R2P IDEAS in brief

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South Africa and the Responsibility to Protect

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Introduction: Why South Africa?

It is often said of the so-called rising – or emerging – powers that they want a fairer share of institutional power and authority as opposed to challenging the principles of legitimacy upon which post-1945 international society has been built. The fall-out over the Libya intervention in 2011 challenges this view. It was a landmark moment when it became apparent that emerging powers could also be 'revisionist', as Russia and China – with some support from Brazil, India, and South Africa, pushed back against the interventionism of Britain, France and the United States. These divisions continued inside the UN Security Council during 2012 and 2013 as the permanent members were unable to respond collectively to the Syria crisis (with the US-Russian led initiative to disarm the Syrian governments stockpile of chemical weapons being an exception to what has otherwise been a systemic failure on the part of the Security Council to deal with crimes against humanity that have occurred in the civil war).

South Africa is embedded in multiple institutional orders – the African Union (AU), the Non-aligned Movement (NAM), the G77, the Southern African Development Community (SADC), the IBSA grouping (with India and Brazil), and in April 2011 it was invited to join the BRICS after a period of sustained lobbying. Additionally, since 2007 it has spent 4 years on the UN Security Council as an elected member and has been a member of the UN General Assembly throughout its post-Apartheid period. These institutional fora enable South Africa to leverage its status as a pivotal power. And to augment its institutional strength, the country has economic and military capacities that set it apart from its neighbours. Together these capacities mean that South Africa is more than a conventional middle power, it is a regional hegemon that has engaged in institution-building and identity construction. Alden and Le Pere describe the latter as 'a revivalist form of the pan Africanist ideology'.[1]

In the coming months, the Asia Pacific Centre for R2P plans to publish briefings on several pivotal states and their orientation towards R2P. It will include Russia and the United States as well as the Asian members of the BRICS grouping, India and China. We start the series of briefings with the case of South Africa. Of all the BRICS, it would be logical to assume that South Africa will be the most R2P-friendly given the prominence of human rights in its struggle to build a post-Apartheid society. The briefing shows how South Africa's support for R2P is much more complex than this initial assumption.

R2P IDEAS in brief

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Since the end of Apartheid, South Africa's foreign policy has also been labelled 'a foreign policy of transformation' given its prioritization of socio-economic development issues and its promotion of the transformation of global political and economic architecture.[2] Premised on the leitmotif of *Ubuntu* (humanity) in its foreign policy, South Africa has sought to position itself as a key global player and an African leader. The pursuit of regional hegemony has been seen in *inter-alia:* South Africa's advocacy for reform of the UNSC; Mbeki's role in the establishment of the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM); and, South Africa's membership in strategic groupings such as the BRICS and G20.

South Africa's status as a regional hegemon presents it with an opportunity to advance – or to slow down – the development of R2P in Africa and in other multilateral settings. In the following section, we examine how far South Africa has used its normative power to advance R2P in the context of its two terms as a non-permanent member on the UNSC (first term 2007-2008, second term 2011-2012).

> **South Africa's seven principles guiding foreign policy**
>
> These are: the promotion of human rights; the promotion of democracy to enhance the prospect of peaceful conflict resolution; the primacy of international law and justice; international peace as the ultimate goal of all states; the prioritization of Africa; economic cooperation as the stepping stone to economic development; the recognition that foreign policy should reflect domestic interests and principles.[3]

1. South Africa, the AU, and the Evolving R2P Framework

South Africa's position on R2P can be traced back to its formative role in drafting of the AU Constitutive Act in 2000, marking the AU's policy shift from non-interference to non-indifference. During the transformation process from the defunct OAU to the AU, South Africa lobbied for the inclusion of a liberal policy agenda emphasising human rights, democracy, good governance, sustainable development and a broad view of security. The inclusion of Article 4(h) in the AU Constitutive Act which codifies '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' resonated with the ethical impetus in South Africa's foreign policy.

