

The African Union's Response to the Libyan Crisis of 2011.

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ABSTRACT

The African Union is legally mandated by its Constitutive Act to intervene in security situations like the Libyan crisis of 2011, namely, to protect populations from genocide, war crimes and crimes against humanity, collectively known as mass atrocity crimes. In this respect, Article 4(h) of the AU Constitutive Act accords the right of AU “to intervene in a member State pursuant to a decision of Assembly in respect of grave circumstances, namely; war crimes, genocide and crimes against humanity.”

When the Libyan crisis that had all the hallmarks of mass atrocity crimes broke out, African Union showed willingness to intervene and solve the crisis by passing resolutions, establishing fact finding missions, and, forming High Level Ad hoc committee comprising of 5 African Presidents and the AU Commission. However, when the time for reckoning came, AU was relegated to the periphery by NATO and other International actors in finding solutions to the Libyan crisis.

This study therefore, examines and assesses the African Union’s response to the Libyan crisis of 2011 in light of the Article 4(h) of the Constitutive Act (intervention).

The method of data collection majorly relied on what AU did in form of resolutions, Letters and other publications, and what has been written about AU’s actions in reference to the Libyan crisis of 2011. The study examined the measures AU took to respond to the crisis, the AU organs that were greatly engaged in looking for the solution to the crisis, and whether the measures undertaken were sufficient in resolving the crisis, and, in the hind sight what AU ought to have done.

The study looked at the weaknesses that beset African Union in trying to look for a solution to the Libyan crisis, and concludes by proving recommendations for strengthening African Union Peace and Security Architecture to be able to confront head on, future African security crises like the Libyan one of 2011.

DECLARATION

I declare that this report is my own, unaided work. It is submitted in partial fulfilment of the requirements of the degree of Master of Management in the field Security in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other university.

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LIST OF ABBREVIATIONS AND ACRONYMS

APSA	Africa Peace and Security Architecture
AU	African Union
ECOWAS	Economic Community of West African States
EU	European Union
ICISS	International Commission on Intervention and State Sovereignty
ISS	Institute for Security Studies
NATO	North Atlantic Treaty Organisation
LAS	League of Arab States
OAU	Organisation of African Unity
PSC	Peace and Security Council
RWP	Responsibility while protecting
R2P	Responsibility to Protect
TNC	Transitional National Council
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

SUMMARY

The Libyan crisis was a domino effect from the Arab Spring that sprung from Tunisia and Egypt in North Africa, where the citizens in those countries protested against dictatorial regimes in those countries. Due to the prevailing conflicts on the continent, the Peace and Security Council of the African Union has been preoccupied with dealing with country-focused issues such that when the crisis in Libya broke out, it was immediately ceased with the crisis.

The response to the Libyan crisis by the international community was multifaceted and has different success ratings. While the response by the AU was rather subtle, cautious and more diplomatic contrary to the expectation of the right of intervention under Article 4(h) of the AU Constitutive Act, the UN Security Council authorized “the use of all means necessary to protect the civilians” at risk. It demanded “an immediate ceasefire in Libya, including an end to the current attacks against civilians, which it said might constitute ‘crimes against humanity.’” It imposed a “ban on all flights in the country’s airspace, a no-fly zone, and tightened sanctions on the Colonel Muammar Gaddafi regime and its supporters.”

Although the role of regional organizations in the Libyan crisis was noteworthy, analysts are of the view that the AU, as a regional or continental organization did not significantly perform its ‘gate keeping’ role in the implementation of R2P. Specifically, although the search for a political resolution to the conflict was an important goal, the AU’s attempts to mediate were belated attempts and unrealistic, especially seeking an assurance of a ceasefire from Gaddafi in the midst of the bombing, while the opposition movement refused to even enter discussions on the AU’s

terms. In the long run, the AU mediation team was sidelined as NATO airstrikes ensured the inevitability of Gaddafi's fall.

While there were calls to the UN SC from the other regional bodies (such as the Arab League) to impose a no-fly zone on Libya to protect civilians, one would have expected the PSC, faced with the deteriorating situation in Libya to act decisively' for example by requesting the intervention from the AU in order to restore peace and security. However, the PSC did not act accordingly and instead took two which also came to be overtaken by the UN SC action.

The AU could have played a crucial role towards a negotiated agreement given that Gaddafi had close relationships with other African heads of states. The AU had the potential of having a powerful influence except that the close relationship of some AU Heads of State and the AU itself with Gaddafi brought mistrust to be a neutral arbiter in the crisis.

Still, the AU's response in Libya was significant. Particularly, the AU established a roadmap through 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 implementation of political reforms necessary for the elimination of the causes of the current crisis.

The Libyan crisis exposed the hollowness of the AU's peace and security architecture to implement Article 4(h) of the AU Constitutive Act and the notion of the responsibility to protect.

To move from rhetoric to reality, the AU should perform its role as the gate-keeper in implementing UNSC resolutions. As a regional arrangement, the AU can shape policy options that are available to their member states in terms of responding to crises in Africa. The AU can also act as part of the building blocks of a global peace order feeding into the UN global peace and security architecture, especially when making decisions to intervene and subsequent intervention.

The loss of life caused by NATO intervention showed that airpower may not be appropriate for the mission to protect populations at risk. It is contended that intervention forces should not aggravate the suffering of the very people they want to protect when intervening. More so, those who intervene should make the humanitarian objectives of the intervention clearly known in advance to the international community in order to minimize the risk of aggravating the situations and without ulterior motives.

Furthermore, the Libyan crisis has showed that although Article 4(h) gives the AU a legal mandate to intervene in the territory of Member States, AU Member States are still reluctant to actually implement such interventions. Resources and political will are the necessary tools for any effective intervention. As seen from the NATO intervention in Libya, it is political will coupled with adequate resources that ultimately determines whether or not States intervene. Therefore, key governments should take on the responsibility to persuade and mobilize resources and political will for the AU to take necessary action to act in a situation of mass atrocities.

CHAPTER ONE

1. INTRODUCTION

1.1. Background

The 21st century has witnessed unprecedented institutional transformation at the regional and sub regional levels on the African continent. Central to this, is the transformation of the regional body from the Organization of the African Unity (OAU) to the African Union (AU) and the creation of a more robust African Peace and Security Architecture (APSA) (Maluwa: 2012: 25-52; Akuffo: 2010:34) The transformation from OAU to AU signaled a drastic change in approaches to peace security and stability of the African continent (Maluwa: 2012: 25-52). The Constitutive Act of the African Union in Article 3(f) sets out the promotion of peace, security and stability on the continent as one of its principles. Further, Article 4 of the AU Constitutive Act stipulates the following objectives, among others:

“(f) Prohibition of the use of force or threat to use force among Member States of the Union;

(g) Non-interference by any Member State in the internal affairs of another;

(h) The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;

(I) Peaceful co-existence of Member States and their right to live in peace and security;

- (j) The right of Member States to request intervention from the Union in order to restore peace and security;
- (k) Respect for democratic principles, human rights, the rule of law and good governance;
- (O) Respect for sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.”

Unlike its predecessor, the OAU, the AU has had a promising start by getting involved in the Burundi peace process, Darfur crisis, Sierra Leone and Somalia, among others. The AU adopted a policy of non-indifference as opposed to the earlier one of non-interference which was the hallmark of the erstwhile OAU (Mwanasali: 2004). This was a significant departure of policy and show of determination as the AU promised to confront the continental security crises head-on and resolve crises decisively. Therefore, on this basis, one would have expected a united, robust AU in resolving the Libyan crisis. However, despite this impressive array of commitments, and promises, it is clear that the AU failed to intervene and resolve the crisis in Libya in 2011. This research, therefore, assesses the AU's response towards the Libyan crisis of 2011. It does so by investigating what the AU did; what the AU did not do; and also what the AU ought to have done in resolving the Libyan crisis.

As indicated earlier, central to realization of the peace and security of the African continent, was the establishment of African Union Peace and Security Council (PSC), which is mandated to maintain peace, security and stability on African continent (AU Act: 2002; PSC Protocol

2004). The PSC was an afterthought as it was only proposed at the Lusaka Summit in 2001 and established in 2004 under a protocol to the Constitutive Act.

The Protocol relating to the Establishment of the Peace and Security Council (PSC Protocol), which was adopted by the AU Assembly in July 2002, creates the PSC as a collective security, and early warning arrangement in order to facilitate timely and effective response to conflict and crisis situations in Africa (PSC Protocol:2004:Art. 2). Other responsibilities conferred to the PSC by the PSC Protocol include prevention, management and resolution of conflicts, post-conflict peace building and developing common defence policies (Ibid). The PSC is the organ which is in charge of enforcing the decisions of the AU.

The AU is legally mandated by its Constitutive Act to intervene in security situations like the Libyan crisis of 2011, namely, to protect populations from genocide, war crimes and crimes against humanity, collectively known as mass atrocity crimes.¹ In this respect, Article 4(h) of the AU Constitutive Act accords the right of AU “to intervene in a member State pursuant to a decision of Assembly in respect of grave circumstances, namely; war crimes, genocide and crimes against humanity.”

Further, Article 4(j) declares the right of Member states to request intervention from the Union in order to restore peace and stability. Although Article 4(h) does not use the precise language of Responsibility to Protect (R2P), as articulated by the International Commission on Intervention

¹ Libya is found in the North of Africa bordering Algeria, Republic of Niger and the Mediterranean Sea in the North. Libya is a country rich in oil and petroleum. Since 1969, the leader of Libya was Colonel Muammar Gaddafi, who led the country in an autocratic manner without any election, denying people all the basic freedoms. The late Colonel Gaddafi, who came to power through a coup by deposing the king, always, silenced dissent.

and State Sovereignty (ICISS) in 2001 and its political adoption at the 2005 World Summit by world leaders, the two notions have the same root, namely to protect citizens from mass atrocity crimes by their own governments. Today, human rights are not a purely domestic concern and sovereignty can no longer shield repressive states (Kuwali: 2010). On this basis, therefore, the international community including the AU as a regional organization had the responsibility to protect the Libyans from the mass atrocity crimes committed by their won government.

1.1.1. The Libyan crisis of 2011

It is important to state at the outset that Libya was not regarded as a mere member of the AU, but a strong member mainly because it spearheaded the transformation from the OAU to AU.² Further, the former leader of Libya Colonel Muammar Gaddafi played a monumental role in the transformation of the regional institution, albeit for his selfish and egocentric reasons. As such, at the time of the crisis, Libya was a prominent member of the AU and its leader the late Colonel Muammar Gaddafi was a frequent financier of the AU and a dependable donor for several African states. Colonel Muammar Gaddafi was also the Chairman of the AU Assembly of Heads of State and Government from 2009 to 2010.

The Libyan crisis started in December 2010, when the people of Libya, especially those in the city of Benghazi started agitating for change, demanding realization of basic human rights and democratic reforms in the country. Basically, the people of Libya were inspired by the successful revolution in the neighbouring Tunisia and Egypt. This agitation by the people of Libya initially

² It was in the Libya's city of Sirte on the 9th September 1999 that, the 4th extra - ordinary session of OAU General Assembly decided to establish AU. It is not an exaggeration therefore, to state that the AU project was born in Libya.

started as peaceful demonstrations which later gathered momentum to threaten the dictatorial regime of Colonel Muammar Gaddafi. Colonel Gaddafi responded to the peaceful demonstrations by using excessive use of force to quell the demonstrations and silence the demonstrators.

Colonel Muammar Gaddafi's excessive and brutal response to the hitherto peaceful protests was captured by the regional and international media – it alarmed the international community and AU. The brutal response to demonstrators necessitated the interest by the AU, the Arab League and the UN. The United Nations Security Council in Resolution 1970 deplored “the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government.”³

The Security Council demanded “an immediate end to the violence and called for steps to fulfill the legitimate demands of the population.” Further, the Security Council urged the Libyan authorities to:

- (a) Act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors;
- (b) Ensure the safety of all foreign nationals and their assets and facilitate the departure of those wishing to leave the country;

³ United Nations Security Council 1970, UN Doc. S/RES/1970 (2011).

- (c) Ensure the safe passage of humanitarian and medical supplies, and humanitarian agencies and workers, into the country; and
- (d) Immediately lift restrictions on all forms of media.

Clearly, there were mass atrocities being committed in Libya by the government against its own people. This situation called for the implementation of Article 4(h) of AU Constitutive Act by the AU, intervention as well as R2P by the international community. Given that Libya is a member of the AU, the AU as a supranational continental body had uncontested legitimacy to take the lead to intervene in Libya, especially on the basis of Article 4(h) of the Constitutive Act of the AU.

1.1.2. The AU's response to resolve the Libyan crisis

At its 265th meeting held on the 10th March 2011, the AU held a summit at the level of Heads of State and Government and established a High Level Ad hoc Committee to examine the issue of Libya and find the way forward (AU Assembly: 2011). The High Level Ad hoc Committee was composed of the leaders of Congo (Brazzaville), Mauritania, Mali, South Africa and Uganda. The High Level Ad hoc Committee of the AU, which was chaired by the South African President Jacob Zuma, agreed on a roadmap for resolving the Libyan crisis. The AU road map required:

- a) Immediate cessation of hostilities;
- b) Cooperation of the concerned Libyan authorities to facilitate the timely delivery of humanitarian assistance to needy populations;

- c) Protection of foreign nationals, including the African migrant workers living in Libya;
- d) humanitarian aid; and
- e) Dialogue between the Libyan parties and establishment of a consensual and inclusive transitional government.⁴

The PSC established yet another ad hoc committee to follow up on the implementation of the AU Roadmap (PSC: 2011). The intention of AU was to approach the Libyan crisis in a diplomatic manner in order to avoid bloodshed.

Later, on the 17th March 2011, seven days after the AU summit of Heads of State and Government, the United Nations Security Council (UNSC) met and passed resolution 1973 of 2011, which was supported by all African representatives in the Security Council. UN Security Council Resolution 1973 (2011) authorized the use of all necessary means to protect civilians in Libya. The relevant part of the resolution read:

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

⁴ African Union, AU HL Communiqué, 2011.

pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;

At the same time, the AU High Level Ad hoc Committee was planning to enter Libya and hold meetings with the belligerent parties and help resolve the crisis. However, they were denied entry into Libya because the troops of the North Atlantic Treaty Organization (NATO) established a no fly zone in Libya, purportedly by way of implementing the UN Security Council resolution 1973. In the circumstances, the AU was sidelined and the AU roadmap was completely ignored.

1.2. Problem statement

Following the elaboration of the Roadmap, the AU showed willingness to intervene in the Libyan crisis. However, the response by the AU was overshadowed by NATO's military intervention in Libya. In spite of the political will to intervene in Libya, it is clear from the handwringing in the decision-making process of the AU that AU's action was ambivalent. It is the ambivalent response on the part of AU that informs the intention of this study.

