 2 August 2011, http://www.info.gov.za/speech (accessed 13 August 2012).

Africa had been wrong to support UNSCR 1973.[50] An open letter, initiated by prominent South African academics and signed in July 2011 by influential Africans in the political and academic community, condemned the UNSC for undermining the ability of the AU to take the lead role. This letter expressed suspicion of how the responsibility to protect had been applied, and argued that the UNSC had produced 'no evidence to prove that its authorisation of the use of force under chapter VII of the UN Charter was a proportionate and appropriate response to what had in reality in Libya developed into a civil war'.[51] The open letter further accused the UNSC of 'outsourcing or subcontracting the implementation of its resolution to NATO', without putting in place any mechanisms to supervise the contractor or monitor or assess its actions. It also criticised the establishment of an 'unauthorised' contact group, which had displaced the UN as the authority with the legitimate responsibility to help determine the future of Libya.

South Africa was later to insist that it supported the stringent measures outlined in the two UN resolutions (UNSCRs 1970 and 1973) in good faith. Moreover, in an effort to preserve African unity, it had co-ordinated its position with Nigeria and Gabon, the other non-permanent members of the UNSC. In a statement issued on 18 March 2011, the South African government explained that it had decided to adopt UNSCR 1973 because it 'supported the UNSC's request that Colonel Gadhafi end the violence against the population, but that the Gadhafi administration defied this request'.[52] The South African government also acknowledged that the UNSC had to act and declared that 'the Security Council has responded appropriately to the call of the countries of the region to strengthen the implementation of Resolution 1970 and that the adoption of the additional measures outlined in Resolution 1973, which included negotiating a ceasefire and enforcing a no-fly zone, 'constitutes an important element for the protection of civilians and the safety of the delivery of humanitarian assistance to those most vulnerable and those desperately in need of such assistance'.[53] Deputy Minister Ebrahim, speaking on another occasion, said that South Africa's vote constituted support for the Arab League's request for a 'no-fly zone over Libya in order to protect civilians in keeping with established multilateral diplomacy principles'. South Africa had trusted that UNSCR 1973 was going to

50 See declaration by the ANC Youth League, 21 March 2011, objecting to South Africa voting in favour of UNSC 1973, http://www.ancyl.org.za/docs/pr/2011/pr0321.html (accessed 20 August 2012).

51 Concerned Africans 'Libya, Africa, and the new world order. An open letter to the peoples of Africa and the world 24 August 2011 http://mrzine.monthlyreview.org/2011/libya270811.html. (accessed 13 August 2012).

52 C Monyela 'South Africa welcomes and supports the UN Security Council's resolution on no fly zone in Libya' 18 March 2011 http://www.dfa.gov.za/docs/2011/liby0318.html (accessed 13 August 2012).

53 As above.

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be implemented 'in good faith and in full respect for both its letter and spirit'.[54] Several commentators in South Africa, suspicious of the Western powers' intentions, were, however, extremely suspicious of NATO and suggested that the 'no-fly zone' from the start had the ring of regime change about it.[55] In April 2011 their suspicions were fuelled by the pledge of Presidents Obama (USA) and Sarkozy (France) and Prime Minister Cameron (Great Britain) to continue with military intervention until Colonel Gaddafi has been removed from office because it would be an 'unconscionable betrayal' if they were to give in to the demands for a ceasefire and a negotiated settlement.[56]

The South African government promoted its stance on Libya as a reflection of the normative bias and framework which underlie its own foreign policy. International humanitarian law provides the legal framework for South Africa's foreign policy. In the words of South Africa's Minister for International Relations and Co-operation, Ms Maite Nkoana-Mashabane, apart from being tied to South Africa's domestic priority of ensuring stability and prosperity for itself and its neighbours, are derived from a long-standing history, ideology and values that embrace:[57]

- the spirit of internationalism;
- the rejection of colonialism and other forms of oppression;
- our quest for the unity and political, economic and social renewal of Africa;
- the promotion and defence of the plight of the suffering masses and poor of the world; and
- our opposition to the structural inequalities and abuses of power in the global system.