At the 2005 World Summit, South Africa and other Southern leaders 'were influential in securing a consensus on the R2P pillars'.[4] The South African approach to R2P has centred on engagement and quiet diplomacy, and where necessary, cajoling non-compliant states into respect for norms and laws. This has been illustrated by South Africa's preference for mediation and dialogue in the political situations in Zimbabwe and Madagascar rather than publicly censuring these governments for their failure to protect peoples in their jurisdiction.[5]

R2P IDEAS in brief

In December 2008, as Chair of the Security Council's Working Group on Conflict Prevention and Resolution in Africa, South Africa facilitated a meeting to develop a broader understanding of R2P that linked the concept to conflict prevention and resolution in Africa.[6] South Africa has also stressed the pivotal role of regional organizations in implementing R2P, spearheading Resolution 2033 on cooperation between the UN and regional and sub-regional resolutions during its presidency of the UNSC in January 2012.[7] Additionally, in the 2010-2012 Open Debates on the Protection of Civilians, South Africa has been insistent on the primary responsibility of the state to protect its citizens while counselling against the use of R2P's as a pretext for regime change.

2. South Africa on the UNSC

Part of what makes a regional hegemon is its capacity to shape global norms and decision-making procedures. When it comes to peace and security, it is very difficult to be a regional hegemon without participation in, and membership of, the UN Security Council. In part due to the isolationist effect of Apartheid, South Africa had to wait until 2007 before it took up a non-permanent seat on the UNSC. The membership rules of the Council mean that a state is forbidden from standing for concurrent terms – so South Africa did the next best thing and returned to the Council a second two-year term starting in 2011.

The First Term

While R2P did not figure prominently in South Africa's first term on the UNSC, it would be remiss not to note the moments of controversy from this period - and what these moments tell us about South Africa's foreign policy.

(i) Iran and sanctions. The first concerns Iran's defiance of a Resolution 1737 on December 2006, which imposed sanctions on Iran's trade in nuclear materials and froze the assets of twenty-two individuals affiliated with nuclear proliferation activities. In 2007, the IAEA offered Tehran a sixty-day grace period to cease uranium enrichment in exchange for lifting of UN sanctions. Iran was deemed not to have complied with this instruction hence the adoption of Resolution 1747 in March 2007. The controversial aspect of Resolution 1747 lay in South Africa's insistence on amendments to the draft resolution submitted by the Group of 6.[8] These included a reduction in number of individuals to face an asset freeze and a ninety-day sunset clause on past sanctions if Iran ceased uranium enrichment.

South Africa's Ambassador Dumisani Kumalo added that the amendments were intended as a protest on behalf of the ten elected members of the UNSC against their exclusion from the Group of 6 negotiations.[9] South Africa's negotiation in relation to Resolution 1747 reflected the country's longstanding objection to unjust and unequal governance structures, evident in the absence of a permanent Global South member on the UNSC and the on-going failure by nuclear powers to take real measures to disarm in line with the non-proliferation treaty.

R2P IDEAS in brief

(ii) Zimbabwe and sanctions. On 11 July 2008, a draft resolution on Zimbabwe (Resolution 447) was presented before the UNSC with the intention of imposing sanctions on the Mugabe regime. The United States mission in New York wrote the draft in the aftermath of the general election held in March of that year. As there was no outright winner in round one, a second ballot should have occurred in June but Mugabe's opponent (Tsvangirai) withdrew citing violence being perpetrated against his party members as the reason for not contesting the ballot. The draft resolution called for an end to the violence and political repression in Zimbabwe, coupled with the imposition of sanctions on the country and an asset freeze on Mugabe and thirteen government officials: it was not adopted as a result of vetoes by China and Russia. The vote was nine in favour, five against (China, Libya, Russia, South Africa and Vietnam) with Indonesia abstaining. China, Russia and Libya defended their positions stating that the situation in Zimbabwe was an internal matter and that the resolution would hamper the process of dialogue and negotiation between the MDC and ZANU-PF.