As such, this study seeks to explore the obstacles that the AU faced in order to timely and decisively intervene in Libya. Therefore, to move from rhetoric to reality, there is need to ascertain and address the challenges faced by the African Union in the Libyan crisis in order to be able to intervene decisively and in a timely manner to avoid the scenario of Libya in the future.

1.3. Statement of purpose and objective of the study

The purpose of this research is to assess the roles of the various organs within the APSA in responding to crises as manifested by the Libyan situation in 2011. The goal is to provide recommendations for strengthening the APSA to be able to respond to crises in a timely and decisive manner as indicated in the AU Constitutive Act.

1.4. Research questions

The research intends to answer the following different but related questions:

- (i) How did the AU respond to the crisis in Libya in 2011? To address this question, the research will mainly dwell on these two sub questions:
 - a. What measures did the AU take to respond to the crisis in Libya in 2011?
 - b. Which organs of the AU were engaged in responding to the crisis in Libya in 2011?
 - c. Were the measures that the AU undertook sufficient to respond to the crisis in Libya in 2011?
- (ii) What, if any, were the consequences of the AU's response to the crisis? And
- (iii) In hindsight, what could the AU have done better?

1.5. Definitions of terms and concepts

It is important to define the concepts, doctrines and terminologies that feature prominently in the body of this research, and have a direct bearing to the research. These include but not limited to definition of the terms such as intervention and the responsibility to protect (R2P).

Intervention: The definition of intervention as enshrined under Article 4(h) and (j) of the AU Constitutive Act implies coercive action involving armed force in a member state without consent of the government of that state. This definition derives from the Report of the International Commission on Intervention and state sovereignty (ICISS) which states that, intervention may take three forms: political, economic or other sanctions; international criminal prosecutions; and military intervention for humanitarian ends(Yusuf, 2012).

According to Yusuf (2012) “the AU Constitutive Act, particularly when read together with Peace and Security Protocol, appears to exclude the first two forms identified by ICISS and to focus exclusively on military intervention for humanitarian ends, at least in so far as Article 4(h) of the Constitutive Act, is concerned, to help a population in distress following a grave and massive violations of human rights and humanitarian law”.

The doctrine of non-indifference: The concept of non-indifference is probably one major policy shift that defines, differentiates and distinguishes the AU from the OAU. It ushered in a possibility of an intervention phase in the continental management of peace and security. This is the possibility of AU to interfere in the internal affairs of member states in the event, of an

imminent threat to peace, security and stability. It suggests the operational modalities and institutions authorized to take preventive action on AU's behalf. The doctrine of non-indifference is closely associated with the principle enshrined in Article 4(h) of the Constitutive Act. One of the principle tenets of the defunct OAU was the principle of non-interference into the internal affairs of Member states. With the principle of non-interference, African countries remained spectators when the genocide in Rwanda was happening.

However, the AU ushered in a different era, with the principle of intervention enshrined in Article 4(h) of the AU Constitutive Act, it confirms that AU has adopted an interventionist stance and has embraced a spirit of non-indifference towards genocide, war crimes and crimes against humanity in Africa. Some of the most prominent proponents of the doctrine of non-indifference have been from the former OAU Secretary-General, Salim Ahmed Salim, and the First Chairman of AU Commission, Alpha Ouma Konare.

These prominent personalities believed that it was no longer tenable for African countries to remain silent in the face of atrocities being committed in the neighboring countries. For example, non-intervention clause in the OAU Charter should not be taken to mean indifference. Salim Ahmed Salim correctly contended that there was no clause in the OAU Charter that gave African governments the rights to kill or let its citizens to be killed. Actualizing the ideal of Pan-Africanism means that African countries can no longer remain indifferent to the suffering of and plight of their neighbours (Bah: 2005:41).

Responsibility to Protect: The responsibility to protect (R2P or R to P) is a norm adopted by the United Nations General Assembly in 2005 World Summit Outcome document. It consists of an emerging norm, or set of principles, based on the idea that sovereignty is not a right, but a responsibility. R2P focuses on preventing and halting mass atrocity crimes, namely genocide, war crimes and crimes against humanity, including the innocuous crimes of ‘ethnic cleansing’.

In the international community R2P is a norm, not a law. R2P provides a framework for using tools that already exist, i.e. mediation, early warning mechanisms, economic sanctioning, and chapter VII powers, to prevent mass atrocities. Civil society organizations, States, regional organizations, and international institutions all have a role to play in the R2P process. The authority to employ the last resort and intervene militarily rests solely with United Nations Security Council and the General Assembly.

CHAPTER TWO

2. LITERATURE REVIEW

2.1. The Intervention by the African Union in Libya

In this chapter, I shall focus on the subject of Article 4(h) of the AU constitutive Act (intervention) by the AU and the responsibility to protect the populations at risk of mass atrocities in Africa. The review of the literature also includes relevant articles on the role of the APSA in the Libyan crisis. I shall engage in a review of literature to identify what others have written on the subject, verify the gaps in the literature and, determine how to strengthen the APSA intervention regime. The reason for such a rigorous review of literature is to set a sound base for the study and provide concrete justification for the findings.

In trying to answer the key question in this research, it is of paramount importance to understand the AU Constitutive Act, particularly Article 4(h), which lays down the principle for intervention for purpose of protection of populations in distress. To be specific, the literature review will focus on ascertaining the rationale of the framers of Article 4(h) intervention; determine what constitutes intervention as it has come to be understood in international law and international relations; and the role of the APSA in implementing Article 4(h) intervention and the notion of R2P.

The literature review also extends to assessing the role of the AU in the Libyan crisis of 2011; mainly zeroing on what the AU did and what it did not do. In this case, I shall, among others, scrutinize the letter written by the former Chairman of the AU Commission, Jean Ping, putting the record straight on the role of the AU on the Libyan crisis and the AU roadmap in responding to the Libyan crisis. The idea is to have a solid basis for providing recommendations to strengthen the APSA in order to respond decisively in future crises of the scale of Libya.

2.1.1. The paradigm shift from non-interference to non-indifference in Africa

Given the failure of the international community in the 1990s to decisively deal with problems in Africa, particularly the genocide in Rwanda in 1994 and state collapse in Somalia, African countries resolved to devise their own solutions to the problems emerging on the continent. “This marked the origin of the notion of “African solutions to Africa’s problems which was later to become one of the founding principles of the AU” (Apuuli: 2012:1). The idea of African solutions to African problems was also impelled by the reluctance of Western countries to provide support to solve, or intervene in, African crises following the American debacle in Mogadishu against the forces of General Mohamed Farah Aidid in 1992.

Although the establishment of the OAU in 1963 represented the institutionalism of pan-African ideals, “the organization was impotent in its efforts to positively influence national politics, monitor the internal behavior of member states, and prevent human rights atrocities” (Apuuli: 2012:1). The OAU Charter contained the provision “to defend the sovereignty, territorial

integrity and independence of member states which came to be translated into the norm of non-intervention.” (Apuuli, 2012:1).

Therefore, the transformation of the OAU to the AU was meant to be a policy shift by which the new organization would become an effective mechanism to deal with the numerous problems afflicting the continent. According to Apuuli (2011:2):

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 African countries. Thus, learning from the lessons of the OAU, when the Africa leadership decided to establish the AU, they adopted a much more interventionist stance in the organisation’s legal frameworks and institutions.

The AU is thus meant to be a reformed and reinvigorated institution, which replaced the OAU in 2002 (Sturman: 2012:1). In this way, the establishment of the AU ushered in a normative change to the Pan-African peace and security agenda, particularly regarding parameters of sovereignty and intervention for humanitarian ends. Transformation of OAU into AU generated a great sense of optimism (Murithi, 2011:5), and enthusiasm, the pace at which the AU has drafted and adopted ground breaking principles of humanitarian protection, and the African leaders seem in a hurry to cure or at least curb the endemic African security catastrophes. The promises coupled by rhetoric statements heightened hope and great expectations from African people. Thus, the notion of ‘non-interference’ was replaced with that of ‘non-indifference’, meaning that member states of the AU should be concerned with events happening in the neighborhood.

Following the genocide in Rwanda and the international community's failure to intervene, former UN Secretary General Kofi Annan asked the question, when does the international community intervene for the sake of protecting populations? In response, when they were transforming the OAU into AU, African leaders incorporated Article 4(h) of the AU Constitutive Act, which gives Member States the prerogative to intervene in a Member State on prescribed grounds. The pertinent part of Article 4 (h) provides for:

[T]he right of the [AU] to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.

The AU provides for unprecedented powers of intervention in a Member State as an exception to the principle of state sovereignty. The AU's right to intervene under Article 4(h) and (j) of the AU Constitutive Act presupposes an exception to the general prohibition on the use of force in international relations. For such intervention to have a genuinely humanitarian character the intervening State must not act out of any element of self-interest and, therefore, the beneficiaries of intervention must not be nationals of the intervening state.

This progressive mandate of the AU reflects the AU Member States' acknowledgement of the notion of 'sovereignty as responsibility' and the political commitment of the 'responsibility to protect' (R2P), which was endorsed by the 2005 World Summit Outcome. R2P is the cosmopolitan concept that the international community has a responsibility to intervene to protect populations at risk from mass atrocity crimes if governments abdicate their sovereign responsibilities (Sunga: 2006: 44 – 45).

The AU Act is the first international agreement to recognize a right of intervention to protect populations at risk of mass atrocity crimes (Puley: 2005:9). The unprecedented agreement among AU Member States to limit their own traditional rights of absolute sovereignty in Article 4(h) and departure from the earlier norm of non-intervention in each others' affairs has come to be known as the 'doctrine of non-indifference.' The AU also adopted the "Ezulwini Consensus" in March 2005 to embrace R2P and recognized the authority of the UN Security Council to decide on the use of force for the prevention of mass atrocities.⁵

Although the AU does not use the precise language of R2P, the normative framework adopted in the AU Act of 2000 is similar to the political commitment made by UN Member States in the 2005 Summit Outcome Document. While it is seemingly sound that protection of human rights of citizens should prevail over state sovereignty, the problem was, and still is, that challenging the notion of sovereignty also amounts to questioning the cornerstones of the Charter of the United Nations in Articles 2(1), 2(4) and 2(7) that guarantee, *inter alia*, territorial sovereignty of all Member States and outlaw war. Through the transformation from the OAU to the AU, the AU has committed itself to a new culture that places respect for human rights, democracy, the rule of law and good governance enshrined in the Constitutive Act at the heart of the Organization's principles (Yusuf, 2012:47).

⁵ African Union, "The Common African Position on the Proposed Reform of the United Nations: The Ezulwini Consensus," Executive Council, 7th Extraordinary Session, 7-8 March 2005, Addis Ababa, Ethiopia, http://webcache.googleusercontent.com/search?q=cache:knfeO7BmdKYJ:www.africaunion.org/News_Events/Calendar_of_%2520Events/7th%2520extra%2520ordinary%2520session%2520ECL/Ext%2520EXCL2%2520VII%2520Report.doc+ezulwini+consensus&cd=1&hl=en&ct=clnk&gl=us&client=safari (3 January 2013).

2.1.2. The Responsibility to Protect

The political commitment of the ‘responsibility to protect’ was unanimously adopted by the heads of state and government at the World Summit High-Level Plenary Meeting of the 60th Session of the United Nations General Assembly (UNGA) in September 2005, UN General Assembly Resolution (A/RES/63/308) on the implementation of R2P was adopted in September 2009. The ‘responsibility to protect’ (R2P), is an international human rights norm to prevent and stop genocide, war crimes, ethnic cleansing, and crimes against humanity. Thakur (2012:1) makes an apt analysis thus:

The system of collective security against interstate aggression never materialised. In the decades after World War [II] the nature of armed conflict was transformed. Interstate warfare between uniformed armies gave way to irregular conflict between rival armed groups. The nature of the state too changed from its idealised European version. Many communist and some newly decolonised countries were internal security states whose regimes ruled through terror. Increasingly, the principal victims of both types of violence were civilians.

Thakur (as above) continues to note that:

Advances in telecommunications brought the full horror of their plight into the world’s living rooms. In the meantime, the goals of promoting human rights and democratic governance, protecting civilian victims of humanitarian atrocities and punishing governmental perpetrators of mass crimes became more important. R2P spoke eloquently to the need to change the UN’s normative framework in line with the changed reality of threats and victims.

In the final analysis, Thakur (as above) posits that:

Failure to act in the 1994 Rwanda genocide and the non-UN-authorized humanitarian intervention in Kosovo in 1999 set off angry and deeply divisive recriminations around the world for acts of omission and commission. In the wake of that controversy, the 2001 report of the [ICISS] argued that the essential nature of sovereignty had changed from state privileges and immunities to the responsibility to protect people from atrocity crimes. Where the state defaulted on its solemn responsibility, owing to lack of will or capacity, or because it was itself complicit in the commission of the atrocities, the responsibility to 'protect' tripped upwards to the international community acting through the authenticated structures and procedures of the UN.

Orford (2011) is of the view that – and rightly so – “R2P is an attempt to integrate existing and evolving but dispersed practices of protection into a conceptually coherent account of international authority.” One important point to note is that R2P requires the international community, acting through the UN, to take up the responsibility when a state abdicates or defaults on its sovereign responsibility to protect the people within the state (Thakur:2011:2).

For Lee (2012:2), the responsibility to protect is:

a norm or set of principles that redefines sovereignty as a responsibility rather than as a privilege or a means of control. It prescribes that a state has the responsibility to protect its population and if a national government is neither able nor willing to fulfill the responsibility to protect its people, the international community has a secondary responsibility to protect them by force, if necessary, from the “four R2P crimes,” genocide, ethnic cleansing, war crimes, and crimes against humanity.

Since the adoption of the notion of R2P, the notion has been reaffirmed in Security Council resolutions such as UNSC Resolutions 1674 (2006) and 1894 (2009) as well as in several reports of the UN Secretary General, and in the establishment of a new joint office for R2P and the prevention of genocide. It is fair to say that the political consensus on R2P and the institutionalization of the notion of R2P have helped shape international reactions to the crisis in Libya, particularly the adoption of UNSC Resolution 1973 (Bellamy and Williams, 2011:3). Therefore, since the adoption of the notion of R2P, the question is not whether or if interventions to protect populations at risk will take place, but rather when, why, how and by whom and under whose authority (Thakur: 2011:2). Lee (2012:13) has noted that:

While R2P doctrines are widely accepted as a new normative guideline to define a relation between a government and its people, there have been several criticisms and limitations. Those who are against the idea of international community assuming the responsibility to protect individuals of other nations argue that it is a threat to state sovereignty under the guise of human rights protection and blame it as a new form of colonialism (Evans 2007). Also, since the agreement in the UN General Assembly carries no legal binding force, substantive implementation of R2P may be unfeasible. Moreover, even if the UNSC is considered a legitimate decision maker for an international responsibility to protect, there still remains the potential problem of selectivity that comes from the *realpolitik* of its permanent members. R2P has also been criticized regarding the use of force in the process of implementing secondary international responsibility.