It is now common knowledge that the South African government, as the conflict developed, expressed concern that the 'no-fly zone' of UNSCR 1973 was being used as a pretext by some powers to effect regime change, an agenda it was vehemently opposed to. South Africa accused the coalition of countries implementing the no-fly zone of deviating from the spirit of the UNSCR and also felt that the TNC, which the contact group backed, could not speak for all Libyans. There were those who, rightly or wrongly, had supported the government and any political solution had to include them. To support this position, President Zuma cited article 30 of the AU Constitutive Act which clearly states that '[g]overnments that come to power through

54 Ebrahim (n 49 above).

55 'SA group slams NATO attacks on Libya' 24 August 2011 *News 24* http://www.news24.com (accessed 10 August 2012).

56 A Stratton 'Obama, Cameron and Sarkozy: No let-up in Libya until Gadaffi departs' *The Guardian* 15 April 2011.

57 M Nkoana-Mashabane Speech by Minister of International Relations and Co-operation on South Africa's Foreign Policy 2 September 2011 23 http://www.dfa.gov.za (accessed 13 August 2012).

unconstitutional means would not be allowed to participate in the activities of the Union' and he also indicated his support for 'an inclusive transitional government'.[58]

These shifting responses to the Libyan conflict may be indicative of an unsteady normative base in South Africa's foreign policy. The coexisting values of a regard for sovereignty and the aversion to 'unconstitutional changes of power' were placed in uncomfortable proximity to the value of human dignity, and the right to life. The South African government found it difficult to adapt their normative base to complex circumstances and demands and to move from sovereignty as a right to control to sovereignty as a responsibility to protect. Undoubtedly, the South African authorities wanted to see an end to the suffering, but were constrained by their adherence to the rules they had been party to setting in both fora (the AU and the UN), and had the difficult task of navigating both solutions.

The fact that the UNSC did not wait for AU approval to consider the appropriateness of the NATO response once UNSCR 1973 had been passed was seen by the AU as a slap in the face.[59] For the UNSC, the approval of the Arab League provided sufficient legitimacy, rendering the AU's claim that Africa can find solutions for its problems null and void. Sidiropoulus agrees: 'Resolution 1973 makes only scant reference to the AU', but she also emphasises the important role of the Arab League 'in matters relating to the maintenance of international peace and security in the region'.[60] The AU and the South African government still clung to the possibility of a settlement negotiated under the auspices of the AU roadmap.

Nathan argues that the AU roadmap was doomed to fail, firstly because there was no 'mutually hurting stalemate' forcing both parties to the negotiating stalemate when the roadmap was launched. Both parties felt that they had some prospect of dominating the other through force. Secondly, the rebels had made up their minds that their actions were worth the effort if they spelt the possibility of freedom. Thirdly, argues Nathan, there was 'little trust in the AU as a non-partisan peacemaker' because Gadhafi funded the AU and 'it had long tolerated his systematic and gross violations of the African Charter on Human and Peoples' Rights'. The AU even appointed Gadhafi as AU Chairperson in 2009. A fourth reason Nathan puts forward for why the AU's plan was not viable relates to the dynamics surrounding ceasefires:[61]

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58 J Zuma Speech 27 August 2011 http://www.info.gov.za/speech (accessed 25 July 2012).

59 See J Mahlahla 'AU: Time to wake up is now' 18 May 2012 http://www.zbc.co.zw/news (accessed 6 June 2012).

60 Sidiropoulus (n 44 above).

61 L Nathan 'Remarks at UP seminar on Libya 15 September 2011' (2011) 33 *Strategic Review for Southern Africa* 135.

> A cessation of hostilities is extremely dangerous for rebels: It allows the regime to consolidate; it provides a perfidious regime with the opportunity to destroy rebel forces and eliminate their leaders; it removes one of the few sources of leverage against the regime that the rebels have, namely organised violence; and it removes the rebels' basis for mobilising and organising popular support and gaining international attention.