Defending South Africa's vote against the resolution, Kumalo made reference to the regional efforts aimed at resolving the political crisis in Zimbabwe under the auspices of SADC. He also highlighted the AU Assembly of Heads of State and Government meeting which had expressed concern about the situation in Zimbabwe but had appealed to states not to take action that might negatively impact on the dialogue. Kumalo further emphasized that South Africa was obliged to follow the decisions of the AU and SADC and had thus voted against the resolution.[10] As we note below, in the case of Libya in 2011, fidelity to the AU's position was compromised as South Africa voted in favour of a use of force resolution.

South Africa's Zimbabwe policy was based on the priority accorded to solidarity with another African state – or, in terms that are more familiar in an international context, based on the respect for a strong conception of sovereignty that entails a stance of non-interference. However, critics viewed South Africa's position on Zimbabwe as a gross betrayal of its human rights commitments and were scornful of the fact that President Mbeki and his foreign minister denied the existence of a crisis in Zimbabwe. Moreover, the South African observer mission for Zimbabwe's elections endorsed the elections as free and fair even though this contradicted the findings of other observer missions.[11]

The Second Term

Setting out an agenda for the second term, the Foreign Minister stated that South Africa had every intention of abiding by the priorities of its foreign policy including the prioritization of the African Agenda, South-South cooperation, North-South cooperation and the strengthening of the multilateral system including the reform of the UNSC. Closer cooperation between the AU and the UNSC was also a key concern of South Africa during its second term.[12] Yet, as is often the case in foreign policy, guiding principles are easier to craft than responding to real world dilemmas in a coherent manner. The following section considers three specific challenges that South Africa experienced in its second term on the Council.

(i) Libya. Resolution 1973 authorised members of the UN to take all necessary measures, short of an occupational force, to protect civilians under attack from pro-Gaddafi forces. The resolution was passed on 17 March by a vote of ten with none against, and five abstentions (Brazil, China, Germany, India and Russia). South Africa was the only BRICS country that voted in favour of the resolution. Ambassador Sanqu defended South Africa's position stating that the country believed that adoption of measures under Resolution 1973 was a necessary reinforcement of Resolution 1970, all aimed at protecting the rights of civilians. He also added that as a matter of principle, South Africa supported the resolution with all the necessary caveats surrounding sovereignty, territorial integrity and rejection of foreign occupation.[13]

In a media briefing held on 1 April 2011, Minister Nkoana-Mashabane highlighted that South Africa's support of Resolutions 1970 and 1973 was based on

> 'our values of human rights, human dignity and freedoms, which behoved of us not to be silent while people were being massacred in Libya by their own government; our ideological outlook which emphasizes/prioritizes the spirit of internationalism, the rejection of colonialism and other forms of oppression, and the promotion and defence of the plight of the suffering masses of the world; and that the UN resolution 1973 contained elements of civilian protection and the delivery of humanitarian assistance to those affected in Libya'.[14]

The AU's Peace and Security Council (AU PSC) interpreted the situation in Libya as 'a serious threat to peace and security in that country and in the region as a whole', while at the same time emphasising its 'strong commitment' to the 'territorial integrity' of Libya and its outright opposition to occupation of that country by foreign forces.[15] The AU's search for a political solution to the Libyan crisis was seen in the issuing of a roadmap on 10 March 2011, including the following elements: for the cessation of all hostilities; cooperation with the competent Libyan authorities to facilitate the timely delivery of humanitarian assistance to the needy populations; protection of foreign nationals, including African migrants living in Libya; and adoption and implementation of political reforms necessary for the elimination of the causes of the current crisis.

The AU PSC also set up a High-Level Ad Hoc Committee; consisting of the chairperson of the AU Commission and the presidents of Mali, Congo-Brazaville, Uganda, Mauritania and South Africa, to facilitate the implementation of the proposed roadmap. As it came to be seen, the AU's decisions were too little too late, given that the implementation of Resolution 1973 began on 20 March, the day of the scheduled visit of the Ad Hoc Committee to Libya. The rejection of the roadmap by the Libyan rebels also cast a shadow on the credibility of the AU as a mediator in the conflict and downplayed any alleged influence over negotiations.[16] The side-lining of the AU by the P3 can be attributed to the following combination of factors: the PSC's lack of a coherent and timely plan of action in response to the Libyan crisis; the absence of a common African position on Gaddafi; the AU's failure at public diplomacy in the early stages of the crisis; and the questionable nature of its impartiality which detracted from its role as the key interlocutor.