The concept of R2P has been narrowed down to the three R2P crimes, namely, genocide, war crimes and crimes against humanity. This was to prohibit arbitrary use of the R2P concept to justify unbounded international intervention. Yet, it still generated much controversy during the

United Nations Security Council (UNSC) sanctioned North Atlantic Treaty Organization (NATO) military intervention in Libya in 2011, an intervention based on R2P (Lee:2012:2).

2.1.2. What constitutes intervention?

It is important to note that R2P is not solely about military intervention (Evans: 2008). Intervention may also be, and indeed most often is, of non-violent character not involving the use of force, such as diplomatic or economic intervention. However, the imposition of economic sanctions generally has not been regarded by States or scholars as a use of force in the sense of Article 4(h), but has been regarded as relevant to the principle of non-intervention (Bowett: 1972:1-12). Many writers narrow the term ‘intervention’ to intervention by the threat or use of armed force (Franck and Rodley: 1973:275-277). This approach is in line with the practice of States and the UN in the field of human rights where merely considering, debating and making recommendations regarding a State’s human rights record is not generally considered ‘intervention’ in that State’s internal affairs if there is no implication of enforcement action (Murphy: 1996:10).

Some commentators prefer to eliminate the modifier ‘humanitarian’, before ‘intervention’. ‘Humanitarian’ is used to indicate an official justification directed at satisfying the most basic needs of a civilian population (Corten: 2008:89). The ‘humanitarian’ part need not be exclusive, but must be an essential aspect of the justification advanced by the interveners. The criterion thus refers to the justificatory discourse rather than the true reasons for military action. Much of the controversy surrounding R2P is based on the misunderstanding that it represents an excuse for

humanitarian and military intervention. According to Evans (2012:2), there are crucial differences between R2P and the ‘right of humanitarian intervention:

“First, R2P is primarily about prevention, whereas humanitarian intervention is only about reaction. Second, R2P is about a whole continuum of reactive responses – from diplomatic persuasion, to pressure, to non-military measures like sanctions and International Criminal Court process, and only in extreme, exceptional and last resort cases military action, whereas humanitarian intervention is *only* about military reaction. And third, R2P is about a wide range of actors, starting very much with the sovereign state itself where the problem exists, and others in the international community able and willing to assist that state prevent mass atrocities, whereas humanitarian intervention focuses only on the role of those able and willing to apply coercive military force.”

Practitioners have stated that R2P has three operational pillars, namely pillar one (building state capacity to protect its populations). i.e., it is the primary responsibility of states to protect their population and to not participate in genocide, war crimes, or crimes against humanity; pillar two (international assistance to build state capacity), i.e., the international community must assist states in preventing these mass atrocities; and pillar three (coercive international action with the final option being military intervention to protect populations at risk from atrocity crimes, i.e., if the states have manifestly failed to prevent these atrocities, then the international community must take action (Thakur:2011:2)

2.1.3. The question of humanitarian intervention

First, a distinction should be drawn between the right of intervention under Article 4(h) of the AU Act and ‘humanitarian intervention.’ The term ‘humanitarian military intervention’ or

‘humanitarian intervention’ for short can have a different meaning to different scholars. Broadly speaking, humanitarian intervention involves coercive action by one or more States involving the threat or use of force in another State without the consent of its government, for the purpose of preventing or putting to a halt gross and massive violation of human rights or international humanitarian law (Rytter:2001:122-123).

In this sense, humanitarian intervention consists of forcible intervention at the interstate level, undertaken without any other justification rooted in a legally-binding expression of will. According to this formulation, humanitarian intervention can be conducted either with or without authorisation from the Security Council. This distinction is crucial in legal terms in that the use of force authorised by the Security Council under Chapter VII or for the maintenance of international peace and security is *prima facie* lawful; whereas ‘humanitarian intervention’ without the authorisation from the Security Council has no explicit legal basis in the UN Charter hence the burden of justification (Sunga:2006:41:47).

Thus, an authorisation exists only if the Security Council has explicitly mandated the Member States to intervene under Chapter VII of the UN Charter. Humanitarian interventions, so properly called, must be motivated primarily by the distinct humanitarian aim of averting further violations of human rights and international humanitarian law against civilians. The issue of consent by the target State is not central to whether certain actions should be categorised as ‘humanitarian intervention’. Consent by the target State becomes relevant in assessing whether the humanitarian intervention should be regarded as permissible or lawful (Murphy: 1996:18). If consent is given, then it is not humanitarian intervention but rather, intervention by invitation.

According to Kindiki (2006:10) definitions of ‘humanitarian intervention’ can be classified into traditional (classical or narrow) and liberal (wider) categories. Liberal definitions encompass humanitarian activities by entities other than States such as administration of relief supplies by intergovernmental organisations whereas the narrow definition restricts humanitarian intervention to the use of force by States. This study will focus on the classical definition of intervention. It should be noted that the definition chosen has a bearing for determining the existence and nature of a possible legal basis for such an intervention (Gill: 2007:8-23).

Human rights organisations and humanitarian agencies dislike the association with the use of military force, viewing ‘humanitarian intervention’ as an oxymoron. For this reason, the then UN Secretary-General Kofi Annan (2001:11) cautioned that “[o]f course military intervention may be undertaken for humanitarian motives but let’s get right away from using the term ‘humanitarian’ to describe military operations.” Beckman (2005:24-26) draws a distinction between ‘armed intervention’ and ‘humanitarian intervention.’

In this context, the former is described as “armed operations which are limited in time, without the consent of the legitimate Government and are without aspirations of permanently conquering territory for the benefit of the intervening State” (Beckman (2005:24-26). In this case, the existence of a UN mandate only changes the legal ground of the operation but it does not change the fact that the intervention is an armed intervention. Thus, the term ‘humanitarian intervention’ should be reserved for situations of armed intervention for the sole benefit of human rights and humanitarian norms without the consent of the target State. ‘Humanitarian intervention’ in the

contemporary context is characterised by its forcible means of coercion. The weakness of restricting ‘humanitarian intervention’ to coercive or forcible acts is that such a definition provides no framework for accommodating non-military measures (Wheeler and Bellamy: 2001:573).

As a working definition, this study will view ‘humanitarian intervention’ as the threat or use of force by a State or States in order to stop or halt mass atrocity crimes in a third State, provided that the victims are not nationals of the intervening State or States and there is no legal authorisation given by a competent international organisation, in particular, the UN by means of the Security Council (Kolb: 2003:119-134; Kindiki, 2007: 317). As the Danish Institute report has defined, such ‘humanitarian intervention’ needs not take the form of action by a single intervening State but it must be unilateral (Roberts, 2000:5). However, where there is a legal title to intervene, there is no necessity to invoke the doctrine of ‘humanitarian intervention’. Although such actions may be labeled ‘humanitarian intervention’ in light of their object, however, as a legal entitlement, this label is misleading and should be avoided (Kolb:2003:120-121).

As such, this study does not regard the right to intervene in Article 4(h) as humanitarian intervention but rather statutory or treaty-based intervention (Kuwali:2009). According to Kuwali (2010), Article 4(h) accords the AU statutory mandate to intervene in a member state, therefore, no need for justification on humanitarian grounds. As long as there are war crimes, genocide and crimes against humanity, the AU may intervene in a member state on the basis of Article 4(h). For purposes of the present study, what this means is that in light of Article 4(h) of the AU Act, the AU, therefore, had a legal mandate to intervene to protect the people of Libya

from mass atrocities because the conditions were warranting it. It is on this basis that this research seeks to explore whether the AU duly responded to the crisis in Libya in 2011; and if so, how?

2.1.4. The AU Peace and Security Architecture

As a response to the ineffectiveness of the OAU's mechanism, African leaders devised a new defence and security regime within the framework of the AU when they were transforming the OAU to the AU. Apart from the groundbreaking intervention clauses in Articles 4(h) and (j) and concomitant sanctions in Article 23(2) of the AU Act, the legal architects of the AU have instituted mechanisms whose common denominator is to ensure a greater degree of enforcement and oversight of the AU's decisions. This transformation is in contrast to the OAU's perceived weakness of lack of both the political will and the means to uphold its decisions. Kioko (2003) and Powell (2005) have noted that this sense of responsibility and activism on the part of the AU represents a clear shift from the OAU's *de facto* policy of 'non-intervention' to the AU's commitment to 'non-indifference'.

As noted above, the AU has a right to intervene in a member state pursuant to the decision of the Assembly of Heads of State and Government of the AU (AU Assembly). The Protocol relating to the establishment of the PSC (PSC Protocol) was adopted by the inaugural meeting of the Assembly of the AU held in Durban, South Africa in July 2002 and entered into force on 26 December 2003. Article 7 of the PSC Protocol states that in conjunction with the Chairperson of the commission, the Peace and Security Council shall:

[...]

e. recommend to the Assembly, pursuant to Article 4(h) of the Constitutive Act, intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments;

f. approve the modalities for intervention by the Union in a Member State, following a decision by the Assembly, pursuant to article 4(j) of the Constitutive Act;

Against this backdrop, the challenge now is how to move from rhetoric to reality. It is in this light, the study goes further to assess the key institutions in implementing Article 4(h) intervention.

2.1.5. The AU Assembly of Heads of State and Government

Article 4(h) of the AU Constitutive Act is clear that it is the AU Assembly of Heads and Government that shall make a decision for intervention. A decision to intervene is by consensus or, failing which, only requires an endorsement of two-thirds of the Member States. Flowing from Article 11 of the AU Act, no single Member of the AU has the power to veto as is the case with the UN Security Council. This implies that, no AU Member State can control the decision-making process in respect of the implementation of Article 4 (h).

Firstly, according to the formulation of the intervention clause under the AU Constitutive Act, the AU Assembly will specifically decide on intervention on two fronts, namely, on its own initiative in terms of Article 4 (h) and at the request of a Member State pursuant to Article 4(j) of

the AU Constitutive Act. This approach will facilitate decisions on intervention, since the AU Assembly is not obliged to wait for the consent of the Member State concerned.

The AU Assembly, which is composed of Heads of State and Government or their duly accredited representatives, is the supreme organ of the AU. Article 7 of the AU Act as well as Rule 18 of the Rules of Procedure of the AU Assembly specify that the Assembly shall take decisions by consensus or, failing which, by a two-thirds majority of the AU Member States. Two-thirds of the total membership of the AU shall form a quorum. According to Article 4(1) of the Rules of Procedure of the AU Assembly, the Assembly shall decide on intervention in a Member State.

It shall also determine the sanctions to be imposed on any Member State for non-payment of assessed contributions, violation of the principles enshrined in the AU Constitutive Act and the rules of the AU as well as non-compliance with the decisions of the AU and unconstitutional changes of government. The AU Commission shall also collaborate with the UN, its agencies, other relevant IGOs, research centres, academic institutions and NGOs, to facilitate the effective functioning of the Continental Early Warning System (CEWS). It is conceivable that there may be instances when it is generally agreed that some form of intervention is necessary, but there is no agreement on its form or objective, its mandate and duration(Kioko:2003:822-824).

However, the AU has not yet identified the processes that will guide decision-making surrounding intervention under Articles 4 (h) of the AU Constitutive Act. Pursuant to Rules 33 and 34 of the Rules of Procedure of the AU Assembly, if a decision on intervention is issued as a

Regulation or Directive then it will automatically be binding on the Member States and shall be enforceable 30 days after the publication in the AU Official Journal or as specified by the decision (Kioko:2003:816). However, if a decision is taken as a Recommendation, Declaration, Resolution or Opinion then it will not be binding. Non-implementation of Regulations and Directives shall attract appropriate sanctions under Article 23 of the AU Constitutive Act.

The forms that sanctions may take include the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the AU Assembly. Thus, the implementation of the AU's right to intervene largely depends on the decision of the AU Assembly. This is strengthened by the fact that the AU Assembly also has the responsibility to monitor the implementation of policies and decisions of the AU as well as ensure compliance by all Member States through appropriate mechanisms in accordance with Rule 4(1)(b) of the Rules of Procedure of the AU Assembly.

2.1.6. The Peace and Security Council (PSC)

The PSC makes recommendations to the AU Assembly in respect to intervention under Article 4(h), whilst in relation to Article 4(j) it approves the modalities for intervention following a decision by the AU Assembly. While the AU Assembly is mandated to decide on Article 4(h) intervention, the PSC is expected to consider the necessity of intervention when a situation so warrants and make appropriate recommendations to the Assembly for possible intervention. However, the Protocol relating to the Establishment of the Peace and Security Council (PSC

Protocol) does not address the obvious intervention dilemmas that have dragged decisions to intervene in the past.

Instead, despite the requirement of the UN Security Council for authorisation of enforcement action by regional organisations, the PSC Protocol provides for uneven authority to the PSC. Nonetheless, Articles 6 and 7 of the PSC Protocol inform that with regard to the management of intervention, the PSC shall cooperate with the UN Security Council, which has the primary responsibility in this sphere and, where necessary, recourse shall be had to the UN to provide the necessary financial, logistical and military support.

The PSC was established recognising that the AU required more effective policy channels through which it could tackle conflicts more proactively. According to Article 2 of the PSC Protocol, the PSC is ‘a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa’ (Levitt: 2003:110). The PSC has considerable powers serving as the standing decision-making vehicle for the prevention, management and resolution of conflicts.

Pursuant to, and as buttressed by, the need to promote peace, security and stability in Africa, the main objectives of the PSC are, *inter alia*, to: anticipate conflicts and undertake preventive diplomacy; make peace through use of good offices, mediation, conciliation and enquiry; undertake peace support operations and interventions; engage in peace-building and post-conflict reconstruction; undertake humanitarian action and disaster management as stipulated in Article 7

of the PSC Protocol. The PSC will also form vital part of the African regional human and peoples' rights system (Levitt: 2003:110).

Despite the broad powers accorded to the PSC, the PSC Protocol exhibits three major shortcomings in terms of the mandate of the PSC. Firstly, the lack of power for the PSC to make the final decision to implement an Article 4 (h) intervention (Kuwali: 2010). Even if the PSC may become aware of actual grave human rights violations enumerated under Article 4(h), the final decision for intervention lies with the AU Assembly. Although such a requirement is necessary to avoid possible abuse, it does not only make the decision-making procedure convoluted, but also in situations where urgent direct intervention is needed the AU Assembly may decide not to intervene because of the inherent political nature of the AU Assembly.