2.4 The AU and the UN: Roles and responsibilities in executing the responsibility to protect

As discussed earlier when engaging with the frameworks proposed by Florini[62] and Finnemore and Sikkink,[63] norms interact in the international, regional and national arenas and are in constant revision. At times, the changes are horizontal and indicate modifications of an existing norm. At times, they are vertical and generational and mark a fundamental departure from a pre-existing norm. It is too early to predict where the responsibility to protect fits on this scale. The ability of new norms to take root, persist and become dominant depends on their acceptance and their strengthening by complementary norms in the national, regional and international arena. The launch in 2002 of the AU introduced a new Africa to the world and created a new window of opportunity for the continent. The AU's Constitutive Act laid the foundations for a new legal, institutional and normative framework characterised by the strengthening of long-existing pan-African ideals of unity and cohesion and 'African solutions to African problems', but also by the acceptance of new norms underlying the responsibility to protect.

The involvement of NATO in the Libyan case irked the members of the AU, but its own financial weaknesses and inability to provide the necessary logistical support forced the AU to accept the military involvement of a third party. The lack of political will of AU members to speak with one voice, and to create unity based on its new security structure and the norm of responsibility to protect were shown very clearly. This case tested the ability of the AU, and South Africa particularly, to fulfil their obligations to engage with all the parties to the conflict and to win their support as the designated and legitimate peace-broker. Ban Ki-Moon argued that there will inevitably be differences in the perspectives and approaches of the actors involved in the resolution of African conflicts, but 'what matters is the way they manage their differences'.[64]

62 Florini (n 11 above).

63 Finnemore & Sikkink (n 7 above).

64 UN Security Council (n 2 above).

Within the international system, the responsibility to protect does not yet have the status of a legally-binding norm. Fortunately, the responsibility to protect already has an African variant in article 4(h) of the AU Constitutive Act. This should be built on through further deliberation on what threshold needs to be reached before the extreme form of intervention, coercive military measures, is instituted. This talks to the need for a set of agreements guiding the behaviour of states in such instances.

The polarised approaches on how to end the conflict in Libya was a reflection that not enough thinking had been done within the AU to implement the emerging doctrine or norm of the responsibility to protect. Similarly, the fact that South Africa convened a UN meeting to discuss this vexed issue during its rotating presidency in January 2012 indicates that both the UN and AU acknowledge the seriousness of the normative divide. Moreover, the fact that NATO and the contact group were able to insert themselves into the equation suggests that there is a gap in the AU's implementation capacity and in its overall unity. Mezyaev argues:[65]

> The AU lacks the political will (and often the means) to play hardball with some of its recalcitrant leaders who flaunt the very principles that the organisation is meant to espouse.

Added to the inability of the AU to act as a unified body is the inadequacy of the AU's peace and security machinery to address a problem of this scale. Bellamy and Dunne agreed that 'prevention is always preferred over intervention because the latter only follows where lives have been lost and irreparable damage occurred'. They argue that military intervention is only one of many strategies that can be followed, and that 'combinations of different tools, applied by different actors, usually well outside the gaze of all but close followers of UN affairs or those connected to the relevant regions'.[66]

Reiff expressed a different view when he argued that the Libyan case demonstrated that military action could be decisive, that the decisions of the UNSC were successfully followed up by NATO and that it 'appears to be the most successful foreign humanitarian intervention since the quagmires in Afghanistan and Iraq'. However, he conceded that the Libyan intervention had done 'grave, possibly irreparable, damage to the responsibility to protect'.[67]

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65 A Mezyaev 'Africa and the UN: An attempt to shatter "NWO" chains' 23 January 2012.