R2P IDEAS in brief

South Africa's partners on the UNSC agreed with the AU's analysis that Libya was a threat to peace and security, but disagreed that negotiating with Gaddafi was likely to succeed: instead, during an intense week of diplomatic activity between 10 March and 17 March 2011, the Council managed to agree on a robust mandate that was consistent with Pillar 3 of the R2P framework whereupon the international community was responding in a 'timely and decisive manner' to protect vulnerable populations.

How did this critical resolution come about? The key meeting was held in the White House situation room on 15 March in which Obama decided that the US would endorse military strikes to prevent Gaddafi from killing more civilians – but only with the condition that such a course of action had UN backing. While Ambassador Rice took up the challenge of persuading Portugal, Brazil, and Russia to support the resolution, Obama helped the diplomatic effort by making a personal call to Zuma. Little is publicly known about the content of the call aside from the fact that Obama conveyed that this was 'a personal priority'.[17]

South Africa's affirmative vote was critical to the Resolution being passed – though only critical in conjunction with the votes of other non-permanent members. The other two African countries on the Council, Gabon and Nigeria - also aligned themselves with the consensus being forged in New York rather than Addis Ababa. Had any two of the three African members chosen to reflect the AU position in their voting, Resolution 1973 would not have been adopted because it would not have received the required nine affirmative votes.[18]

South Africa's support for enforcement of the no-fly zone over Libya was greeted with hostility by many key domestic actors. Zuma's allies in the South African Communist Party were also critical pointing out that South Africa was 'unwittingly aiding imperialist lust for Libyan oil.'[19] President Zuma reacted to the criticism by distancing himself from the NATO-led intervention in Libya arguing that it had endangered civilians. Zuma joined the bandwagon criticizing the killing of civilians in Libya yet he should have known that a properly enforced no-fly zone was likely to result in unintended but foreseeable civilian deaths. Perhaps this is what those powerful countries who abstained on Res 1973 (Brazil, China, India, Germany, and Russia) were seeking to avoid: the possibility that civilians might once again bear the brunt of western military intervention as they had done in other cases such as Kosovo and more latterly Afghanistan. The excuse that South Africa did not anticipate civilian casualties in the course of implementing Resolution 1973 simply does not hold.

Given its aspiration to be a regional hegemon, the Libya intervention put South Africa on a collision course with the African Union. South Africa's support for potentially conflicting norms of solidarity (entailing support for sovereignty and territorial integrity of African states) and human rights (entailing the scrutiny and possible intervention in the affairs of other countries), was revealed in the Libya case to be incoherent. This was not lost on *The Economist* in a 2011 editorial that described South Africa's foreign policy under Zuma as being 'all over the place.'[20]

(ii) Côte d'Ivoire. It can be argued that the Côte d'Ivoire case also highlighted the confused indecisive stance of South Africa on the issue. South Africa was indecisive on the Côte d' Ivoire post-electoral crisis for months and then sided with the Angolan position in favour of former President Laurent Gbagbo for a while. After a visit to France in February 2011, Zuma announced South Africa's recognition of Outtara as legitimate winner of the election, a reiteration of the stance taken by AU, ECOWAS and the UNSC.