The problem here is that the AU Assembly meets only once a year and takes decisions on the basis of consensus or failing that, by a two-thirds majority. The process of activating Article 4 (h) against the will of the target State would therefore be time-consuming. Secondly, in light of “the continent’s traditional reluctance to endorse interventionism and fractious sub-regional alignments, the possibility of securing a two-thirds majority in the face of a hostile host must be thought unlikely at best.” (Bellamy: 2006: 118-158). Thirdly, the PSC Protocol has not spelt out specific powers and institutions through which the PSC can enforce its decisions.

By ratifying the PSC Protocol, all AU Member States are expected to implement the decisions of the PSC. In case of non compliance, the PSC Protocol provides no instrument and institutions for the enforcement of the decisions of the PSC. The AU Constitutive Act, in general terms,

provides that the AU Assembly will ensure compliance with the decisions of the AU pursuant to Article 23(2) of the AU Constitutive Act. Although this may apply to the decisions of the PSC as well, it is not only unclear as to what measures the AU Assembly may take, but also the process will be lengthy and ineffective (Alemu:2005). Although the PSC can recommend Article 4(h) intervention to the AU Assembly, there is a significant danger in the PSC being essentially a political body and not legal or judicial body, to make a finding as to whether war crimes, genocide and crimes against humanity are occurring in a given situation (Abass:2007:47-57).

2.2. Application of Article 4(h) and R2P to the Libya crisis

In the case of Libya, on 19 March, 2011, the United Nations Security Council (UNSC) approved resolution 1973 which reiterated the responsibility of the Libyan authorities to protect the Libyan population. The UNSC Resolution 1973 reaffirmed “that, parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians” (UNSC Resolution 1973:2011). It demanded “an immediate ceasefire in Libya, including an end to the current attacks against civilians, which it said might constitute ‘crimes against humanity.’” It imposed a “ban on all flights in the country’s airspace, a no-fly zone, and tightened sanctions on the Colonel Muammar Gaddafi regime and its supporters.”

The UNSC resolution 1973 was passed with 10 in favour, 0 against and 5 abstentions with all African members voting in favour of the Resolution. However, two of the five Permanent Members of the Security Council abstained, namely, China and Russia. As it will be shown below, the interpretation and implementation of Resolution 1973 was later to generate mixed

reactions to the subsequent military action by NATO. Detractors of the intervention believe that problems in Libya then should have been best resolved amongst Libyans.

CHAPTER THREE

3. RESEARCH METHODOLOGY

3.1. Method of inquiry

There are two well documented broad research methods which are positivist (qualitative and quantitative research traditions (Bowen: 2005; Merriam, 1998: Willis: 2007) the two methods are differentiated mainly by the type of data collected. For example, if the researcher is interested in numbers to determine the research question, then it is advantageous to employ quantitative method. On the other hand, qualitative research method can reveal how all parts work together to form a whole (Merriam: 1998:6).

Qualitative research is based on the notion that reality is constructed by individuals interacting with their social worlds (ibid). Qualitative research is an umbrella concept covering several forms of inquiry that help understand and explain the meaning of social phenomenon with a little disruption of the natural setting as possible. Suffice to say that research is qualitative where the research shall builds towards the theory from observations and intuitive understandings gained in the field. On this understanding, therefore, this study can be viewed as qualitative research for reasons that are given in the section that follow.

3.1.1. Research approach

The research approach of this exploratory study is qualitative in nature because of the structure of the research questions and the data (information) to be collected. The method of inquiry of this study shall be a narrative analysis and documentary analysis of both primary and secondary sources collected. As it will be noted in section 3.1.2. below, the primary sources include views of practitioners and government officials who were involved in the intervention in the Libyan crisis. Such views have been collected through in-depth interviews carried out by administering an open-ended questionnaire in Appendix I. The secondary sources include books, research reports, as well as scholarly and professional journal and general public information magazines on the subject.

3.1.2. Data collection

The method of data collection has basically been through literature review by way of desk research enriched by open-ended interviews. In this way, the research makes use of primary data which involved interviews of relevant personnel, including speeches and statements by various Member States and organs of the AU. The researcher also collected data by sampling involving purposeful snowball sampling and interview of at least 5 respondents. The target group included Libyan diplomats, members of the AU High-Level Ad hoc Committee on Libya and their foreign ministers and their support team comprising mainly of staff of AU Peace and Security Council.

The interviews were conducted at the AU Headquarters in Addis Ababa, Ethiopia, the Libyan Embassy in Pretoria, South Africa and the Department of International Relations and Cooperation (DIRCO) in Pretoria, South Africa. However, the researcher also had a chance to meet the targeted individuals in other places other than their offices, such as in conferences and seminars; and was allowed by the interviewees to conduct the interview accordingly. In such cases, the researcher duly conducted the interview and recorded data. The researcher, was therefore, not restricted to meeting the targeted individuals in their places of work only.

Apart from two (2) officials from the Libyan Embassy in Pretoria, the researcher also interviewed relevant authorities from the States that were part of the High Level Ad hoc Committee, i.e., Congo Brazzaville, Mauritania, South Africa and Uganda. The researcher interviewed one relevant official from these countries. The researcher additionally interviewed one high ranking official from the AU's Peace and Security Council. As stated above, the researcher targeted relevant authorities those who were directly involved in the Libyan crisis of 2011.

The researcher adopted a questionnaire with a list of predetermined questions designed for use as guidelines for semi-structured and in-depth interviews. The use of such an interview guide was a strategy to have a more structure than in completely unstructured informal conversational interview, while maintaining a relatively high degree of flexibility.

The researcher was mindful of the fact that asking good questions is key to getting meaningful data (Merriam: 1998:93). To this end, as opposed to multiple and leading questions yielding yes-

and-no answers, the questions for in-depth interview were framed in an open-ended mode to give the respondents room for opinions on facts and beliefs about facts.

As a precautionary measure, the researcher did not put words in the people's mouths but rather asking probing and objective questions. The researcher recorded responses verbatim and was objective. The researcher always treated the responses of the respondents as perceptions rather than facts (Leedy and Ormrod: 1989:159). By and large, the success of the interview depended on the nature of interaction between the interviewer and the respondent, and on the interviewer's skill in asking good questions and the interview focused on the factual as opposed to hypothetical cases (Merriam:1998).

3.1.3. Research credibility

For credibility of the research, the four factors to be considered in establishing trustworthiness of findings from qualitative research include: credibility, transferability, dependability, and conformability (Denzin and Lincoln: 1994: Bowen 2005: 8). Reliability is concerned with the question of whether the results of a study are replicable while validity relates to integrity of the conclusions that are generated from a piece of research (Bryman and Bell: 2007:40). To ensure reliability in this research, all interviews shall be conducted by the researcher using carefully prepared questionnaires, to maintain consistency of responses. For validity, the researcher will endeavor to verify the questionnaires with the supervisor and others conversant with the subject of research to ascertain that the questions asked shall generate valid responses.

The research also heavily relied on secondary data involving an examination of the AU Constitutive Act and other legal and policy instruments of the AU as well as the resolutions, decisions and communiqué of the AU Peace and Security Council. As indicated above, secondary data included books, articles, AU reports and other relevant papers written on the subject. The reports included those compiled by the relevant organs of AU obtained from AU website, policy papers, annual reports, and letters among other relevant documents. However, emphasis was placed on those secondary sources that had a bearing on the role of AU in resolving the Libyan crisis of 2011, and the bigger objective of the AU Peace and Security Council.

3.2. Significance of the study

This research is important insofar as it provided recommendations to the AU for strengthening the APSA in order to intervene in a decisive and timely manner to avoid a repeat of the AU's apparent inaction as was the case in the Libyan scenario. The idea is that the AU should move from rhetoric to reality; from promise to practice. In this way, the research intends to fill the gap on the literature in this regard. The study is also intended to contribute to the academic literature on the subject of R2P and intervention pursuant to Article 4(h) of the constitutive Act of the AU. In the long run, this research recommends guidelines for strengthening the posture of the APSA and enhancing its role in ensuring human security in Africa.

3.3. Limitations of the study

Given that the primary instrument in qualitative research is human, all observations and analyses are filtered through that individual's worldview, values and perspectives. Hence one of the philosophical assumptions underlying this research is that reality is not an objective entity. It therefore, follows that there are multiple interpretations of reality (Bowen, 2005:11 Merriam, 1998; 22). Like any scholarly study, there are evident limitations in this research ranging from scope, design and individual bias.

It is important to note that, this research is limited to the Libyan crisis of 2011 and not other interventions such as the one in Northern Mali or the lack of intervention in Syria. Although the study discusses in detail the NATO operations in Libya, it particularly focuses on the responsibility of the AU to act in Libya and why the AU did not act as envisaged in its Constitutive Act. The study did not delve or discuss the commission or non-commission of mass atrocities in Libya. To put it more candidly, the study is limited to discussing the role of the African Peace and Security Architecture in implementation of Article 4(h) intervention and R2P as enshrined in the AU Constitutive Act.

3.4. Ethical considerations in conducting the study

This research abides by the necessary academic ethical requirements and, therefore, addresses the following important ethical questions.

- a) Authority was sought to interview selected individuals relevant to this study.
- b) The interview adhered to the code of confidentiality
- c) Authors and other academic ancestors whose ideas are relied on as authorities in this research are adequately cited to avoid plagiarism.

CHAPTER FOUR

4. ASSESSMENT OF THE INTERNATIONAL COMMUNITY'S RESPONSE IN LIBYA

4.1. Interrogating the international intervention in the Libyan crisis

The response to the Libyan crisis by the international community was multifaceted and has different success ratings by experts. While the response by the AU was rather subtle, cautious and more diplomatic contrary to the expectation of the right of intervention under Article 4(h) of the AU Constitutive Act, the UN Security Council authorized “the use of all means necessary to protect the civilians” at risk. This chapter analyses the different kinds of interventions by the international community to the Libyan crisis, with a special focus on the AU intervention.

Several authors have questioned why the international community was quick to intervene in Libya and yet it has been reluctant to intervene in Syria (Kuwali: 2012). In this respect, Bellamy and Williams (2012:18) have noted that is not difficult to see why the international community supported measures against Libya and why few countries were prepared to defend the Gaddafi regime. Colonel Muammar Gaddafi was remarkably a key founder for the AU and a number of African states yet it was widely distrusted across Africa and the Middle East, not least for its role in fuelling conflicts in the region, such as Liberia, Sierra Leone and Chad, as well as the radical Popular Front for the Liberation of Palestine (Bellamy and Williams: 2012:18).

The eccentric style of Gaddafi made him to have a love/hate relationship with many leaders. For example, when Gaddafi proclaimed himself African ‘king of kings’, he obviously infuriated several African statesmen by seemingly elevating the status of their traditional chiefs (Bellamy

and Williams: 2012:18). Gaddafi was in the habit of calling himself controversial names such as ‘Brother Leader’ and ‘Imam of the Muslims’. The Libyan leader also developed rivalry with other countries that have influence in the Arab region such as Saudi Arabia and other Gulf states. Bellamy and Williams (2012:18) have noted that Gaddafi once insulted key Arab personalities, especially in 1988 when he blew cigar smoke into King Fahd’s face. Also, in 2003 at a LAS summit he openly criticized the Saudi Crown Prince Abdullah and called him “a product of Great Britain and protected by the United States” and a man “whose past is a pack of lies and who is facing death.”

Hence, when Gaddafi’s armed forces engaged lethal and discriminate use of force against unarmed protesters, the international community did not hesitate to explicitly condemn him (Apuuli 2011:2). This view is supported by Bellamy and Williams (2012:2) who have concluded that “[c]onsensus on the use of force against Libya was enabled by several exceptional factors, in particular a putative regional consensus and the poor international standing of Gaddafi’s regime, as well as the clarity of the threat and short timeframe for action.”

4.2. Chronology of events as regards AU’s action

4.2.1. Creation of Gaddafi’s Libya

Colonel Muammar Gaddafi ruled Libya from September 1969, when he captured power in a military coup, to 2011 when he died during a hot pursuit by the rebels who turned against his regime in Libya. During his dictatorship that spanned over four decades, Gaddafi imposed an

eccentric and oppressive system of government, that Apuuli (2011:2) has described it as being “devoid of any of the institutional features common even to many of the world’s most undemocratic regimes.”

For example, there was neither a constitution in the modern sense nor were there any political parties in Gaddafi’s Libya (Apuuli: 2011:2). Upon capturing power, Gaddafi introduced his so-called Third Universal Theory which advanced the idea that “people should directly run the activities and exercise the powers of government” (ISS: 2011:3). This eccentric system of governance led to a “virtual absence of any development of a state bureaucracy or any form of institutionalized governmental structure” (Apuuli: 2011:2).

4.2.2. The fall of Gaddafi’s Libya

The crisis in Libya was a knock-on effect of the events in Tunisia and Egypt in which ordinary citizens fearlessly protested to force out the dictatorial governments in those countries. Events started to unfold in North Africa in what came to be popularly known as the ‘Arab Spring’, where mass protests and civil uprisings were occurring in response to decades of repression by the governments in Tunisia and Egypt. The ripple effects of the Arab Spring consequently engulfed Libya, in mid-February 2011 when the people in Eastern Libya staged an uprising against Gaddafi’s regime. True to his ruthlessness, Gaddafi responded to these mass protests by dispatching government troops in an attempt to forcefully suppress the civilian protests that were largely peaceful.

As the rebellion gained ground driving westwards towards Libya's capital, Tripoli, the Gaddafi government deployed its military troops to counter the revolution. However, most of the regime troops that were deployed defected to join the rebellion, leading to a civil war in the country (Lee: 2012:21). The crisis in Libya was unexpected and escalated rapidly. According to Bellamy and Williams (2012: 14).

After some initial protests in mid-January, demonstrations quickly turned violent. This was partly because of the regime's crackdown and partly because defections from the government and army facilitated the establishment of an armed opposition group under the Interim Transitional National Council.

The people from Eastern Libya who were dubbed "the rebels" immediately took control of several towns including Benghazi, the second biggest city in Libya. The rebels established a Transitional National Council (TNC), headed by former Justice Minister Mustafa Mohamed Abud Al Jeleil, to spearhead the struggle against the Gaddafi regime (Apuuli: 2011:2). By the end of the month of February 2011, Gaddafi forces were able to reclaim several towns that had been taken by the rebels. This temporary victory impelled Gaddafi forces to engage in a "bloodbath" in Benghazi (Apuuli: 2012:1).

Gaddafi called on his supporters to go out and attack protesters, and deployed his troops "in all tribes and regions so that they can purify all decisions from these cockroaches", to "cleanse Libya house by house" and to execute "any Libyan who takes arms against Libya" (Bellamy and Williams, 2012:14).⁶ In countering the peaceful civilian protests and possibly the quest to create fear amongst the protesters, the Gaddafi government allegedly committed war crimes and crimes

⁶ 'Defiant Gaddafi issues chilling call', ABC (Australia), 23 Feb. 2011.

against humanity, which are violations which trigger R2P, i.e., R2P crimes. It was this lethal, disproportionate and discriminate use of force by Gaddafi's security forces against civilians that resulted in condemnation by the international community (Apuuli 2011:2).