66 A Bellamy & T Dunne 'Syria: R2P on trial' *The Interpreter* 5 June 2012 (accessed 13 August 2012).

67 D Reiff 'R2P, RIP' *New York Times* 7 November 2011 http://www.nytimes.com (accessed 13 August 2012).

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3 Conclusion

The intervention in Libya revived the mistrust of African states of the motives of Western nations when they intervene in African affairs. Africans experience these interventions as an 'inappropriate violation of their sovereignty',[68] a feeling strengthened by suspicion that Western powers were after Libya's oil reserves and Gadhafi's unpopularity in the Western media. What should concern us most is whether prevention of such a crisis was ever on the agenda. South Africa and the AU need to evaluate whether their newfound principle of non-indifference will only take effect when there is a crisis. Prevention can only happen if there is a common and high standard of good governance, accountability of elected leaders and sustained efforts to ensure prosperity for all citizens. The current approach of the AU is to have all inside of the Union and to persuade them to change their ways.

The hard work of rebuilding Libya from the ashes is something the international community now has to deal with. Building up the damaged infrastructure, the demobilisation of armed combatants, stopping the flow of arms in the region, promoting a political culture of tolerance, and holding inclusive elections: At least there was agreement that this was the way forward. The South African government has since recognised and met with the TNC to discuss how South Africa could contribute to the reconstruction efforts, but the failure of the AU roadmap has been a bitter experience.

What lessons can be learnt from the discordant application of the responsibility to protect in the Libyan crisis? It appears that the international community is experiencing a very similar dilemma to the one it faced then – about how to intervene effectively and decisively – in the case of the conflict in Syria. As in the case of Libya, South Africa in 2011 expressed concern about the violence in Syria. It condemned the violence against unarmed civilians, against the security forces and called on all sides to act with the utmost restraint and respect for human rights. South Africa in February 2012 reiterated its call for a Syrian-led peace process and welcomed the diplomatic efforts of the UN and the Arab League to send a special envoy, Kofi Annan, to Syria, to negotiate a settlement similar to the AU roadmap for Libya. Unfortunately, on 2 August 2012 Kofi Annan resigned from this assignment, disappointed at his inability to overcome the obstacles of what he called 'mission impossible', one of which the inability of the UNSC to reach a decision.[69] It would appear to be obvious that the Syrian situation is in need of drastic intervention and yet the UNSC is paralysed because the Permanent Five cannot agree on an appropriate

68 C Keeler 'The end of the responsibility to protect?' *Foreign Policy Journal* 12 October 2011 http://www.foreignpolicyjournal.com (accessed 18 July 2012).

69 R Gladstone 'Resigning as envoy to Syria, Annan casts wide blame' *New York Times* 2 August 2012 http:// www.nytimes.com (accessed 13 August 2012).

course of action. Given their active engagement in the conflict, would the Security Council be willing or justified in recognising the rebels as civilians, as was implied in the Libyan case, and what would be the implications? The following words of warning in 2003 from General Roméo Dallaire, force commander of the UN mission in Rwanda, cannot be ignored:[70]

> Human beings who have no rights, no security, no future, no hope and no means to survive are a desperate group who will do desperate things to take what they believe they need and deserve.

The conflict in Libya taught both the AU and the UN a lesson on the need to co-ordinate their actions and to overcome their differences. It is crucial to acknowledge the difficulty of deciding when and how to act. UN Secretary-General Ban Ki-Moon argued that co-operation between the UN and AU demands 'common strategic objectives and a clear division of responsibilities, based on shared assessments and concerted decisions of the two organisations'.[71] It is important to establish 'pre-agreed mechanisms for consultation that would allow the Secretariat and AU Commission to act and proceed together when a new crisis erupts'.[72]

70 R Dallaire *Shake hands with the devil. The failure of humanity in Rwanda* (2003) 521.

71 UN Security Council (n 2 above).

72 As above.

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