The revised position adopted by Pretoria raised several questions around South Africa's accession to the BRICS in December 2010 in light of Russia and China's general preference for non-interference. Additionally, South Africa's approach towards the crisis in Côte d' Ivoire revealed the nuances of motives and influences such as the African agenda vis-à-vis the BRICS-informed emerging power agenda. Consequently, South Africa voted in favour of Resolution 1975 adopted 30 March 2011 that imposed sanctions on Laurent Gbagbo and his affiliates. The resolution, which was passed unanimously, urged Gbagbo to step down immediately and also reinforced the Council's support for UNOCI's mandate to protect civilians from violence.[21] In a media briefing held on 1 April 2011, Minister Nkoana-Mashabane stated that South Africa voted in favour of Resolution 1975 as the resolution was fully in line with the roadmap outlined by the African Union, as it called for: an end to hostilities, the protection of civilians and for the parties to implement the political solution endorsed by the African Union. Furthermore, South Africa believed that a political solution, aimed at restoring national reconciliation and unity, democracy, good governance was the only sustainable approach to ensuring long-term stability in Côte d'Ivoire.[22]

(iii) R2P after Libya: South Africa adopts 'Regime Change' thesis. By November 2011, South Africa had become so critical of the action taken against Libya by NATO countries that it was becoming an open sceptic about the R2P framework and its application.

In a UNGA protection of civilians debate, the South Africa Ambassador to the UN put the challenge to the pro-R2P states on the Security Council in the following way:

> 'South Africa has registered its concerns publicly with the manner in which efforts employed by the Security Council to protect civilians have been exploited in the recent past. In particular, my delegation has expressed its condemnation of recent NATO activities in Libya which went far beyond the letter and spirit of resolution 1973 adopted by this Council. Abusing the authorization granted by this Council to advance political and regime change agenda's does not bode well for future action by this Council in advancing the protecting of civilians agenda. This could lead to a permanent state of paralysis within this Council in addressing similar situations in future. Such action could undermine the Council's credibility in protecting civilians. Regime change, arming civilians and harming of civilians cannot be justified in the name of protecting civilians and those entrusted with such responsibility must uphold their responsibility while protecting as aptly stated by Brazil. Those who deliberately go beyond Council decisions and international legality must bear full responsibility for this impasse'.[23]

R2P IDEAS in brief

Whatever the reasons for South Africa's positioning in relation to R2P after Libya, the post-Apartheid period has been one where there has been a tension between the endorsement of a conception of strong sovereignty – forged through the experience of a colonised continent – and the pressure of putting atrocity prevention and response at the heart of foreign policy.

In line with its post-apartheid foreign policy priorities and principles, South Africa has been involved in peace support operations in several conflicts on the continent; notably Darfur, Somalia and the DRC. A detailed analysis of South Africa's role in these conflicts is beyond the scope of this brief, although it is worth noting that South Africa's rallying of 'African solutions to African problems' has deep roots in its transitional experiences from the apartheid regime and its drive to assert itself as the continental leader.[24]

In summary, the following points capture South Africa's position on R2P and its possible contribution to the evolving framework:

- South Africa was an early adopter of the norm and used its advocacy to support an endorsement of R2P at the 2005 World Summit. Sovereignty as responsibility has an enduring appeal in post-Apartheid South Africa given the memory of a violent, exclusionary state based upon institutionalised discrimination

- The country's preference is for a graduated approach to R2P, based on multi-faceted considerations such as conflict prevention, management and resolution and an acknowledgement of the role of sub-regional and regional organizations in the actualization of R2P

- Military interventions by UN member states, to prevent or protect people from mass atrocities, are unlikely to find favour in Pretoria. That said, South Africa's voting record in the Council suggests that it has not had an absolute aversion to 'pillar 3' measures being taken as a last resort

- South Africa's role in the diplomacy of responsibility post Libya has positioned it among the chorus of countries wanting greater command and control of militarised interventions to remain in the hands of the Security Council; additionally, greater accountability – morally and legally – by those countries/institutions carrying out the intervention. These combined points are increasingly seen as a distinctive BRICS contribution to R2P

- Given its prominence as an AU leader and a regional hegemon, South Africa is well placed to assist the UN in working out a common practice of subsidiarity in which peace and security matters are appropriately delegated to the right level of organizations.

R2P IDEAS in brief

R2P IDEAS in brief

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R2P IDEAS in brief

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