4.2.3. International Intervention in Libya

Meanwhile, one week after the rebellion broke out the Peace and Security Council (PSC) of the African Union convened and issued a communiqué asserting its intention to send a fact-finding mission to Libya. The UN Security Council, Human Rights Council and the UN Secretary General called on Libya to comply with its responsibility to protect by complying with its fundamental human rights and humanitarian law obligations.⁷ On 22 February 2011, the UN's High Commissioner for Human Rights, Navi Pillay, called on the authorities in Libya to stop using violence against demonstrators, which 'may amount to crimes against humanity.'⁸ On the same day, the UN Special Adviser on genocide and the responsibility to protect, respectively said the Gaddafi regime's behaviour could amount to crimes against humanity and insisted that it should comply with its responsibility to protect the populations within its jurisdiction.⁹

The following day on 23rd February 2011, the UN Secretary General, Ban Ki-Moon followed suit and termed the crisis in Libya as a human protection problem. Ban Ki-Moon reiterated the fact that the Libyan government had the responsibility to protect its citizens and reminded both the

⁷ See Security Council Press Statement on Libya, United Nations document SC/10180 AFR/2120, 22 February 2011, <http://www.un.org/News/Press/docs/2011/sc10180.doc.htm> (accessed 5 September 2011); and 'Ban strongly condemns Qadhafi's actions against protesters, calls for punishment', <http://www.un.org/apps/news/story.asp?NewsID=37599> (accessed 5 September 2011).

⁸ Libya attacks may be crimes against humanity: UN', Reuters, 22 Feb. 2011.

⁹ UN press release, statement by the UN Secretary General Special Adviser on the Prevention of Genocide, Francis Deng, and the Special Adviser on the Responsibility to Protect, Edward Luck, on the situation in Libya, 22 Feb. 2011.

Libyan authorities and the Security Council of their responsibilities. This was followed by the establishment of a commission of inquiry by the UN Human Rights Council on 25 February 2011, to investigate the situation in Libya. The UN Human Rights Council urged the General Assembly to suspend Libya from the Human Rights Council. The UN General Assembly consequently suspended Libya on 1 March 2011.

When the authorities in Libya ignored the appeals, on 26 February 2011, the UN Security Council passed Resolution 1970 where it affirmed Libya's obligations to protect its populations and demanded an end to the violence in Libya which, in the Security Council's view, seemed to "amount to crimes against humanity." By the same Resolution 1970, the UN Security Council imposed sanctions against Libya and referred Gaddafi, to the International Criminal Court (ICC). Despite the unambiguous appeal made in Resolution 1970, Gaddafi continued to massacre his own people boasting that "I was the one who created Libya and I will be the one to destroy it."¹⁰

The slaughter of the innocent civilians led to a defection of several top Libyan diplomats who joined the calls of the Libyan rebels and the international community to protect civilians in Libya. While the AU Peace and Security Council was still handwringing on how to respond to the Libyan crisis, the United Nations Security Council passed resolution 1973 authorizing the use of force to protect the civilian population in Libya in response to the threat from Gaddafi forces to crush the rebellion.

¹⁰ -Muammar al-Qaddafi directing pilots (who later defected) to bomb protesters, 20 February 2011; see "Libya Update: The Violence of An Unraveling Regime [On Qaddafi's Speech]" *Jadaliyya*. 21 Feb. 2011. <http://www.jadaliyya.com/pages/index/707/libya-update_the-violence-of-an-unraveling-regime_>

4.3. The Role of the UN Security Council in the Libyan crisis of 2011

On 22 February 2011, the Security Council first received a briefing on the Libyan crisis by the UN Under-Secretary General for Political Affairs, Lynn Pascoe, and held informal consultations on Libya. Bellamy and Williams (2012:15) indicate that “[a]ctivism by the UN Secretariat and the relatively tough stance taken by regional organizations thus set the context for the Security Council’s discussions on the crisis in Libya.

Following the deliberations, the Security Council issued a press statement that welcomed the statement that was made by the League of Arab States earlier that day. The Security Council also expressed grave concern about the situation in Libya, condemned the use of force against civilians, called on the Libyan government to meet its responsibility to protect the citizens and promised to monitor the situation closely.¹¹

4.3.1. UN Security Council Resolution 1970

Although the search for a diplomatic solution through the UN Special Envoy and the AU High-Level Committee was widely favoured, many governments, commentators and UN officials were wary that diplomacy alone would not prevent a massacre (Bellamy and Williams, 2012:16). On 26th February 2011, following elaborate consultations, the UN Security Council unanimously passed Resolution 1970, acting under Chapter VII of the UN Charter. Resolution 1970, among other things, condemned “the widespread and systematic attacks” against civilians, which as the Security Council noted, “may amount to crimes against humanity”. The Security Council also

¹¹ SC/10180-AFR/2120, 22 Feb. 2011.

welcomed the earlier criticisms of the Libyan government's actions against its own citizens by the LAS, the AU and the Organization of the Islamic Conference (OIC); and underlined the Libyan government's responsibility to protect its population.

By Resolution 1970, the Security Council demanded an immediate end to the violence; urged Gaddafi's government to ensure safe passage for humanitarian and medical supplies. The Security Council also referred the situation in Libya since 15 February 2012 to the Prosecutor of the International Criminal Court; established an arms embargo on Libya; imposed indefinite travel bans on 16 individual members of the Libyan regime; froze indefinitely the assets of six members of the regime including Muammar Gaddafi; established a sanctions committee to monitor the implementation of these measures; and called upon UN Member States to make available humanitarian and related assistance for Libya (S/RES/1970(2011)).

The Security Council having repeatedly expressed its determination to accept its duties under R2P and accepted the legitimacy of international engagement by unanimously adopting Resolution 1970, and being confronted with advice from the UN Secretariat and elsewhere about the imminence of mass atrocities, the skeptics had little diplomatic room for manoeuvre (Bellamy and Williams, 2012:20).

It is clear that Resolution 1970 effectively sidelined the AU from being the lead organization to deal with the Libyan crisis.¹² The fact that the UN Security Council has the primary responsibility for the maintenance of international peace and security, the passing of Resolution

¹² United Nations, Security Council Resolution 1970, S/RES/1970 (2011), 26th February 2011.

1973 meant that “whatever the AU would do in future regarding the Libyan situation, would be secondary to what the UNSC did” (Apuuli: 2011:4).

Some of the factors that helped persuade the Security Council to overcome its differences and adopt enforcement measures after Resolution 1970, were Libya’s intransigence, the deterioration of the situation inside Libya, with the imminent fall of rebel-held Benghazi and fears that Gaddafi’s forces would commit a massacre there (Bellamy and Williams:2012:16). Despite the demand set out in Resolution 1970, Gaddafi’s regime refused to permit humanitarian aid convoys into besieged towns such as Misrata and Ajdabiya. The UN Secretary General also literally failed to persuade Gaddafi to comply when he contacted him in a 40-minute conversation.

4.3.2. UN Security Council Resolution 1973

Following Gaddafi’s unrelenting behavior and the flagrant disregard of the demands made in Resolution 1970, on 17 March 2011 the UN Security Council adopted Resolution 1973, which authorized the use of “all necessary measures [...] to protect civilians and civilian-protected areas” under threat of attack in the Libyan Arab Jamahiriya, including Benghazi. In operative paragraph 6 of Resolution 1973, the UN Security Council established ‘a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians’, excepting only those necessary to enforce the no-fly zone and those “whose sole purpose [was] humanitarian.”

Resolution 1973 also reaffirmed the arms embargo and asset freeze detailed in Resolution 1970, in part by creating a panel of experts to assist in their implementation. As Resolution 1973 explicitly prohibited the deployment of ground troops, international protection efforts were limited to the air campaign. However, experts have questioned the efficacy of such a strategy wondering how much protection an air campaign can provide for threatened populations (Rieke: 2012:78).

Resolution 1973 reiterated the Security Council's concern that crimes against humanity might have been committed, deplored the ongoing humanitarian crisis, and took note of the criticisms of Gaddafi's regime made by a variety of international organizations, particularly the LAS call for a no-fly zone and safe areas to protect civilians. According to Bellamy and Williams (2012:1):

In passing Resolution 1973, the Council showed that it will not be inhibited *as a matter of principle* from authorizing enforcement for protection purposes by the absence of host state consent. Although its response in Libya broke new ground, it grew out of attitudes and processes evident well before this particular crisis.

The precursor to the UN Security Council Resolution 1973 was the declaration of the League of Arab States of 12 March 2012, which called on the UN Security Council 'to impose immediately a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya, while respecting the sovereignty and territorial integrity of neighbouring States', and to 'cooperate and communicate with the TNC in Libya and to provide the Libyan people with urgent and continuing support as well as the necessary protection from

the serious violations and grave crimes committed by the Libyan authorities, which had consequently lost their legitimacy.¹³

The implementation of Resolution 1973 marked the beginning of western countries' intervention in the Libya crisis (Apuuli: 2012:1). Resolution 1973 also marked the first time the UN Security Council had authorized the use of force for human protection purposes against the wishes of a functioning state (Bellamy and Williams, 2012:1). It is worthwhile to note that this was the first UN-sanctioned combat operation since the 1991 'Gulf War' (Thakur: 2011:3).

4.4. The North Atlantic Treaty Organization (NATO) Intervention in Libya in 2011

4.4.1. NATO's manifestation to intervene in Libya

Well before the passing of Resolution 1973, NATO, had announced on 10 March 2011 that it was moving additional ships into the region to support humanitarian assistance efforts and its own ability to monitor the crisis effectively. The Secretary General for NATO also revealed that the alliance was discussing how an arms embargo and/or no-fly zone over Libya might be enforced.¹⁴ Prior to the adoption of Resolution 1973, US diplomats persuasively briefed their counterparts from reluctant states at the UN headquarters in New York about the activities that would be required to implement a 'no-fly zone' and protect civilians (Bellamy and Williams: 2012:23).

¹³ Council of the League of Arab States, Res. no. 7360, 12 March 2011, paras 1 and 2.

¹⁴ 'NATO ready to support international efforts on Libya', NATO, 10 March 2011, http://www.nato.int/cps/en/natolive/news_71446.htm, accessed 12 June 2011.

As it turned out, NATO intervened in Libya on the basis of Resolution 1973. Thakur (2011:4) notes that “NATO had indeed intervened on behalf of one side in a civil war and pursued regime change.” According to Milne (2011), the Arab revolution was hijacked by the imperialist West in Libya because “[i]f stopping the killing had been the real aim, NATO states would have backed a ceasefire and negotiated settlement, rather than repeatedly vetoing both.”

In a statement on 20 March 2011, the Secretary General for LAS, Amr Moussa, issued a strong statement claiming that the air strikes by the NATO went beyond the scope of Resolution 1973 to implement the no-fly zone.¹⁵ LAS were concerned about the collateral damage regarding civilian population and civilian objects occasioned by NATO attacks in Libya. Moussa argued that NATO’s action “differ[ed] from the goal of imposing a no-fly zone’ and stated that ‘what we want is the protection of civilians and not bombing other civilians.’”¹⁶ Surprisingly, however, Moussa backtracked the following day, using a joint press conference with Ban Ki-moon to reiterate his support for Resolution 1973.¹⁷

4.4.2. The perception of ulterior motives on the part of NATO in its intervention in Libya

Critics have contended that while protection is a legitimate activity it must not become synonymous with regime change. For Macalister (2011), the “Libyan conflict has been a war about oil if not “for” oil.” However, Bellamy and Williams (2012:24) seem to dispute that when they say note that:

¹⁵ Institute for Security Studies, *Peace and Security Council Report no. 21*, Addis Ababa, April 2011, p. 7.

¹⁶ Cited in Bellamy and Williams (2012), p. 21 quoting the ‘Arab League criticises western strikes in Libya’, *Straits Times*, 20 March 2011.

¹⁷ As above.

Although many internet blogs and newspaper editorials have accused western states of pursuing their material interests in Libya, especially in relation to oil, we have found little evidence to support such an interpretation.

On its part, the AU feared that Resolution 1973 had left too much leeway for “powerful Western states with a notorious track record of invasion and occupation” (Dembinski and Reinold (2011:12; D’Almeida 2011). The NATO intervention in Libya has poignantly been analyzed by Thakur (2011:3) thus:

Carefully crafted to both authorise and delimit the scope of intervention, Resolution 1973 specified the purpose of military action as humanitarian protection and limited the means to that goal. At a time when the recapture of Benghazi by Gaddafi loyalists seemed imminent, it authorised military action to prevent such civilian slaughter but not intervene in the civil war (any state has the right to use force to suppress armed uprisings), not effect regime change, and not occupy Libya. Gaddafi was not to be directly targeted. To the extent that he was so targeted, NATO exceeded UN authority in breach of the Charter law

4.4.3. The view that NATO’s intervention in Libya was impartial

According to Rieke, “[t]here can be little doubt that the international community successfully prevented a bloody massacre in Benghazi and large-scale atrocities in other parts of Libya. But it seems equally clear that this was achieved in a way that many perceived as very problematic. The strategy of regime change, which some states seem to have pursued, is probably the clearest indicator that impartiality was abandoned as a guiding principle. In short, the international community chose sides in the internal Libyan struggle (Rieke: 2012:77). This leads Thakur

(2012:1) to the concluded that the application of [R2P] norm to Libya in 2011 was successful but controversial. Dembinski and Reinold (2011:7) have observed that:

NATO declared that Operation Unified Protector would be restricted to the enforcement of UNSCR 1973 and would be terminated as soon as the Libyan government met three demands: a) end attacks against civilian populated areas, b) withdraw to bases all military forces and c) permit unlimited humanitarian access. Despite these assurances, the impression quickly emerged that NATO was not an impartial protector of civilians, but, willingly or unwillingly, was pursuing the toppling of the Libyan regime. This impression was created by the dynamics of the conflict.¹⁸

NATO's expansion of its target list to include Gaddafi's compound in Tripoli, for instance, fuelled fears in Africa of hidden neo-colonial agendas (Dembinski and Reinold (2011:12; Oluka 2011). NATO has been widely criticized for what some states see as an overly expansive interpretation of Resolution 1973 and for causing civilian casualties. As a result of the expansive interpretation of Resolution 1973, the Indian Prime Minister, Manmohan Singh, cautioned that "[a]ctions taken under the authority of the United Nations must respect the unity, territorial integrity, sovereignty and independence of individual states."¹⁹

To this end, Thakur (2003:163) underscores the realistic counsel of Professor Adam Roberts when he says that "the primary motivation behind intervention – the cause rather than the necessary condition – must not be defeating an enemy state", but 'if defeat of a non-compliant

¹⁸ Compare NATO Statement on Libya, following the working lunch of NATO Ministers of Foreign Affairs with non-NATO contributors to Operation Unified Protector, 14 April 2011 cited in Dembinski and Reinold (2011:7)

¹⁹ See "Manmohan slams West for using force to change regimes," *Times of India*, 25 September 2011, available at: <http://articles.timesofindia.indiatimes.com/2011-09-25/india/30200524_1_libya-sovereignty-countries> (accessed 2 January 2013).

state or regime is the only way to achieve the human protection goals, then so be it.” For this reason, Thakur observes that:

It is possible for the international community, working through the authenticated, UN-centred structures and procedures of organised multilateralism, to deploy international force to neutralise the military might of a thug and intervene between him and his victims. NATO military muscle deployed on behalf of UN political will helped to level the killing field between citizens and a tyrant. (Emphasis in the original).

4.4.4. Airpower may not be appropriate for protecting civilians

While air power can help stem the tide of mass killing, it provides only indirect protection and may come at the cost of some unintended additional harm to civilians (Bellamy and Williams: 2012:23). The way NATO executed the Libya operation, it is very similar to the way it executed other operations such as the initial stages of operation Desert Storm or Iraqi Freedom. According to Sewell “[t]here is a Western way of using air power that looks a lot like regime change, and doesn’t resemble humanitarian protection.” For this reason, Sewell emphasizes the importance of defining R2P as an international community for the protection of civilians rather than a form of imperialism.²⁰ Evans (2012:3) is more candid when he concludes that:

The truth of the matter is that consensus *has* simply evaporated in a welter of recrimination about how the NATO-led implementation of the Council’s Libya mandate in UNSCR 1973 “to protect civilians and civilian populated areas under threat of attack” was actually carried out. We have to frankly recognize that there has been some infection of the whole R2P concept by the perception, accurate or otherwise, that the

²⁰Washington Report on the Middle East Affairs, available at : <<http://www.wrmea.org/wrmea-archives/371-washington-report-archives-2011-2015/august-2011/10613-human-rights-libya-and-the-responsibility-to-protect-r2p.html>>(accessed 23 January 2013).

civilian protection mandate granted by the Council, with no dissenting voices, was manifestly exceeded by that military operation.

4.4.5. The problem of interpretation of Security Council Resolution 1973

The passing of Resolution 1973 and its subsequent implementation has showed that differences remain over how to interpret UN Security Council mandates. Two key lessons can be drawn from NATO's intervention in Libya. Firstly, the overstepping of Resolution 1973 mandate might make it more difficult for Council members to find common ground on civilian protection mandates as there may be a danger that they might be used as a façade for other agendas (Bellamy and Williams: 2012:23). This view is strengthened by Bellamy and Williams (2012:24) who view that:

Nevertheless, the *perception* of ulterior motives and agendas may make it more difficult in the future to forge a consensus on the use of force for protection purposes, within the context of either a peacekeeping operation or a potential humanitarian intervention (Emphasis in the original).

Secondly, NATO's action in Libya showed that coalitions of the willing might exacerbate some of the operational problems on the ground, making it more difficult to implement resolutions effectively (Bellamy and Williams: 2012:23).

4.5. Summary of NATO's intervention in Libya

The main contention is that that the NATO-led mission in implementing Resolution 1973 went beyond the mandate of the resolution to protect civilian lives and changed into one that sought regime change in Libya (CFR 2011). The main problem was the establishment of a no-fly zone (to prohibit all flights in Libyan airspace in order to protect civilians) became highly controversial, as it enabled only NATO air forces to attack Libya from the air, leading to the collapse of the Gaddafi regime and finally the killing of Gaddafi (Cotler and Genser 2011) (Lee:2012:22).

There was no definite or satisfactory explanation from either UN Security Council or NATO as to the extent to which non military options were tried and if they were who did and what was the response. The concern of whether the first two pillars of R2P were thought of before the third pillar was initiated. Similarly it was felt that it is very hard to say with certainty who was tracking the casualties so from the situation since it is difficult and very costly to do it.

After seven months of NATO's involvement in Libya, its mission ended with the death of Gaddafi on 20 October and NATO officially ended its mission on 31st October 31 2011 (Lee:2012:21; Ramoin:2012:1). With the final arrests of the Gaddafi's inner circle, the people of Libya liberated themselves from Gaddafi's dictatorship that lasted 42 years. While the UN Secretary-General Ban Ki-Moon and several UN member states commended the NATO intervention in Libya, others, such as India, openly doubted the efficacy of NATO action in Libya.

In the final analysis, the unilateral and subjective expansion of the interpretation of Resolution 1973 by NATO vindicated those who claimed that NATO intervention in Libya was simply furthering of imperialism through the “Trojan horse” of R2P principles (Bush, Martiniello and Mercer 2011). This view is buttressed by the fact that “international powers did not appear to give peace a chance, despite numerous offers by Gaddafi to come to the negotiating table” (Agrube 2012).

4.6. Assessment of the African Union’s response to the crisis in Libya

The AU seemingly looked inadequate to tackle the Libyan crisis. Sturman (2012:1) notes that the Libyan crisis affords an opportune case study “to reflect on whether the AU’s response to events taking place in North Africa over the past year is an exception to the organisation’s track record of greater engagement in conflict resolution and political peer pressure among African leaders, or a sign that the old rules of the “dictators’ club” of the 1970s and 80s still prevail?” The case of Libya raises questions about which regional organizations should be given the gate keeping role in situations where relevant institutions adopt different positions on the use of force.

4.6.1. The ambivalence of the AU to respond in the Libyan crisis

Initially, some African leaders tried to downplay the potential conflagration in Libya. For example, President Robert Mugabe of Zimbabwe degraded it as merely a “domestic hiccup” (Dembinski and Reinold: 2011:12). Notwithstanding the sympathy that other African leaders had

for the ‘Brother Leader’ – as Gaddafi was fondly called, however, the majority of African leaders were apparently convinced that Gaddafi had become politically untenable (Dembinski and Reinold: 2011:12; Bakata:2011).

With the exception of Rwanda and The Gambia, African states were very slow in their responses to the crisis in Libya. (Dembinski and Reinold: 2011:13; Kituyi 2011). For example, Paul Kagame openly criticized the AU’s response to the bloodshed in Libya that “[f]rom the African perspective there are important lessons to learn, the main one being that we as the AU need to respond faster and more effectively to situations such as these” (Kagame 2011; Dembinski and Reinold: 2011:13).

Also, South Africa, which was a cautious supporter of Resolution 1973, later joined the chorus of criticism, arguing that the Security Council’s decision to refer the situation in Libya to the ICC in Resolution 1970 should also extend to cover “any actions that may have been committed in the purported implementation of Resolution 1973.”²¹ The AU’s position to resolve the Libyan crisis is clear in the words of Jean Ping, when he said that:

We are convinced that, in the final analysis, only a political solution will fulfill the legitimate aspirations of the Libyan people and promote lasting peace in that country. It is this belief that informs our approach since 10 March 2011, when the PSC worked out a roadmap for resolving the Libyan crisis.²²

²¹ S/PV.6528, p. 11.

²² Statement of Jean Ping, Rome Italy, 5 May 2012.

4.6.2. The AU's intention that the Libyan problem should be solved by Libyans

Instead of supporting regime change from the outside, the AU believed that it was up to the Libyan people to initiate a process of political reform. This is discerned from the statement of the AU High-Level Ad Hoc Committee which stated that “it should be left to Libyans to choose their leaders and that international actors should refrain from taking positions or making pronouncements that can only complicate the search for a solution.”²³ This shows that the AU did not subscribe to the view that forcible democracy promotion from the outside was a legitimate means to ensure the effective protection of civilians. The then AU Commissioner, Jean Ping, stated that:

The AU has no other agenda in Libya than to facilitate the resolution of the crisis and a democratic transition in that country. We are all the more determined in our endeavor as the AU Constitutive Act and a number of other relevant instruments of our Union are very clear as regards the collective commitment of Africa to promote peace, as well as democracy and the rule of law. The AU Roadmap offers a viable basis for launching a political process led and owned by the Libyans, so that the democratization of their country is the result of their action and the consensus they would have reached. As experience has taught us on several occasions, this is critical for sustaining any democratic gain.²⁴

In light of NATO's resolve to bomb Gaddafi's compound in Tripoli, the AU High-Level Committee appealed to NATO to strictly adhere to the provisions of Resolution 1973.²⁵

The PSC issued several communiqués on the situation in Libya. The language of the communiqués was unprecedented, given that Egypt and Libya were two of the AU's “big 5”

²³ PSC/PR/2(CCLXXV), 26 April 2011.

²⁴ Ping Statement, 5 May 2011.

²⁵ PSC/PR/2(CCLXXV), 26 April 2011.

members, each responsible for paying 15 per cent of the organisation's ordinary budget. It was all the more surprising for the fact that the composition of the PSC at the time included some of the most authoritarian states on the continent: Equatorial Guinea, Zimbabwe, Chad and Libya itself (Sturman: 2012:4).

When the PSC discussed the crisis in Libya during its 261st sitting held on 23rd February 2011, the PSC issued a communiqué stating that the PSC decided to urgently dispatch a mission to Libya to assess the situation on the ground. However, according to Apuuli (2011:3), “there was no mission which was dispatched “urgently.”” The PSC's 23rd February communiqué strongly condemned “the indiscriminate and excessive use of force and lethal weapons against peaceful protestors, in violation of human rights and International Humanitarian Law” The PSC also underscored “the aspirations of the people of Libya for democracy, political reform, justice and socio-economic development are legitimate.”²⁶

The AU did not want to leave the resolution of the crisis to extra-continental powers alone, and therefore adopted another statement on 10 March on the establishment of an ‘Ad Hoc High Level Committee’ tasked with seeking a diplomatic solution. The AU PSC moreover expressed its conviction that urgent African action had to be taken to reach a cessation of hostilities and the adoption of political reforms.²⁷ This formula was seen as sufficiently flexible for leaving open the possibility of further engagement with the Gaddafi regime in pursuit of a diplomatic solution. When the UNSC – encouraged by the Arab League's request to establish a no-fly-zone over Libya (Leiby/Mansour 2011) – upped the ante on 17 March by authorizing “all necessary

²⁶ African Union Peace and Security Council, *Communiqué*, 261st...,

²⁷ PSC/PR/COMM.2(CCLXV), 10 March 2011.

measures” to protect civilians,²⁸ its African members voted in favor, even though the AU PSC had previously rejected any foreign military intervention.²⁹

4.6.3. The AU wanted a diplomatic settlement of the Libyan crisis

The onset of the bombing campaign frustrated the AU’s High Level Committee’s diplomatic mission, because the eminent personalities could not even get into the country – which further exacerbated tensions between the AU and NATO (Onyango-Obbo 2011). The AU’s Proposal for a Framework Agreement on a Political Solution to the Crisis in Libya called for an immediate and complete cessation of hostilities, to be followed by the formation of an inclusive transitional government, the establishment of a constitutional framework and the organization of elections.

A peace plan based on this proposal, which was presented by an AU delegation under the leadership of Jacob Zuma to the Libyan government in April, received Gaddafi’s approval but failed to convince the National Transitional Council. Despite this failure, the AU continued to push for a solution to the crisis based on “the African way”, that is, through a negotiated settlement with Gaddafi, but was increasingly sidelined in the following months.

At the 265th meeting of the PSC on 10 March 2011, the PSC discussed the crisis in Libya at a time when Gaddafi regime forces were threatening to reclaim the rebel stronghold of Benghazi. The PSC made two important decisions in an ensuing Communiqué. Firstly, the PSC established a roadmap to outlining steps to resolve the Libya crisis, including calling for: urgent African

²⁸ S/RES/1973, 17 March 2011.

²⁹ PSC/PR/COMM.2(CCLXV), 10 March 2011.

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 implementation of political reforms necessary for the elimination of the causes of the current crisis.³⁰

Secondly, the PSC established an AU High level Ad Hoc Committee on Libya comprising five heads of state and government, including the chairperson of the AU Commission. The AU Ad Hoc committee was mandated 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 AU's partners, in particular the League of Arab States (LAS), Organization 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.³¹

However, as it turned out, these two decisions by the PSC were also overtaken by the action of the UN Security Council, particularly the passing of UNSC Resolution 1973 soon after the establishment of the *ad hoc* Committee. Resolution 1973 did not only pave the way for military attacks against Libya by NATO troops but also imposed a non-fly zone over Libya, which meant that the *ad hoc* Committee could not travel to the country without UN authorization. The UN Security Council action effectively closed off the Libyan crisis from AU intervention. At its 10th meeting held on 12th May 2011 in Addis Ababa, the Panel of the Wise expressed its deep concern at the situation in Libya and called for an immediate and complete ceasefire, and an end to all attacks on civilians.

³⁰ African Union, *Communiqué of the 265th Meeting of the Peace and Security Council, PSC/PR/COMM.2(CCLVX), 10 March 2011*, para. 7.

³¹ African Union, as above.

4.6.4. The AU was slow in recognizing the Transitional National Council

Initially, in the final communiqué of its 291st meeting, the PSC declined to recognize the Transitional National Council (TNC) as the legitimate authority in Libya. The PSC cited Article 30 of the Constitutive Act of the AU which bars governments which come to power through unconstitutional means from participating in the activities of the AU. The PSC reaffirmed its stand that all the stakeholders in Libya come together and negotiate a peaceful process. This position would involve the inclusion of elements from the Gaddafi regime to be part of the new government. However, on 20th September 2011, the AU moved to recognize the rebel movement, the TNC, only after they had captured the Libyan capital, Tripoli. According to Bellamy and Williams (2012:18):

The position of the AU's Peace and Security Council was more cautious and rather less generous to the Interim Council than that of the LAS. Although it defined the situation in Libya as 'a serious threat to peace and security in that country and in the region as a whole', it condemned 'the indiscriminate use of force and lethal weapons [...] and the transformation of pacific demonstrations into an armed rebellion'. It also emphasized its 'strong commitment to the respect of the unity and territorial integrity of Libya, as well as its rejection of any foreign military intervention, whatever its form'.³²

4.6.5. The AU was overtaken by events

The AU denounced the violence in Libya, stating that it "posed a serious threat to the peace and security in that country and the region as a whole" (Barker 2011; Lee:2012:22), while the Arab

³² AU document PSC/PR/COMM.2(CCLXV), 10 March 2011.

League took a similar position against the Gaddafi regime, suspending Libya's membership in the league, as well as considering a no-fly zone. On March 12, the AU called on the UN Security Council to "impose a no-fly zone", as well as to create "safe areas" for the protection of the Libyan people (Lee: 2012:22). On the 25 May 2011, an AU statement was issued which objected to NATO's interpretation of the UNSC resolution and called for an end to the NATO intervention. The Chairperson of the AU Commission, Jean Ping, complained subsequently that the AU was sidelined and ignored in international deliberations on Libya (Sturman: 2012:5).

As it turned out, the AU was overtaken by events. Apuuli (2011:3) is of the view that the "failure of the PSC to act without delay in the crisis set the basis upon which it came to be marginalized" by the UN Security Council. Apuuli notes that "[h]ad the PSC immediately established the fact-finding mission; it would have been very difficult for the UNSC to ignore it in the conflict." The crisis in Libya has exposed the hollowness of the AU an African solution to Africa's problems. According to Apuuli (2011:1):

the " 'marginalization' of the organization in the crisis is self-inflicted because had it taken a very strong stance when the crisis broke out, it would have laid a strong basis to preclude the eventual entry of the UN in Libya. However, from the very beginning, the organization took half-hearted measures in its reaction to the crisis which eventually resulted in its being overridden by the western powers using the UN SC to intervene in the country. Moreover, the AU is also saddled with problems including lack of capacity (especially financial) and fissured within its ranks, which preclude it from playing a very active and meaningful role in Africa's crises.

The resource constraints, ambivalence to act, among others, impelled the AU to fail to capitalize on its responsibility as a regional arrangement under Chapter VIII of the UN Charter to deal with

the Libyan crisis. Apuuli (2011:4) aptly notes that “the failure of the PSC to immediately establish the fact finding mission paved the way for the UNSC to pull the rug from the feet of the AU in the Libya crisis.”

4.7. The role of the AU High-Level Ad Hoc Committee on Libya

Following the 23rd February 2011 meeting of the PSC on Libya, the AU established a High-Level Ad Hoc Committee to take further action, led by South African President Jacob Zuma and including Mauritania, Mali, Uganda and Congo (Brazzaville). The Ad Hoc Committee met on 10 March 2011 and rejected the idea of foreign military intervention in Libya. The Ad Hoc Committee resolved to travel to Libya to attempt mediation between Gaddafi and the opposition movement. At the same time, an international debate was unfolding on whether and how to respond to Gaddafi’s military campaign against the uprising. This included a proposal to establish a ‘no-fly zone’ over Libya, which Sturman (2012:4) has noted that it was “a euphemism for military action that stopped short of deploying foreign ground forces on Libyan soil.”

The Ad Hoc Committee travelled to Libya from 9 to 11 April 2011 and managed to meet Gaddafi 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.”³³ However, when the Ad Hoc Committee travelled to Benghazi the next day to meet the TNC, there was no agreement as the TNC contended that it could not negotiate an end to the crisis unless Gaddafi

³³ The AU Ad hoc Committee on the Situation in Libya met at ministerial level in Addis Ababa, on 25 April 2011. On that occasion, the Committee met with representatives of both parties. The Libyan Government reiterated its unconditional acceptance of the AU Roadmap, while the National Transitional Council pledged to study the document thoroughly. It is expected that both sides will shortly submit their comments and proposals on the various elements of the Roadmap.

relinquished power. The TNC argued that Gaddafi and his government had lost all legitimacy to govern the country and thus could not, therefore, be interlocutors in finding a solution to the crisis.

Thus, the TNC refused to agree on the crucial issue of the cessation of hostilities (Apuuli, 2011:8). The Libyan crisis led to the criticism of the AU Ad Hoc Committee “as an ineffective gathering of self-congratulatory African leaders who were ultimately forced to watch from the sidelines while NATO tried to bomb Gaddafi out of office (Dembinski and Reinold (2011:13).

4.8. Summary on the AU’s response to the crisis in Libya

Although the role of regional organizations in the Libyan crisis was noteworthy, analysts are of the view that the AU, as a regional or continental organization did not significantly perform its ‘gate keeping’ role in the implementation of R2P (Barker 2011; Lee: 2012:22). Sturman (2012: 4) states that “[al]though seeking a political resolution to the conflict was an important goal, the AU high-level committee’s attempts to mediate were premature and unrealistic, seeking an assurance of a ceasefire from Gaddafi in April in the midst of the bombing, while the opposition movement refused to even enter discussions on the AU’s terms.

The then AU Commission Chairman, Jean Ping, defended the AU policy on Libya during an opening address to the continental summit in Addis Ababa, Speaking to Africa’s foreign ministers, Chairman Ping said the AU’s difficulty with handling the Libyan revolt was that it did

not start with peaceful demonstrations, as with other “Arab Spring” uprisings.³⁴ The AU came in for withering criticism during Gaddafi’s last months in power for a mediation attempt that could have kept the Libyan dictator in power. Defending the policy, Ping said AU thinking was based on the concern that Libya might become a failed state like Somalia if Gaddafi were overthrown. AU policymakers at the time expressed concern at reports the Libyan rebels were allied with al-Qaida. In the end, an AU mediation team was sidelined as NATO airstrikes ensured the inevitability of Gaddafi’s fall.³⁵

While there were calls to the UN SC from the other regional bodies (such as the Arab League) to impose a no-fly zone on Libya to protect civilians, one would have expected the PSC, faced with the deteriorating situation in Libya to act decisively’ for example by requesting the intervention from the Union in order to restore peace and security. However, the PSC did not do such a thing, and instead took two important decisions which also came to be overtaken by the UN SC action. The AU could have played a crucial role towards a negotiated agreement given that Gaddafi had close relationships with other African heads of states. The AU has the potential of having a powerful influence except that the close relationship brings about the mistrust of heads of states to be neutral. A lot of concern also goes into the fact that AU is not very effective; it could be true that, its diversity of membership makes it difficult to reach decisions quickly.

³⁴ Voice of America, Ping Defends AU Libya Policy in Summit Opening Speech, available at: <<http://www.voanews.com/content/ping-defends-au-policy-in-summit-opening-speech-138130508/151169.html>> (accessed 3 January 2012).

³⁵ Voice of America, Ping Defends AU Libya Policy in Summit Opening Speech, available at: <<http://www.voanews.com/content/ping-defends-au-policy-in-summit-opening-speech-138130508/151169.html>> (accessed 3 January 2012).

Sturman (2012:3) is of the view that the “events of early 2011 demonstrate the limitations of the AU’s architecture for promoting democracy. The constitutionalism on which the AU’s democracy promotion was founded does not provide for an adequate response to popular uprisings, or what could have been interpreted as “direct democracy” in action.” Sturman (2012:3) has also observed that “taking to the streets to remove heads of state from power was interpreted by some within the AU as an unconstitutional change of government, since constitutional democracy only allows for removal from power by elections.” Sturman (2012:3) puts the record straight thus:

What this interpretation of events misses is that the AU principle was meant to apply only to challenges to “democratically elected governments.” The uprising against Gaddafi was more clearly one against authoritarian rule than those against presidents Mubarak in Egypt or Ben Ali in Tunisia. The Libyan leader had never held so much as a charade of elections since himself seizing power in 1969, disqualifying his regime from even the broadest definition of a ‘democratically elected government’ challenged by unconstitutional change. This is in contrast to Tunisia and Egypt, in which the uprising’s legitimacy depended on a judgement of the quality of elections won by these leaders in the recent past.

Still, the AU’s response in Libya was significant. For example, the AU established a roadmap through 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 implementation of political reforms necessary for the elimination of the causes of the current crisis.

The PSC also established an AU High level Ad Hoc Committee on Libya comprising five heads of state and government, together with the chairperson of the Commission. The committee was mandated 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 AU's partners, in particular the League of Arab States, Organization 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. However, as the subsequent events were to show, the AU's decisions were overtaken by events happening elsewhere (Apuuli: 2011:4).

CHAPTER 5

5. LESSONS LEARNT FROM THE LIBYAN CRISIS: HOW CAN APSA BE STRENGTHENED TO AVOID FUTURE CRISIS SUCH AS LIBYA?

It is fair to say that the Libyan crisis has highlighted the ambivalent commitment of many African governments to the ambitious implementation of Article 4(h) intervention and the notion of human security. The Libyan crisis has showed that although the AU made a revolutionary statutory commitment to intervene in a member state to protect the population from mass atrocities, such commitment is yet to find concrete expression in the actions of AU member states where there is a clash between state security and human security. The Libyan crisis exposed that the AU still lacks political will and courage to deal with state-sponsored abuses of civilian right holders in member states such as the Libya scenario.

5.1. Why was the AU overtaken in Libya?

5.1.1. Resource Constraints

It is clear that the AU had the intention to effectively intervene in the crisis in Libya but they did not have the means. This is clear from the statement of the then Chairman of the AU Commission, Jean Ping, at a meeting of the Contact Group, Chairman of the AU Commission, when he said that:

Our presence in Rome, as an invited guest at the meeting of the Contact Group, is further testimony to the commitment of the [AU] to interact and hold dialogue with its partners to speed up the resolution of the

Libyan crisis. At its last meeting on the situation in Libya, on 26 April, our [PSC] reiterated the need for more coordinated international action and a common vision of what the international community can and must undertake to support the quest for peace in Libya and to fulfill the legitimate aspirations of the Libyan people. I hope that this meeting of the Contact Group will contribute to the attainment of this objective.³⁶

The talk of “African solutions to African problems” has not been backed with serious resources by the African countries in order to translate it into reality (Apuuli: 2011:6). Although the AU was eager to find a diplomatic solution to the crisis in Libya, it is clear that it may not have raised enough financial and human resource to conduct an operation to protect civilians in Libya as envisaged by Resolution 1973. This has led some commentators to conclude that the expression of interest of the AU to lead the mediation was “a little too late a face-saving exercise for an institution without political resources and the will to solve such a complex impasse” (Hengari; 2011; Dembinski and Reinold (2011:13).

5.1.2. Lack of consensus among African Union members

Apuuli (2011:7) has aptly analysed that the Libyan crisis “exposed the fissures within the AU members and thus the failure of the organization to mount a united front in the matter.” As a result of lack of consensus within the AU, the AU could not have mounted an effective intervention in the crisis. Apuuli (2011:7) notes that:

three positions emerged among the members to deal with the situation. The first position advanced by *inter lia* Uganda, South Africa and to an extent Kenya, accepted UN Resolution 1973 in principle but was

³⁶ Statement of the Chairperson of the African Union Commission, Jean Ping, at the Meeting of the International Contact Group in on Libya, Rome, Italy, 5th May 2011.

critical of the way the NATO countries were conducting their operations in Libya. To these countries NATO's operations went beyond the contours of Resolution 1973 and in effect were part of "regime change doctrine." The second position advanced by the likes of Rwanda, supported the attacks on Libya. President Kagame in particular, is reported to have argued that "the Libyan situation had degenerated beyond what the AU could handle".

Apuuli (2011:7) continues to say that:

The third position advanced by the likes of Zimbabwe, Algeria and Nigeria opposed NATO's operation in Libya and viewed is as Western Countries using the UN to get rid of the Qaddafi regime. In fact, President Mugabe has accused NATO of being a "terrorist organization" fighting to kill Qaddafi.

5.1.3. Ambivalence on deciding on Gaddafi's future

The ambivalence of the AU on deciding the future of Gaddafi stalled the AU's mediation efforts. This is well exposed by Apuuli (2011:7) who notes that the AU in its roadmap failed to pronounce itself on the future of Gaddafi in and after the negotiation of the political solution to the crisis. Although the Permanent Members of the UNSC were resolute in their demand that Gaddafi should relinquish power, the AU was ambivalent on the issue at best.

5.1.4. African Union's impartiality in their response to the Libyan crisis

The AU's own ability and willingness to act as an honest broker in the Libyan crisis and to apply R2P in an impartial fashion was equally doubted (Dembinski and Reinold: 2011:13). Given the significant financial and ideological influence Gaddafi wielded in the OAU and later AU, it is

questionable whether the AU was an impartial arbiter in the AU crisis. For example, Gaddafi was elected AU Chairman in February 2009 although there was some uneasiness in some quarters.³⁷ Gaddafi strongly advocated for the United States of Africa in order to realize his dream of a unified pan-African state rivaling the EU and US.³⁸ This explains why many African leaders initially sought to distance themselves from Gaddafi early on in the military campaign.³⁹

In light of the AU's political history, it is clear that the AU could not be separated from its close ties to the Qaddafi regime. The Financial Times stated that:

Gaddafi has commercial, military and political footprints across much of the continent, where he has concentrated efforts at extending Libyan influence since giving up on promoting Arab unity in the 1990s. He has channeled billions of dollars of investment into as many as 31 African states and provided backing to numerous African politicians and leaders.⁴⁰

For these reasons, the AU's credibility to act as an impartial mediator in the conflict was called into question, considering Gaddafi's central role as a prime financier of the continental organization (Dembinski and Reinold: 2011:13). Not surprising, a local survey in Libya revealed that about 97 per cent of Libyans did not see the AU as a neutral mediator to resolve the Libyan crisis.⁴¹ It is not confirmed whether it was for the same reason of impartiality why the UN

³⁷ Polgreen, Lydia. "Qaddafi, as New African Union Head, Will Seek Single State" *The New York Times*. 2 Feb. 2011. <<http://www.nytimes.com/2009/02/03/world/africa/03africa.html>>

³⁸ Gettleman, Jeffrey. "Libyan Oil Buys Allies for Qaddafi" 15 March. 2011. <<http://www.nytimes.com/2011/03/16/world/africa/16mali.html>>

³⁹ "The Arab Spring: Hopes and Challenges" *The Brookings Institution*. 6 June. 2011. <http://www.brookings.edu/~media/Files/events/2011/0606_juppe/20110606_arab_spring_juppe.pdf>

⁴⁰ Gaddafi calls in favours from Africa, *The Financial Times*, 27 March 2011

⁴¹ "Eastern Libyans believe in national unity, distrust AU and Turkish mediation, survey reveals" *English.Libya.TV*. 25 April. 2011. <<http://english.libya.tv/2011/04/25/eastern-libyans-believe-in-national-unity-distrust-au-and-turkish-mediation-survey-reveals/>>

Security Council was paying more attention to LAS as opposed to the AU in adopting Resolution 1973 (Bellamy and Williams: 2012:22).

5.1.5. The AU's perpetual problems of failing to match words with deeds

As indicated earlier, some of the prominent proponents of the non-indifference doctrine have been the Secretariat of the regional organization, namely Salim Ahmed Salim and Alpha Oumar Konare. These norm proponents within the AU may have succeeded in changing the principles of the organization in theory but could not influence state practice. It has been noted that the consolidation of these new principles depends on the position taken by the AU heads of state themselves. However, most of the leaders remain committed to the older rule of non-interference most of the time. For example, Dembinski and Reinold (2011:11) note that:

The AU's role in the crisis tell us about the organization's commitment to human security and R2P [...] the AU's security culture; and that the AU's commitment to human security is wavering when realizing human security comes at the expense of regime security – especially when the regime is one which has long played a leading role in the continental organization.

Sturman (2012:5) even thinks – and justifiably so – that the AU “ may also have drafted the initial communiqués of the PSC in the early days of the uprisings in North Africa, before the government officials under President Zuma took over the handling of the AU's mediation efforts in Libya.” Sturman (2012:5) notes that:

Where they have acted to condemn unconstitutional changes of government, this is arguably in defence of incumbent governments, rather than democracy *per se*. In addition, while the PSC has applied the norm of rejection of unconstitutional changes of government in many cases, it has stopped short of applying the article 4(h) right to military intervention. Each of the AU peace missions undertaken to date has been with the consent of the government of the country in which the mission has been deployed, even in Sudan, where the PSC worked hard to convince President Al Bashir to consent to the AU deployment to Darfur.

In simple terms, the implementation of progressive and revolutionary principles such as the right of intervention under Article 4(h) of the AU Constitutive Act lacked a bold leadership as exposed by the Libyan crisis in 2011. An assessment of the AU politics of not matching rhetoric with reality is that “ the combination of strong leadership driving the reform agenda of the AU forward was weakened after the departure from politics of presidents Mbeki and Obasanjo”(Sturman: 2012:5).

5.2. Summary

The Libyan crisis has showed that to ensure implementation of Article 4(h) intervention and the notion of R2P, there should be systematic linkage between the Security Council and the PSC regarding information sharing, emergency consultation, periodic joint meetings, participation in Security Council meetings on issues related to the region or placement of issues on the agenda by one entity by the other (Murphy: 1996:349).

Undoubtedly the AU is still a work- in- progress that requires concerted efforts and commitment by all its Members to adhere to the noble principles enshrined in the Constitutive Act. However,

it is through fulfillment of the promises to the people of Africa, achieving the set goals that AU shall be an effective organization to attend to the continents security crises in the future.

It should also be noted that the AU's ambivalence to implement Article 4(h) intervention emanates from the drafting history of the provision. The original wording of Libya's draft amendment to Article 4(h) did not refer to unconstitutional changes of government, but to rather to cases of unrest or external aggression Sturman (2012:3). According to Sturman (2012:3)

The word "unrest" commonly means popular protests against a government, which implies withdrawal of their consent and therefore the legitimacy of that order. Gaddafi had regime security in mind, without concern for legitimacy. The adoption of Gaddafi's amendment suggests that the "responsibility to protect" norm did not have enough support among Member States to prevent them from rejecting Libya's proposal out of hand. This goes some way towards explaining why the AU did not invoke article 4(h) in 2011 to intervene against Gaddafi's military suppression of the popular uprisings in Libya.

Further, it should be noted that despite an increase in the number of democracies in Africa since the end of the Cold War, there are still many undemocratic regimes represented in the AU Assembly of the AU. The leaders of these undemocratic regimes may have felt threatened by the North African popular protests for democracy—fearing that they may be next.

CHAPTER 6

6. CONCLUSION AND RECOMMENDATIONS

In response to Gaddafi's ruthless oppression of his own people, for the first time since the inception of the R2P framework in 2005, the UN passed a number of resolutions that precipitated the military involvement of NATO. After the UN reminded Libya of its responsibility to protect its civilian population and called for an end to the violence on 22 February, 2011, there were several efforts at the UN to implement R2P. The UN Human Rights Council adopted Resolution S-15/2, calling for the end of human rights violations, while the United Nations General Assembly suspended Libya's membership on the council. The UNSC Resolution 1970 was adopted on 26 February, imposing financial sanctions in addition to an embargo and the Resolution 1973 on 17 March 2011 (with Russian and China abstaining), calling for a no-fly zone and a cease-fire (Lee: 2012:21).

6.1. Conclusion

There are several conclusions that can be drawn and lessons learnt from the Libyan crisis of 2011.

6.1.1. The gate-keeping role of regional organizations

The Libyan crisis showed the evolving role of regional organizations as gate keepers. For example, Bellamy and Williams (2012:22) have noted that:

Before the LAS resolution calling for the imposition of a no-fly zone and safe areas to protect civilians, British and French diplomats were pessimistic about the chances of the Council being persuaded to authorize enforcement action and the US remained uncommitted to the idea of enforcement measures. Without the LAS statement it is unlikely that what became Resolution 1973 would ever have been tabled for a vote. Whatever the reasons behind the LAS decision, it changed the Council's dynamics: it made opposition to enforcement more difficult; it brought the US on board, adding to the feasibility of the military option; it helped persuade the African Council members; and ultimately it pushed the remaining skeptical members towards abstention.

The Libyan crisis has showed that international responses to protection crises are most effective when there is a strong partnership between the UN and relevant regional organizations such as the AU. The emerging gatekeeper role being played by regional organizations provides avenues for increased activism on human protection while (theoretically) ensuring that the Security Council acts in a manner that is consistent with regional norms and interests. However, Bellamy and Williams (2012:24) note that:

Such gate-keeping presents at least two challenges. First, what should be done when regional organizations disagree, as the LAS and AU did in relation to Libya? In the future, Council members might be tempted to go 'forum shopping' to find regional organizations that better reflect their own positions in order to legitimize those views. Second, while regional gatekeepers can facilitate robust international responses to protection crises, they can also block decisive action. Thus, while the LAS and its representative on the Security Council, Lebanon, facilitated intervention in Libya, it prevented the Council from even condemning violence against civilians in Syria.

As mentioned above, a week into the crisis in Libya, the AU PSC issued a statement calling upon the Libyan government to ensure the protection of its citizens. The statement expressed sympathy for the aspirations of the Libyan people for democracy and political reform, but also highlighted the need to preserve the territorial integrity of Libya.⁴² The UNSC in turn sprang into action rather swiftly, adopting Resolution 1970, which referred the situation in Libya to the ICC.¹⁴ The Council's three African members – South Africa, Nigeria, and Gabon – who had previously sided with other African governments in frustrating the International Criminal Court (ICC) process in the cases of Al-Bashir and Kenya, cast an affirmative vote.

6.1.2. Subjectivity in implementation of UN Security Council Resolutions

NATO's activities over Libya in pursuit of UN Resolution 1973 have again raised questions over the timeliness, legitimacy, proportionality and effectiveness of military action. Such issues have now been made more acute given the emphasis on the operationalisation of the R2P principle, which has strong support from regional actors such as the European Union (Fiott et al: 2012:6). The intentions behind the decision to intervene in Libya were good— as they were in Somalia, Srebrenica, and other efforts to respond to mass atrocity. Yet the difficulty in following through on those intentions in Srebrenica allowed the killing of 8,000 men and boys, and severely undermined the credibility of NATO (Chesterman: 2011:11).

⁴² PSC/PR/COMM(CCLXI), 23 February 2011.

6.1.3. The question of irresponsibility in protecting civilians

Compounding the damning indictment of expansive interpretation of Resolution 1973 is the loss of life after NATO intervened as opposed to the deaths before, and one can see the hypocrisy. More lives were claimed after R2P principles were induced, an incredibly worrying statistic for those whom claim R2P is the humanitarian answer to protection.⁴³ Whilst an estimated 9,000 of the 30,000 deaths were Gaddafi troops, the fact that NATO on numerous occasions was responsible for civilian deaths cannot be ignored (O'Connor 2011).⁴⁴

6.1.4. The erosion of consensus on responsibility to protect

As it may be noted from the reluctance of the international community to intervene in Syria, the implementation of Resolution 1973 has eroded the consensus that was there in 2005 when the political commitment of R2P was adopted by the World Summit. This view is discerned for the practice of Security Council members to pass a decisive intervention to intervene in Syria – whose scale of atrocities may have overtaken that of Libya. According to Dembinski (2011:ii):

Within the AU, the Libyan experience could lead to a disillusionment with and estrangement from this concept. Overall, the Libyan experience will most likely not pave the way for a broad normative consensus

⁴³ Some sources suggest there were approximately 30,000 deaths in the fighting in 2011, whilst others place their estimate at around 13,000. All have higher casualties for post-March than pre-March.

⁴⁴ Mary Ellen O'Connor correctly suggests that intervention had high civilian casualty rates that likely could have been avoided.

on humanitarian protection. On the contrary, it is likely to reinforce existing cleavages between regions and regional organizations.

As a result of the expansion of the interpretation of Resolution 1973, analysts have said that the bombing of civilians and their homes appear to be an obvious misnomer for a principle of protection (Bush, Martiniello and Mercer: 2011).

6.2. Recommendations

6.2.1. Regional organizations should perform their gate-keeping role in implementing UNSC resolutions

Regional security organizations have increased significantly since the end of the Cold War Dembinski (2011:2). As states increasingly turn to regional organizations as suppliers of security, regional organizations increasingly shape the range of policy options that are available to their member states. In this regard, regional security organizations are more relevant than states are building blocks of a global peace order feeding into the UN global peace and security architecture. For this reason, Dembinski (2011:2) states that:

Regional security organizations are an important arena where groups of states with a shared identity discuss their interpretation of emerging global norms. Regional security organizations (RSOs) may accept or reject emerging global norms. Most likely, however, they will “prune these norms”, i.e. they will adapt them to the existing norms, beliefs, and interests (Acharya 2004), as expressed in basic documents and declarations of the respective organization.

Given that regional organizations enjoy authority and may confer legitimacy on enforcement actions they should function as filters between the global level, where emerging norms are presented, and the local level, where the compliance or noncompliance of state actors influences their acceptability (Dembinski: 2011:2; Bellamy and Williams 2011: 847).

6.2.2. The need for responsibility while protecting

The loss of life caused by NATO intervention has been heavily criticized. It is argued that the employment of airpower may not be appropriate for the mission to protect populations at risk. This is why Sewell emphasizes the importance of defining R2P as an international community for the protection of civilians rather than a form of imperialism.⁴⁵ Further, Evans (2012:3) argues that there should be responsibility while protecting. According to Kuwali (2010), those who protect should do no harm, implying exacerbating the suffering of the people they want to protect.

6.2.3. The need for impartiality in implementation of UNSC Resolutions

Some have criticized the NATO intervention being a “war about oil if not “for” oil” (Macalister: 2011) whereas others viewed as a hidden neo-colonial agenda of regime change (Dembinski and Reinold (2011:12; Oluka 2011). Similarly, the AU was also not seen as an impartial and honest broker in the Libyan crisis (Dembinski and Reinold: 2011:13). According to Kuwali (2010:311) the purpose of the intervention should be limited to stopping mass atrocity crimes and to

⁴⁵Washington Report on the Middle East Affairs, available at : <<http://www.wrmea.org/wrmea-archives/371-washington-report-archives-2011-2015/august-2011/10613-human-rights-libya-and-the-responsibility-to-protect-r2p.html>>(accessed 23 January 2013).

protecting civilians. Those who intervene should make the humanitarian objectives of the intervention clearly known in advance to the international community in order to minimize the risk of aggravating the situations. Such prior and clear information should also help in the international monitoring of the intervention. Kuwali (as above) succinctly states that:

Paradoxically, the decision to intervene in a war zone, where the worst humanitarian crises occur, is a political decision. Governments that commit troops to ‘save strangers’ have political as well as humanitarian interests at stake. Therefore, a humanitarian intervention is more likely to succeed when an intervener has clearly identified political motives in addition to humanitarian ones — so long as the political motives do not overwhelm humanitarian objectives — than when the political interests are obscure or non-existent.

According to Kuwali (2010:311) “even if national or strategic interest may influence the decision to intervene, these additional interests must be clearly subordinate to the humanitarian objective.” For this reason, the “intervention ought to be limited in time and space and should not be undertaken with the intention to alter existing State borders or with any significant degree of probability of an escalation of the conflict to neighbouring States” (Harhoff:2001116).

6.2.4. The need for resources and political will to implement the intervention

The Libyan crisis showed that although Article 4(h) gives the AU a legal mandate to intervene in the territory of Member States, AU Member States are still reluctant to actually implement such interventions. Resources and political will are the necessary tools for any effective intervention. As seen from the NATO intervention in Libya, it is political will coupled with adequate resources that ultimately determines whether or not States intervene. If words mean anything,

political will may be driven by the adoption of Article 4(h) and R2P by African governments, which imposes a legal and political responsibility on AU States to protect populations at risk of mass atrocity crimes. On this basis, key governments should persuade and mobilize the AU to take necessary action to act in a situation of mass atrocities (Evans:2008:224).

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APPENDIX

I. Questionnaire

Part I: Introduction

Wilson Kajwengye Twinomugisha is conducting a research, **Assessing African Union's Response in the Libyan Crisis of 2011**. The research seeks to assess the response by the international community, particularly the African Union in the Libyan crisis of 2011. As such your opinion counts and you are respectfully requested to fill out the survey below.

Provision of your particulars in the space below is optional. However, if you choose to provide your name and particulars, confidentiality will be highly exercised in this survey and your identity will not be disclosed. *(If not applicable, skip to question 1 below)*

Surname: _____ First name: _____ Title: _____

Previous Position(s) held:

(1) _____

(2) _____

(3) _____

Address _____

Telephone: _____ Mobile: _____

E-mail address *(if applicable)* _____

Part II: Survey

1. How were you involved in the international community's intervention in the Libyan crisis of 2011.

2. In your own assessment, what are the two important contributions of your institution to the intervention in Libya in 2011?

3. In your view, what are the two significant shortcomings of your institution to respond to the crisis in Libya in 2011?

4. Are you aware of any other institution or organ that responded to the crisis in Libya in 2011?

Yes _____ No _____ (if yes, go to question 4(a))

a. What did such an institution or organ do?

5. In your opinion why did the African Union intervene in Libya?

6. Overall, how satisfied were you with the contribution of the African Union in the intervention in Libya in 2011? Were you satisfied, moderately satisfied, slightly satisfied or not at all satisfied? (*Tick the most appropriate*)

- a. satisfied _____
- b. moderately satisfied _____
- c. slightly satisfied _____
- d. not at all satisfied _____

7. In your opinion why did NATO intervene in Libya?

8. Overall, how satisfied were you with the contribution of NATO in Libya? Were you satisfied, moderately satisfied, slightly satisfied or not at all satisfied? (*Tick the most appropriate*)

- a. satisfied _____
- b. moderately satisfied _____
- c. slightly satisfied _____
- d. not at all satisfied _____

9. How would you rate the following organisations as institutions that responded to the crisis in Libya?

<u>Institution</u>	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>
African Union	4	3	2	1
NATO	4	3	2	1
League of Arab States	4	3	2	1

10. In your view what was not done to effectively intervene in Libya by the African Union?

11. In your view what was not done to effectively intervene in Libya by NATO?

12. In your view what was not done to effectively intervene in League of Arab States?

13. Is there anything else that you would like to inform? Please use the space below.

Thanks for your valuable contribution